

MATERIALS PROGRAM WORKING GROUP

PROPOSED CHARTER

PURPOSE

The working group will identify short and long term measures in response to security vulnerabilities¹ identified in the reports discussed below and through its own assessment.

The Working Group is to assess specific and potential security vulnerabilities and weaknesses in the NRC Materials Program and provide recommendations to address them. The Group is to consider potential vulnerabilities in Agreement State Programs and the effect and likely effectiveness of its recommendations on Agreement State Programs.

BACKGROUND

In late May 2007, staff members from the U. S. Government Accountability Office (GAO) notified the NRC staff of the results of an investigation, where GAO staff used the name of a bogus company to obtain a valid NRC materials license authorizing the possession of portable gauges containing radioactive sources. The GAO staff then modified the license using computer software to make it appear that a much greater number of gauges were authorized than allowed by the original license.

Previously, in a 2006 hearing, GAO presented testimony (GAO-06-583T), which described a 2005 GAO investigation where GAO staff successfully brought small radioactive sources into the U. S. using counterfeit documentation. Also, in 2003, GAO issued a report (GAO-03-804) that concluded that NRC needed to improve the security of radioactive sources.

When the Senate was notified of the GAO investigation, a hearing was scheduled for July 12, 2007, entitled “Dirty Bomb Vulnerabilities: Fake Companies, Fake Licenses, Real Consequences.” GAO and Commissioner McGaffigan testified at the hearing. In its testimony, GAO made three recommendations, calling for: (1) improved pre-licensing guidance, including consideration of mandatory site visits for new applicants; (2) periodic oversight of license application reviewers; and (3) improved measures to prevent counterfeiting of licenses (GAO-07-1038T).

In conjunction with the July 12, 2007 hearing, the Senate released a staff report, “Dirty Bomb Vulnerabilities,” which contained four additional recommendations to improve NRC’s materials program. The recommendations called for NRC to: (1) re-examine its apparent “good-faith” presumption in the licensing process; (2) physically inspect applicants’ facilities before issuance of licenses for Category 3 radioactive sources; (3) consider including Category 3 sources in the

¹Security Vulnerability, as used in this charter, means a weakness which would allow or significantly increase the possibility that an entity could obtain radioactive material and use it to harm the public, the environment or the national interest.

proposed National Source Tracking System; and (4) quickly establish the planned web-based licensing system.

Earlier in 2007, the NRC Office of the Inspector General (OIG) released an audit report (OIG-07-A-12, March 30, 2007). The OIG report concluded that, while NRC has taken a number of steps to improve security of byproduct material, the efforts are incomplete. The OIG report recommended that NRC convene an independent panel of experts external to the agency to identify agency vulnerabilities concerning NRC's material licensing and tracking programs, and validate the agency's byproduct material security efforts. That recommendation is being addressed by a separate independent panel, which may interact with this group.

The Energy Policy Act of 2005 required the establishment of the Radiation Source Protection and Security Task Force, which is chaired by the NRC. The Task Force issued its first report on August 15, 2006. The report contains 10 recommendations and 18 actions, some of which relate to verification issues similar to those raised by the GAO investigation. Reference is made in the Action Plan, to those actions which are similar to tasks assigned to this working group. The group should take into consideration the activities undertaken by other groups as part of the Task Force.

MEMBERSHIP

The working group will operate as an NRC/Agreement State working group as described under NRC's Management Directive 5.3 "Agreement State Participation in Working Groups." The working group will be co-chaired between NRC and a representative from the Organization of Agreement States (OAS). In addition to the co-chair, the OAS and Conference of Radiation Control Program Directors (CRCPD) will be requested to provide a staff member between them for the group. If CRCPD participates, the applicability of the Federal Advisory Committee Act (FACA) to the group must be considered.

The following personnel will serve on the working group:

NRC personnel:

FSME

Regions

NSIR

ADM

OIS

OGC

OIP

(Not all will contribute full time members, some offices may provide resource representatives as noted below.)

Agreement State Personnel:

CRCPD Representation:

Resource Representatives: At least representatives from offices listed above, that are not included in Working Group.

OBJECTIVES

This Working Group has three tasks:

1. Review the following areas and recommend specific actions that can be taken quickly to respond to the security vulnerabilities contained in them. The recommendations should focus on achieving reductions in vulnerabilities in the quickest possible time:
 - a. Improve verification of authorization before transfer of radioactive material to a new licensee or licensee who has recently had a significant increase in their possession limit. Assess, among other possibilities, the effectiveness of issuing additional Orders to Manufacturers and Distributors that would require them to use specific methods, such as direct contact with the regulator, to verify authenticity/legitimacy of a license prior to making such a transfer. Recognize that existing Orders address verification for Category 1 and 2 sources. Determine what amount of radioactive material should require additional verification. Consider whether additional verification should apply to portable gauges.
 - b. Reduce the ability to successfully counterfeit NRC and Agreement State licenses. Assess NRC's and Agreement States' license documentation (specific, import and export) for vulnerability to modification, use after an amendment, etc. Consider what actions could be taken to reduce those vulnerabilities such as special paper or special stickers. Note that many such solutions will require a change to 10 CFR 30.41 for the affected licensees and might be best accomplished in coordination with Task 1.a above. The working group should focus on changes that can be accomplished quickly, even if they are not fully effective; long term changes will be considered as part of the NSTS.
 - c. Evaluate the NRC's general license (GL) program including: appropriateness of devices required to be registered as specified in 10 CFR 31.5 (c)(13)(I); ease of purchasing multiples of devices; ease of obtaining a large aggregate activity; controls that could be implemented in the short term to prevent aggregation; device/source transfer requirements; and Agreement State differences. The staff is engaged in rulemaking on this issue. The working group should coordinate staff preparing the rule to avoid duplicating the analysis involved in the rulemaking, but rather focus on short term actions such as requiring compliance with Increased Controls for general licensees possessing appropriate quantities of material. The working group should consider whether additional controls should be placed on the distribution of a subgroup of generally-licensed devices until the rulemaking is completed.
2. Review the results provided by the Independent Advisory Panel to Identify Vulnerabilities in the NRC Materials Licensing Program. Recommend to Division of Materials Safety and State Agreements (DMSSA) management what actions recommended by that panel should be implemented and describe actions to respond to any identified security vulnerabilities for which the Independent Advisory Panel did not make a specific

recommendation. Coordinate this activity with Task 3, below, to reduce duplication of effort.

3. Conduct a comprehensive review to assess the existing and potential security vulnerabilities in the NRC materials program including specific, import, export and general licenses. The review will include licensing, inspection and management control aspects of the program. The working group is to conduct the assessment using a risk-informed/significance approach and will take into consideration the Congressional and public perception of security as reflected in the reports discussed in the Background Section of this Charter. The working group will identify and propose resolutions for each vulnerability identified. The working group should identify those elements of the existing program that are effective in mitigating security vulnerabilities.

The working group should include in its review, as a minimum:

- a. NRC's specific licensing process for existing and potential vulnerabilities and weaknesses. The assessment will include pre-licensing guidance, procedures, the licensing process, pre-licensing inspection, possession limits, renewal frequency and license reviewer training. The review of the prelicensing guidance should be broader than that conducted by the recent Pre-Licensing Working group, including consideration of more extensive and expensive background checks, fingerprinting for smaller quantities of radioactive material, background checks by another agency or other entity before applying to NRC. Should NRC require additional documentation or information in support of a license application? Should there be additional training for reviewers in how to identify applicants with intentions to misuse radioactive material? Should additional attention be paid to license transfers or significant personnel changes by a licensee? Should procedures that broad licenses or Master Materials Licensees use to issue permits to their own personnel be strengthened to provide a level of assurance similar to NRC procedures?
- b. NRC's Inspection Manual Chapter 2800 and the inspection process. Determine whether inspection frequencies are appropriate in light of concerns about security vulnerabilities and the possible misuse of radioactive material. Note that Manual Chapter 2800 has been reviewed by the Increased Controls subgroup which is recommending inspection frequency changes.
- c. Integrated Material Performance Evaluation Program (IMPEP). Consider the appropriateness of IMPEP frequency, procedures, and whether there are additional areas that should be reviewed or areas that should receive more scrutiny. Particularly consider the effectiveness of the oversight of license reviewers.
- d. NRC's import and export licensing process.
- e. The importance of identifying radionuclides that are not already included in the International Atomic Energy Agency Categories, (e.g., Po-210) as needing

additional security controls. This subject is addressed in the Radiation Source Protection and Security Task Force Report, Recommendation 3-1.

- f. Review appropriate studies of safety and economic consequences of a radiological dispersal device to provide perspective on those events.
- g. To the extent consistent with accomplishing Task 1 rapidly, evaluate the effect of short-term actions on long-term recommendations and minimize undesired effects.
- h. The ongoing general license rulemaking and regulatory framework review that will be conducted by the staff.
- i. The expected effect of each recommendation on Agreement States and the regulated community.

SCHEDULE

Offices, Agreement States and CRCPD identify representatives by October 1, 2007.

For Task 1, above, provide a complete report to the Director, DMSSA by March 31, 2008.

For Task 2, above, provide a complete report to the Director, DMSSA within 45 days of receiving the External Panel's report.

Meet with Director DMSSA and Steering Committee monthly to discuss progress and seek guidance. Additional interactions with the Steering Committee should take place as necessary.

Complete and submit a comprehensive report with recommendations to the Director, DMSSA by September 30, 2008.

In addition to documenting recommendations and the bases for those recommendations, the working group is to be particularly careful to document other options or recommendations which were considered and the reasons for not adopting them.

LEVEL OF EFFORT EXPECTED OF PARTICIPANTS

It is expected that the working group will consist of NRC staff and Agreement State Co-chairs and 3 NRC staff and one Agreement State staff member who will work essentially full time on this working group until completed. Clerical support will be provided by DMSSA.

STEERING COMMITTEE

A steering committee will be established for this working group. The steering committee will be composed of NRC management from DMSSA, NSIR, OIS and ADM as well as representatives from OAS.

MEETINGS

Working group meetings are not subject to the requirements of the FACA, but they will be announced in advance through the NRC Public Meeting Notice System. (If CRCPD participates, the applicability of the FACA to the working group must be considered.) Maximum use will be made of other appropriate media for facilitating interaction with the working group, for example, conference calls, facsimiles, and electronic mail. Working group meetings will be open to the public (unless predecisional information not normally publicly disclosed will be discussed) and will be held in the Washington, D.C., area or other locations as agreed upon by the working group members. Other persons attending working group meetings will be welcome to provide comments to the working group for its consideration in either written form or orally at times specified by the working group chair. Meeting minutes and draft and final documents produced by the working group will be publicly available from the NRC Public Electronic Reading Room, with the exception of exempt information.