

September 23, 2008

MEMORANDUM TO: Chairman Klein
Commissioner Jaczko
Commissioner Lyons
Commissioner Svinicki

FROM: Charles L. Miller, Director */RA George Pangburn for/*
Office of Federal and State Materials
and Environmental Management Programs

SUBJECT: SEPTEMBER 2008 QUARTERLY UPDATE: INCREASED
CONTROL OF SOURCES

The purpose of this memorandum are to (1) provide a quarterly update for the fourth quarter of Fiscal Year (FY) 2008, as directed in the August 15, 2005, Staff Requirements Memorandum (SRM) to COMSECY-05-0028, "Staff Response to SRM for COMSECY-05-0015: Initiatives for Increasing Agreement State Participation in the Control of Sources," and (2) provide an update on the implementation of the fingerprinting requirements for Increased Controls (IC) licensees as directed in the August 31, 2007, SRM, "Meeting with Organization of Agreement States and Conference of Radiation Control Program Directors." The staff's last quarterly update was dated June 20, 2008 (Accession Number ML081640116).

Implementation Working Group

The Implementation of Increased Controls Working Group (IICWG), consisting of U.S. Nuclear Regulatory Commission (NRC) and Agreement State staff, continues to meet by teleconference. During the past quarter, the IICWG changed the schedule of regular meetings to monthly to reflect the decreased number of issues for consideration. The working group anticipates further reduction of workload in the coming quarters.

The working group continued to address issues related to the implementation of the Fingerprinting Order (EA-07-305) and issues raised during inspections of licensee implementation of IC. No significant new issues were identified in the past quarter.

The IICWG worked on three specific activities during the past quarter. First, the IICWG continued preparations for re-inspecting panoramic and underwater irradiator licensees, and manufacturing and distribution (M&D) licensees. The IICWG subgroup on inspections completed the development of inspection procedures, which are being adopted into the NRC Inspection Manual. In addition, the Office of Federal and State Materials and Environmental Management Programs (FSME) contacted the Agreement States to determine their interest in establishing section 274i Agreements to conduct re-inspections at these facilities. Seven States

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that previously signed section 274i Agreements indicated their desire to continue. No new States expressed interest. Based on this, FSME is developing addenda to the existing section 274i Agreements. Staff anticipates starting re-inspections of these licensees later this year. Re-inspections would be completed in a year.

The second activity for the IICWG is a retrospective review of best practices and lessons learned from the IC program to determine whether program changes are necessary and to inform the ongoing rulemakings. The preliminary findings of the review indicate that there are no significant program changes necessary and that the IC appear to be effective in meeting their objectives. In addition, best practices and lessons learned are being compiled and will be provided to the enhanced security rulemaking working group which will codify the enhanced security requirements for byproduct materials licensees.

Thirdly, the IICWG completed development of the Order to implement trustworthiness and reliability requirements for non-manufacturing and distribution (non-M&D) service provider licensees. The non-M&D Service Provider Security Order will be issued, on request, to non-M&D service providers so their representatives may have unescorted access to materials at client facilities. The Order is based on the M&D Security Order (EA-03-0225) and the direction in SRM-SECY-07-0011, "Interim Implementation of Fingerprinting Requirements in Section 652 of the Energy Policy Act of 2005." The IICWG is also finalizing a Regulatory Information Summary (RIS) on the respective responsibilities of Service Provider Licensees and their Clients.

The non-M&D Service Provider Security Order addresses an issue arising from the IC Security Order. IC licensees may authorize M&D service provider personnel (e.g., M&D service representatives and field engineers) to have unescorted access to radioactive material subject to IC in the IC licensee's facility only if the service provider licensee provides a certification or verification that the individual has been found trustworthy and reliable based on the results of an NRC-required background investigation that includes fingerprinting and a criminal history check by the U.S. Federal Bureau of Investigation (FBI). The non-M&D Service Provider Security Order requires the recipient licensees to conduct such an investigation and to provide certification or verification only for individuals found trustworthy and reliable based on the results of the investigation. Non-M&D Service Provider licensees that implement the Order will be able to provide the certification of reliability and trustworthiness, relieving the client licensee of the need to conduct their own fingerprinting and investigation, or to escort the service provider representative.

Inspections of Licensees Implementing the IC

The NRC Regions and Agreement States continue to inspect licensees implementing the IC as planned. No significant problems in completing the inspections have been reported, and the Regions and Agreement States expect to complete the first round of inspections within the original 3-year schedule, which will conclude in July 2009. However, the inspection of blood and research self shielded irradiators was accelerated, and is to be completed by September 2008. The Regions and Agreement States are also conducting a second round of IC inspections. The future inspections will be informed by the retrospective review of the IC program discussed above.

The IICWG continues to consider the need for additional guidance in the form of Information Notices, supplemental Questions and Answers, or other appropriate form.

The performance of the Regions and States in prioritizing and conducting the IC inspections continues to be verified through the routine Integrated Materials Performance Evaluation Program reviews. The Regions and Agreement States that have been evaluated to date were found to be on schedule, had properly prioritized the licensees for inspections, and performed adequate inspections meeting established criteria.

Training

The NRC has scheduled two sessions of the security inspection training in FY 2009. To date, 385 NRC and Agreement State staff have attended the security inspection training. Most of these attended the course on inspecting IC licensees, which does not include the module on requirements for handling safeguards information-modified (SGI-M), needed for inspecting panoramic irradiator and M&D licensees. The SGI-M module is available as a computer self-study course. The IICWG expects a sufficient number of inspectors that attended the IC security inspection training to be able to complete the additional SGI-M module and support the plans for re-inspections of the panoramic irradiators and M&D licensees.

Inspection Guidance

The IICWG previously approved draft changes to the Inspection Manual Chapter (IMC) 2800, "Materials Inspection Program," to reflect the routine security inspections. These changes have been integrated into a revision of the MC, along with other needed changes reflecting the expanded definition of Byproduct Material and experience of the Regional Inspection Programs. The proposed changes have been provided to the Agreement States for comment, along with the NRC Offices and Regions.

Two specific Inspection Procedures (IPs) for the inspections of the security programs at Panoramic Irradiator and M&D licensees were previously approved by the IICWG. FSME staff is processing the IPs for adoption into IMC 2800. Staff expects to implement the IP's later this year. An IP for IC security programs is under development separately, and an additional IP for non-M&D Service Provider security programs is in development.

Fingerprinting

As directed, staff issued requirements for FBI fingerprinting and criminal history record checks to NRC licensees on December 5, 2007. Implementation issues associated with fingerprinting are being addressed through the IICWG.

Implementation issues, as they arise, continue to be addressed through the development of supplemental questions and answers, the same process used to provide additional guidance to licensees implementing the IC. Fourteen supplemental questions and answers have been developed to clarify commonly asked questions that have been received from licensees. These have been posted to NRC's public website and to the IC toolbox.

The Fingerprinting Order required NRC licensees to fully implement their fingerprinting program by June 2, 2008. NRC licensees were required to report to the NRC within 25 days after

reaching full compliance with the requirements of the Order. The Division of Facilities Security in the Office of Administration estimates that they have processed approximately 25,000 fingerprint cards. It is estimated that 50,000 - 60,000 fingerprint cards will be processed by December 2008 for both NRC and Agreement State licensees.

The Agreement States are required to issue legally binding requirements for fingerprinting, equivalent to the NRC Order EA-07-305, by June 5, 2008. In SECY-08-0089, the staff informed the Commission that all Agreement States, with the exception of New York, successfully issued legally binding requirements by the June 5, 2008 deadline. Both the New York State and New York City programs formally indicated that they did not meet the June 5, 2008, deadline but expected that the requirements could be completed through emergency rulemaking by October 31, 2008. The New York City Office of Radiological Health presented its proposed rules to the New York City Board of Health on September 17, 2008, and expects the rules to be published and effective by October 21, 2008. The New York State Bureau of Environmental Radiation Protection (BERP) indicated that it encountered unanticipated delays reaching agreement with, and obtaining approval from its legal counsel on the proposed fingerprinting rules. The BERP now estimates its fingerprinting rules will become effective in February 2009. FSME will closely monitor the State's progress during the next quarter, and will be holding a conference call with the Governor's Office of Regulatory Reform on September 26th to re-emphasize the importance of the State implementing the fingerprinting requirements.

Summary

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

- The IICWG held meetings by conference call. The schedule of meetings was extended from weekly to monthly in response to reduced workload.
- One additional supplemental question and answer pertaining to implementation of the fingerprinting requirements was developed.
- The IICWG subgroup developed and the IICWG approved IPs for the continuing re-inspections of Panoramic and Underwater Irradiator licensees, and M&D licensees.
- The IICWG subgroup on future inspections developed an Order to non-M&D Service Providers to implement a program to ensure the trustworthiness and reliability of their representatives who require unescorted access to materials. NRC/FSME will issue the Order, on request, under the NRC's common defense and security authority.
- An IICWG subgroup was established to conduct a retrospective review of the IC Program.
- The IICWG supported the efforts of FSME to issue guidance on continued IC inspections as a revision to the NRC Inspection Manual and IPs.

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. Some States expect to complete initial inspections of all licensees implementing IC during the second year of the 3-year schedule.
- The IICWG will complete the retrospective review.
- Issue non-M&D Service Provider Order and RIS.

Enclosure:
Timeline for the Issuance of the
Increased Controls

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