

December 22, 2008

MEMORANDUM TO: Chairman Klein
Commissioner Jaczko
Commissioner Lyons
Commissioner Svinicki

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

SUBJECT: DECEMBER 2008 QUARTERLY UPDATE: INCREASED CONTROL
OF SOURCES

The purposes of this memorandum are to (1) provide a quarterly update for the first quarter of Fiscal Year (FY) 2009, 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 September 23, 2008 (Accession Number ML082600605).

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 this quarter, the IICWG met approximately once a month, in accordance with the decision made by the IICWG during the last quarter to meet on a monthly basis due to the decreased number of issues for consideration.

The IICWG 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.

During the past quarter, the IICWG completed development of and approved 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, upon 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 also issued a Regulatory Issue Summary (RIS) on "Security Responsibilities of Service Providers and Client Licensees," dated October 3, 2008 (RIS 2008-24).

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The non-M&D Service Provider Security Order addresses an issue that arose 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. It is anticipated that the Order will be finalized within the next quarter and will be issued to those non-M&D service providers that have previously requested receipt of the Order.

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. The Regions and Agreement States have initiated the second round of IC inspections.

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 (January and April). These upcoming sessions will incorporate lessons learned since the implementation of the IC and will reflect on the fingerprinting requirements. To date, 385 NRC and Agreement State staff have attended the security inspection training.

The security inspection training provides instruction on inspecting IC licensees, but 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." These draft changes reflected changes needed due to the new security requirements in place, the expanded definition of Byproduct Material, and the experience gained from the Regional Inspection Programs. In response to comments received on the draft changes to the inspection frequencies for certain license types that possess radioactive material in quantities of concern, a subgroup, composed of Agreement State members as well as NRC Regional staff, was formed to reevaluate the original proposed changes. The subgroup will provide recommended revisions to the current inspection frequencies in IMC 2800 for the IICWG's consideration.

Two specific Inspection Procedures (IPs), "Panoramic and Underwater Irradiator Security Program" (IP 87135) and "Manufacturing and Distribution (M&D) Security Program" (IP 87136), were issued on October 30, 2008. An IP for IC security programs is being developed separately to replace the existing Temporary Instruction.

Fingerprinting

The 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, which is 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. An additional supplemental Question and Answer has been approved by the IICWG during this quarter. This new Question and Answer was developed to provide the next steps in the process if fingerprints are returned as unclassifiable. The Question and Answer provides available options to licensees if fingerprints cannot be classified after multiple attempts. It is anticipated that this Question and Answer will be posted to NRC's public website and to the IC toolbox within the next quarter.

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 Agreement States were required to issue legally binding requirements for fingerprinting, equivalent to the NRC Order EA-07-305, by June 5, 2008. The Division of Facilities Security in the Office of Administration estimates that they have processed approximately 40,000 fingerprint cards for both NRC and Agreement State licensees.

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. Subsequently, in the staff's last quarterly update, the staff indicated that the New York City Department of Health and Mental Hygiene's Office of Radiological Health and the New York State Department of Health would not meet the deadline.

On October 25, 2008, the fingerprinting requirements for the New York City Department of Health and Mental Hygiene's Office of Radiological Health became effective through emergency rulemaking. The New York State Department of Health implemented the fingerprinting requirements on November 18, 2008, through emergency rulemaking. These actions completed Agreement State issuance of 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 meetings continue on a monthly basis.
- A RIS on "Security Responsibilities of Service Providers and Client Licensees" was issued on October 3, 2008 (RIS 2008-24).
- One additional supplemental Question and Answer pertaining to the next steps in the process if fingerprints are returned as unclassifiable was approved by the IICWG.
- The IICWG approved 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.
- Two specific Inspection Procedures (IPs), "Panoramic and Underwater Irradiator Security Program" (IP 87135) and "Manufacturing and Distribution (M&D) Security Program" (IP 87136), were issued on October 30, 2008.
- All the Agreement States have issued the fingerprinting requirements.

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

- The Agreement States and NRC Regions will continue to complete initial IC inspections. The NRC Regions and Agreement States continue to conduct the second round of IC inspections.
- Two sessions of the security inspection training will be conducted in January and April 2009.
- Revisions to the inspection frequencies will be made in IMC 2800.
- The supplemental Question and Answer pertaining to the next steps in the process if fingerprints are returned as unclassifiable will be posted to NRC's public website and to the IC toolbox.

The Commissioners

- 5 -

- NRC/Office of Federal and State Materials and Environmental Management Programs will issue the non-M&D Service Provider Order, upon request, under the NRC's common defense and security authority.

Enclosure:

Timeline for the Issuance of the
Increased Controls

cc: SECY
OGC
OCA
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OFC	DMSSA	DMSSA	DMSSA	DMSSA	TechEd	FSME
NAME	KLukes	AMauer	TReis	TReis for RLewis	CPoland	CMiller
DATE	12/10/08	12/10/08	12/12/08	12/12/08	12/16/08	12/22/08

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