

March 25, 2009

COMSECY-09-0007

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: MARCH 2009 QUARTERLY UPDATE AND PROPOSED
DISCONTINUATION OF UPDATES ON INCREASED CONTROL OF
SOURCES

The purposes of this memorandum are to (1) provide a quarterly update for the second 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," (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," and (3) propose the discontinuation of Commission updates regarding activities related to the IC and implementation of the fingerprinting requirements. The staff's last quarterly update was dated December 22, 2008 (Accession Number ML083460256).

Implementation Working Group

During this quarter, the Implementation of Increased Controls Working Group (IICWG), consisting of U.S. Nuclear Regulatory Commission (NRC) and Agreement State staff, met approximately once a month via teleconference. The IICWG continued to address a limited number of issues related to the implementation of the Fingerprinting Order (EA-07-305) and issues raised during inspections of licensee implementation of the IC. No significant new issues were identified in the past quarter.

Due to the decreased number of issues for consideration and the fact that the products, which were listed in the IICWG charter, have all been completed and/or are being currently addressed through other working groups, the IICWG agreed to recommend sunseting the group, in accordance with Management Directive 5.3, during the February 4, 2009, IICWG teleconference. The IICWG was first established in January 2006 and had continued to meet on a routine basis during the original 3-year schedule in which the initial IC inspections had to be completed.

CONTACT: Kim Lukes, FSME/DMSSA
(301) 415-6701

It is being proposed that the submittal of Commission updates regarding activities related to the IC and implementation of the fingerprinting requirements be discontinued because of the significant progress made on a number of related activities. The activities listed in this quarterly report had once been under the purview of the IICWG, but are now well underway and monitored by applicable program office staff. It was agreed upon by the IICWG that the Office of Federal and State Materials and Environmental Management Programs (FSME), in consultation with appropriate Agreement State and Regional staff, will address any new implementation issues related to the IC or fingerprinting requirements on a case-by-case basis. Also, FSME is actively working on a rulemaking that addresses the IC and fingerprinting requirements in the new 10 CFR Part 37. The rulemaking has taken into consideration the implementation issues that were addressed and/or resolved by the IICWG through established guidance and supplemental questions and answers. Over time, the IICWG had developed 41 supplemental questions and answers for both the IC and fingerprinting requirements in addition to the already established 234 questions and answers. It is anticipated that the proposed rule will be sent to the Commission in December 2009.

Non-Manufacturing and Distribution Service Provider Security Order

FSME staff is in the process of finalizing the non-Manufacturing and Distribution (non-M&D) Service Provider Security Order. The Order will implement trustworthiness and reliability requirements for non-M&D service provider licensees. The current IC requirements only authorize for M&D service provider personnel to have unescorted access to radioactive material subject to IC in an IC licensee's facility 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 will require 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.

Issuance of the Order was previously approved by the IICWG. It is anticipated that the Order will be issued to those non-M&D service providers that have previously requested receipt of the Order within the next two months.

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. The Regions have completed the first round of inspections and the 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 already initiated the second round of IC inspections. The staff is currently working to incorporate the security inspection program into Inspection Manual Chapter 2800, "Materials Inspection Program."

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 held one session of the security inspection training during this past quarter in January. Another session is scheduled to occur in April. Due to the increased interest and need, the Agreement States requested that the NRC provide additional security inspection training. In response to the request, the NRC has initiated scheduling another training session to occur in August. These sessions incorporate lessons learned since the implementation of the IC and reflect on the fingerprinting requirements. To date, 419 NRC and Agreement State staff have attended the security inspection training.

Fingerprinting

The staff issued requirements for FBI fingerprinting and criminal history record checks to NRC licensees on December 5, 2007. 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. During the previous quarter, all of the Agreement States had issued the fingerprinting requirements. NRC as well as the Agreement States are now beginning inspections of the fingerprinting requirements. The Division of Facilities Security in the Office of Administration estimates that they have processed approximately 70,000 to 75,000 fingerprint cards for both NRC and Agreement State licensees.

Implementation issues associated with fingerprinting have been addressed through the development of supplemental questions and answers, which was the same process used to provide additional guidance to licensees implementing the IC. One supplemental question and answer, which had been approved by the IICWG during the previous quarter, was posted on the NRC's public website and the IC Toolbox during this quarter.

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 on a monthly basis.
- One session of the security inspection training was conducted in January 2009.
- The IICWG agreed to recommend sunseting the group, in accordance with Management Directive 5.3, during the February 4, 2009, IICWG teleconference.

- One additional supplemental question and answer pertaining to the next steps in the process if fingerprints are returned as unclassifiable was posted on the NRC's public website and IC Toolbox.

The staff expects that the following activities will occur in the near future:

- The NRC Regions and Agreement States will continue to conduct the second round of IC inspections and initiate inspections of the fingerprinting requirements.
- Sessions of the security inspection training will continue to be conducted. The next session will be conducted in April 2009.
- FSME will issue the non-M&D Service Provider Order, upon request, under the NRC's common defense and security authority.
- FSME will process any IC or fingerprinting questions under its normal established processes for technical inspection assistance to the NRC Regions and Agreement States.

The staff is proposing that this memorandum be the final Commission update regarding activities related to the IC and implementation of the fingerprinting requirements. Staff would notify the Commission should any non-routine issues arise.

SECY, please track.

Enclosure:
Timeline for the Issuance of the
Increased Controls

cc: SECY
OGC
OCA
OPA
CFO
EDO

- One additional supplemental question and answer pertaining to the next steps in the process if fingerprints are returned as unclassifiable was posted on the NRC's public website and IC Toolbox.

The staff expects that the following activities will occur in the near future:

- The NRC Regions and Agreement States will continue to conduct the second round of IC inspections and initiate inspections of the fingerprinting requirements.
- Sessions of the security inspection training will continue to be conducted. The next session will be conducted in April 2009.
- FSME will issue the non-M&D Service Provider Order, upon request, under the NRC's common defense and security authority.
- FSME will process any IC or fingerprinting questions under its normal established processes for technical inspection assistance to the NRC Regions and Agreement States.

The staff is proposing that this memorandum be the final Commission update regarding activities related to the IC and implementation of the fingerprinting requirements. Staff would notify the Commission should any non-routine issues arise.

SECY, please track.

Enclosure:
Timeline for the Issuance of the
Increased Controls

cc: SECY
OGC
OCA
OPA
CFO
EDO

DISTRIBUTION: WITS 200500298/EDATS: SECY-2009-0104/FSME 200900119
DMSSA r/f FSME r/f RidsSecyCorrespondenceMailCenter EDO r/f
RidsFsmeOd CPoland RidsEdoMailCenter

ML090640436

OFC	DMSSA	DMSSA	DMSSA	DMSSA	TechEd	FSME
NAME	KLukes	AMauer	TReis	RLewis	CPoland	CMiller (GPangburn for)
DATE	3/6/09	3/6/09	3/10/09	3/11/09	3/20/09	3/25/09

OFFICIAL RECORD COPY