

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

UNITED STATES NUCLEAR REGULATORY COMMISSION
BRIEFING ON RADIOACTIVE MATERIALS SECURITY AND LICENSING

+++++

TUESDAY

SEPTEMBER 4, 2007

+++++

The Commission convened at 2:30 p.m., Dale E. Klein, Chairman presiding.

NUCLEAR REGULATORY COMMISSION

DALE E. KLEIN, CHAIRMAN

GREGORY B. JACZKO, COMMISSIONER

PETER B. LYONS, COMMISSIONER

1 PARTICIPANTS

2 MARTIN VIRGILIO, Deputy Executive Director for Materials, Waste,
3 Research, State, Tribal and Compliance Programs

4 JOHN D. KINNEMAN, Deputy Director, Division of Nuclear Material
5 Safety, Region I

6 GEORGE PANGBURN, Deputy Director, Office of Federal and State
7 Materials and Environmental Management Programs (FSME)

8 JANET SCHLUETER, Director, Division of Materials Safety and
9 State Agreements, FSME

10 TRISH HOLAHAN, Director, Division of Security Policies, Office of
11 Nuclear Security and Incident Response (NSIR)

12

13

14

15

16

17

18

19

20

21

1

2

P-R-O-C-E-E-D-I-N-G-S

3

4

5

6

7

8

CHAIRMAN KLEIN: Good afternoon. You'll notice it's not that we don't like each other, but obviously in honor of Ed, we're going to leave his seat available today. I'm sure that you're aware that the e-mail is not exactly working today and so the arrangements are now on the website. And so you can go to those. Obviously, we will not say much today. The NRC will have a memorial service for Ed at a later date. We have not picked that yet.

9

10

11

12

13

14

15

In talking with Ed earlier, he had committed on the fact that if the NRC wanted to say anything at his official services don't count on it. He said the Catholic Church is very strict about what they do and don't do during funeral services so he was making comments to show that his wit as always was with him. He will be sorely missed. He was obviously a dedicated public servant and had served about 11 years here. So he was a really dedicated individual. We will certainly miss his wit and humor.

16

17

18

19

20

21

One thing about Ed as we all know you didn't have to worry where he stood on issues. He made that quite clear and he was in his typical feisty mood on Monday and Tuesday of last week. It's such a sad occasion to lose him. But I think that he went the way he would have liked to have gone. He had his mental abilities till the very end and then went quickly. So I think we have to look in part at the glass being half full instead of half empty.

1 So with that, we will move on and hear today about some exciting activities.
2 This is an issue we discussed before and what I think we'll all be concerned about
3 is what are the interim steps as well as the final steps. We're putting a lot of
4 resources into both the Source Tracking System and the Web-based Licensing, so
5 we need to make some improvements and this is something that obviously is near
6 and dear to all of us. So we look forward to hearing that. Any comments from my
7 fellow Commissioners before we start?

8 COMMISSIONER JACZKO: If I could just say a few words about
9 Commissioner McGaffigan. I know as I just look at the table, I know at least two
10 people -- I know Janet and Annette had worked for him at one point. Did you
11 Annette?

12 MS VIETTI-COOK: No, I wasn't on his personal staff.

13 CHAIRMAN KLEIN: Everybody worked for Ed.

14 COMMISSIONER JACZKO: I guess everyone did. We all did and I
15 know Janet in particular had and I certainly want to say we'll certainly miss Ed. He
16 was a real dynamic force on this Commission and he kept all of us on our toes and
17 I think he made all of us better at our jobs. I think we certainly have a tremendous
18 legacy that he's created at this agency to carry on and I think it's very fitting in
19 some sense that we're having this meeting today because I think this was an issue
20 that Ed really spearheaded and moved the agency forward and brought us to the
21 point in a very short amount of time that we were able to focus on these important

1 issues.

2 I know as the Chairman said, we have other opportunities to talk about this
3 but today is certainly a day where many people will be thinking some difficult
4 thoughts about a person that we all came to be very close with and had a lot of
5 respect for as he battled with a very serious illness and carried on really to the last
6 day working tirelessly to better this nation and to better this agency. So I think we
7 will all miss him. Thank you.

8 COMMISSIONER LYONS: I certainly second the comments that
9 both of you made. Ed was an amazing public servant, an inspiration to all of us,
10 and I'm sure all of us will miss him dearly. Beyond that, I'll wait for the memorial
11 services.

12 CHAIRMAN KLEIN: Thanks. Marty?

13 MR. VIRGILIO: Thank you, Chairman. Today we're going to discuss
14 the action plan developed in enhanced security over radioactive materials. Seated
15 with me at the table are George Pangburn, our Deputy Director of the Office of
16 Federal and State Materials and Environmental Management Programs. Janet
17 Schlueter, the Director of our Division of Materials Safety and State Agreements;
18 Trish Holahan, the Director of the Division of Security Policies in our Office of
19 Nuclear Security and Incident Response; and John Kinneman the Deputy Director
20 of the Division of Nuclear Materials Safety in Region I.

21 The subject of today's meeting was the last major technical issue that this

1 group had worked on with Commissioner McGaffigan. As you have said, he had
2 some very strong views on this topic of protecting radioactive sources. We the
3 staff are going to miss the dialogue and his insights on this and many other areas
4 as well.

5 I want to start the presentation by making some of the same key points that
6 Commissioner McGaffigan made when he appeared before the Senate this past
7 July 12th, the first of which is the NRC and the Agreement States have taken a risk
8 informed approach to regulating radioactive materials.

9 After September 11, 2001, we imposed a number of new requirements on
10 the licensees who possess sources that pose a high risk to public health and
11 safety in the event of an accident or terrorist action. The second point he made
12 was that in May 2007, the Government Accountability Office notified the NRC of
13 weaknesses they had identified in the licensing process for radioactive sources in
14 the lower risk category.

15 In response, we took a number of immediate actions to remedy the specific
16 problem; however, at the time we recognized that there were broader issues that
17 needed to be addressed. In July 2007, the Commission directed the staff to
18 develop a comprehensive action plan to address those broader issues.

19 In August 2007, the staff provided a plan to the Commission and requested
20 your approval. We're here today to discuss that plan with you. I would like to
21 acknowledge that there are key stakeholders in this effort that are either with us

1 today or are watching this meeting through our web broadcast. They include the
2 Organization of Agreement States, the Conference of Radiation Control Program
3 Directors, the Department of Homeland Security, the Government Accountability
4 Office and the NRC Inspector General. With that, at this time I'd like to turn the
5 presentation over to George Pangburn. Thank you.

6 MR. PANGBURN: Thanks, Marty. Good afternoon, Mr. Chairman,
7 Commissioners. We're pleased to be here today to discuss with you the plan that
8 we provided in SECY-07-0147. But before we begin, I'd like to express
9 appreciation to Region I for providing John Kinneman to us for preparation of the
10 plan.

11 John worked closely over the past several weeks with John Hickey, a
12 former NRC manager and a rehired annuitant in developing, as well as other
13 offices and FSME, in developing the tasks, the schedules, the resource estimate
14 that comprised the plan and the paper that was provided to you. In that regard his
15 personal contribution has been a substantial one.

16 We think that the plan is responsive to the recommendations of the
17 Government Accountability Office, the Senate Permanent Subcommittee on
18 Investigations and the Office of Inspector General. We look forward to the
19 discussion today with you and your subsequent decision as the first steps toward
20 implementation of that plan. With that, I'll turn it over to John Kinneman to do the
21 briefing. Thank you.

1 MR. KINNEMAN: Thank you, George. I do appreciate the
2 opportunity both to prepare the plan and to present it to you today. It represents a
3 lot of work that was done in a short time, but I'd like to mention specifically that it
4 builds on a lot of ongoing work and thinking by the staff. We did try to do some
5 original work, but we tried to take advantage of a lot of work that was going on
6 already and in that theme I'd like to acknowledge not only John Hickey's help
7 and cooperation, which I could not have done this without, but also some other
8 people; Mark Shaffer and Trish Holahan and Greg Morell, John Tomlinson, all
9 from NSIR or on loan to NSIR; Pat Moulding from the Office of General Counsel
10 and Steve Dembek from the Office of International Programs all made important
11 contributions.

12 And to be perfectly honest I think everybody I encountered in preparing this
13 is well aware of how important this is to the agency and just gave me absolute
14 cooperation and assistance. So I really appreciate that.

15 What I'd like to do is actually spend a few minutes going back over some of
16 the actions that we've taken to improve security in the past because I think that's
17 important. We thought that was important to think about as we prepared the
18 actions, the action plan. Then review briefly the GAO investigation and Senate
19 hearing and then I'll go into the recommendations and then actually discuss the
20 meat of the action plan. Can I have slide three, please.

21 Starting right after 9/11, the staff began working hard to improve our

1 security posture to reflect that environment. I think it's important to recognize that
2 we were aware that we didn't know as much as we needed to know and in 2002
3 we conducted a number of security assessments to develop a basis for moving
4 forward.

5 We continued with developing a Material Security Working Group that was
6 active throughout a number of years to develop the orders and to work through
7 some of the implementation issues. We issued a whole series of orders including
8 those to panoramic irradiators in 2003, on to the manufacturers and distribution
9 licensees in 2004 transportation orders and then you're all aware that there's been
10 a lot of activity in the area of issuing orders for fingerprinting.

11 In addition, one of the things we tried to do as we developed the action plan
12 as I said recognize other things that were going on. There is the Radiation Source
13 Protection and Security Task Force which produced a report in 2006 and there are
14 a number of ongoing actions associated with that.

15 You're also, I know, aware that in support of the National Source Tracking
16 System which we'll talk about a little later in the presentation, we've been
17 conducting and maintaining an interim inventory of high risk sources to try and
18 learn more about what's available in the regulated community. If I could have the
19 next slide.

20 Throughout that process, the staff has consistently employed a risk
21 informed and graded approach; tried to address as Marty and George talked about

1 the highest risk sources first and produce graded requirements which take into
2 account both the risk and the cost of taking the actions we are taking. Now the
3 staff believes we have in place significant security enhancements for Category 1
4 and 2 sources. That's very important because it gives us the opportunity to move
5 forward in the lower risk area.

6 I wanted to mention one other thing that is very important in the
7 recommendations and that is the development of pre-licensing guidance as I'll go
8 through the history of that a little later, but we were looking at pre-licensing
9 guidance as early as 2003 because we recognize that that was extremely
10 important in trying to be effective in increasing security.

11 Other actions that have gone on over the last couple of years, of course, is
12 we've supported the source recovery efforts by the Department of Energy which
13 actually removes sources from the regulated community when they're no longer
14 needed and that reduces risk. And we've also worked with Customs and Border
15 Protection to help them have easy access or easier access to information they
16 need to carry out their duties. May have the next slide?

17 Then we get to where this current effort begins. Early in this year in 2007,
18 the Government Accountability Office began an investigation that was a follow-up
19 to their 2003 report on Federal and State Action is Needed to Improve Security of
20 Sealed Radioactive Sources and they formed a bogus company. They obtained
21 an NRC license. They altered that license to make it appear that that license - not

1 to make it appear, but as altered, that license did authorize a great number of
2 sources than were originally approved. They presented that license to several
3 suppliers and their report is that they identified two suppliers who agreed to sell
4 them radioactive material.

5 In addition, they made a parallel attempt to obtain an Agreement State
6 license and they aborted that license when they were notified that the State
7 planned to make a site visit prior to issuing the license. That particular action is
8 the source of a number of the recommendations we'll be discussing.

9 Another thing that they mentioned to us is that they found essentially all of
10 the information they needed to prepare the application to get the license on our
11 website and in other places and through a training course that they took from a
12 vendor. If I could have slide six.

13 So as Marty mentioned, we immediately took a number of actions in
14 response to that information. One is we discussed with the GAO investigators
15 what they had done. We wanted to understand thoroughly how they had
16 proceeded so that we would understand what the vulnerabilities were and how we
17 might best respond to that. We have of course terminated the license that we had
18 issued and we stopped issuing new NRC licenses until we were able to have a
19 quick look at the pre-licensing guidance that existed and issue some interim
20 guidance.

21 We were able to issue that interim guidance a short time later, about

1 June 12, and we again began issuing licenses, but that interim guidance requires
2 that we either do pre-licensing visits or meetings for many new applicants. One
3 thing here we try to remind everyone is that we know a lot about many applicants
4 who come to us for new applications and so we're able often to make some
5 judgments about some of the licensees and applicants because they've already
6 had a license. However, we're making a good number of visits or meetings with
7 the licensees in accordance with that guidance.

8 And another thing we did was we restarted the pre-licensing working group
9 which had been active in the past and I'll say a little bit more about that in a few
10 minutes. Slide seven.

11 Additional short-term actions that we took. We coordinated with our
12 Federal and state partners. We talked not only to GAO, but to a number of other
13 Federal agencies and we immediately made sure that the Agreement States were
14 aware of the actions of the GAO and their investigation and the actions that we
15 had taken.

16 We did a consequence assessment and shared that with GAO to try and
17 help them understand our perspective on what the risk from this vulnerability was
18 and is. And we did a retrospective examination of most of the new licenses that
19 had been issued in the last year or so to determine whether we had perhaps
20 missed any other situation where we should not have issued the license. And we
21 found that in all cases examined that the licensees appeared to be legitimate and

1 appeared to be prepared to use the material in a way that's in accordance with the
2 license.

3 Right now, we also are in the final stages of preparing our Regulatory
4 Information Summary which will build on an Information Notice that was issued in
5 2006. Expect that to go out very, very soon and what that will attempt to do is to
6 again heighten the concern and focus of all licensees who are preparing to
7 transfer license material to another licensee that if there's anything unusual about
8 that transfer that they should investigate further and ensure that they have proper
9 authorization.

10 COMMISSIONER LYONS: John, just to clarify before you leave that
11 slide on the retrospective examination. Is that NRC only or is that NRC and the
12 Agreement States with whom you coordinated?

13 MR. KINNEMAN: As far as I know, I know that the NRC did that. I
14 don't know of any Agreement State who did that, but we did supply all of the
15 information to the Agreement States and I know a number of them have increased
16 their vigilance in issuing licenses. I don't think we've asked them the question did
17 they go back and look at their previous licenses.

18 COMMISSIONER LYONS: Okay.

19 MR. KINNEMAN: Just to briefly review the recommendations that
20 came out of the investigation; three groups gave us recommendations. The first,
21 of course, was the GAO themselves and they presented their recommendations in

1 their testimony in front of the Permanent Subcommittee on Investigations. We first
2 looked at those and then we'll look at the Permanent Subcommittee and then go
3 back to the Office of Inspector General.

4 In the first case, they recommended that we develop improved guidance for
5 examining the license applications and we should consider whether a pre-licensing
6 site visit should be mandatory.

7 The second recommendation is that we should conduct periodic oversight
8 of license application examiners so that NRC will be assured that any new
9 guidance is being appropriately applied.

10 And the third is the NRC should explore options to prevent individuals from
11 counterfeiting NRC licenses. I do want to take note of the fact that GAO did in
12 their report give some credit to the NRC for the steps that we've taken in the past
13 to improve security, the fact that we've made a commitment to the IAEA Code of
14 Conduct and that we have in fact done a number of upgrades for Category 1 and
15 2. That's one of the reasons why I mentioned those earlier. Can I have the next
16 slide?

17 Of course, the Senate Permanent Subcommittee on Investigations held a
18 hearing on July 12th at which Commissioner McGaffigan was our key presenter.
19 One of the things we did was have a close look at his testimony in the preparation
20 of this and that gave us a number of -- as many people have mentioned, he had a
21 number of very important points and we used that to develop some of our thinking

1 in this.

2 They gave us three or four recommendations as you'd like to count them.
3 One is that we should reevaluate the apparent good faith presumption that
4 pervades our licensing process. Another is that we should physically inspect
5 applicant's facility before the issuance of a Category 3 materials license and that
6 recognizes the fact that we have put in significant safeguards for Category 1 and 2
7 and they are recommending that we should pay additional attention to the lower
8 risk.

9 They also recommended that we consider including Category 3 sources in
10 the proposed National Source Tracking System and that we should quickly act to
11 establish a web-based licensing system to ensure that materials can only be
12 obtained by authorized individuals in authorized amounts. I'll talk about both of
13 those systems when we get a little further when we talk about our
14 recommendations panel.

15 As I know everyone here is aware, the Office of Inspector General did some
16 work back in March -- issued a report in March of 2007 in which they made a
17 recommendation that the NRC should convene an independent panel of experts
18 external to the agency to identify the agency vulnerabilities concerning NRC's
19 material licensing and tracking programs and validate the agency's byproduct
20 materials security efforts. As we developed this, we took that very seriously. In
21 fact, that will probably be one of the first things I will talk about in our area of

1 recommendations.

2 In addition, trying to take a broad look at things, we look to see if there
3 should be some other recommendations, other things that should be done. And
4 you'll see at the end of the action plan we have a couple of other things we've
5 added in that don't come directly from any of the recommendations we received.

6 As has been mentioned before, the staff of FSME met with the Commission
7 in July and the Commission gave them pretty clear direction that they wanted a
8 comprehensive plan and they immediately began to work on it. They asked me,
9 and I appreciate their confidence in me in asking me to get together with the task
10 force and put together this plan.

11 The SRM, which came out on August 17th asked that we deliver this by
12 September 4th. I'm not always on time, but I think we managed to make it today,
13 so I appreciate that, the support of everybody to get here today.

14 The SRM asked us to talk about the needed changes in the licensing
15 process and to make sure that we include short-term actions. I know in discussing
16 this with a wide range of people throughout the staff and even feedback from the
17 Commission staff is that short-term actions and early actions are very important. I
18 think we can address that and we'll do that in a few minutes. Could I have slide
19 12?

20 So the overview of the action plan, the actual meat of the presentation
21 today is of course the first thing we'll talk about is the external review. We know

1 that there is a lot of interest in that and so we have some things to talk about there.

2 We have a pre-licensing working group that is not really coming out of the
3 action plan. They're already working right now. They've been working for almost
4 a month and that's a reconstitution of a previous group and I'll talk about that for a
5 minute.

6 We are recommending a Materials Program Working Group that will take on
7 a number of actions and provide some continuity through parts of the action plan.
8 An important part of the action plan is the National Source Tracking System and
9 Web-Based Licensing. We think there's some additional vulnerabilities that need
10 to be addressed in the general license area and some of the things that came out
11 of the Senate hearing are some improved communication with the public.

12 In addition, we recognize as I think many people do, that the Agreement
13 States are a key player in this. We can't be successful without a successful
14 partnership with the Agreement States. So all through this we've tried to include
15 resources, include thinking of how can we work through this and partner with the
16 Agreement States so that we're all successful together. Slide 13.

17 External Review Panel. This is very important to the action plan. We know
18 that many people think it's extremely important that this be successful and
19 effective. To that end, we've spent a lot of time to some extent working outside
20 the action plan because this is really an action that's going to be the responsibility
21 of FSME of that office, but giving them the results of our thinking about balancing

1 independence but knowledge of the programs so that the work can be done
2 quickly and efficiently and so that it's something that the product is an effective
3 product.

4 I believe FSME has identified several individuals that can hopefully, subject
5 to the Commission's approval, begin the activity fairly quickly. We are estimating
6 that they'll need about 120 days to do their review to gather the information
7 together that they need. We're going to suggest that they be charged to identify
8 the vulnerabilities and the effectiveness to really look hard at those things.

9 And because, personally, I think that many of the staff, including myself, do
10 have a fairly strong good faith presumption on the part of many applicants that it's
11 a good thing to have this independent panel look at that and see what they think
12 about that and give us some feedback on where that should end up in the program
13 in the future.

14 We've attached a proposed charter to the paper. There is an agency
15 process for these external advisory groups. It will take a little time to set that up,
16 but I think a lot of the pre-work has been done. We do have to get advice from the
17 GSA in order to follow the Federal Advisory Committee Act properly. Next slide.

18 Just to go back to the pre-licensing working group for just a minute. The
19 first record that I can find that we started looking at changes to pre-licensing
20 review was at regional counterpart meetings in 2003 and that was about the time
21 of the previous GAO report. Then there was a working group organized from

1 October 2005 to about October 2006 and formal guidance was issued by the office
2 in December of 2006 and then that group stood down because the work that they
3 had been assigned was complete. But essentially, a good part of the group was
4 put back together at the beginning of August.

5 It's co-chaired by a regional representative, Pam Henderson, who is a
6 Branch Chief in Region 1 and Tom Connelly, who is an Agreement State
7 representative and he actually worked on the original group and that provides
8 some continuity.

9 We've asked them to try and deliver a product on a very aggressive
10 schedule by the end of November and you'll note later one of the questions we've
11 had is we recommend this assignment also be given to the Materials Program
12 Working Group.

13 We think this a very important activity and we want these people to produce
14 a product very quickly, but we also want some other people to have an opportunity
15 to think this through yet again and see if there's some other things that this group
16 doesn't have enough time to consider that might be well incorporated into the
17 program. Can I have slide 15?

18 A really important part of the action plan is something we're calling the
19 Materials Program Working Group. This is kind of the group we hope will pull a lot
20 of things together. If its put together as we recommend, a FSME and Agreement
21 State co-chair done under Management Directive 5.3 would recommend that there

1 be regional participation and this is the group that in addition to some of the other
2 actions that are ongoing by the office, we would charge with doing three principal
3 very quick actions.

4 One is to make some recommendations for action on improving the
5 verification of authorization. Another is to address the counterfeiting issue. And
6 the third is to recognize that we think there's some vulnerabilities in the general
7 license program. We think there's some -- as I'll talk about some good long-term
8 solutions for those vulnerabilities, but that there should be some addressing of
9 those vulnerabilities in the shorter term that they look at that and come up with
10 some recommendations by March of '08 to address those vulnerabilities.

11 That will be their first - hopefully, this will get organized fairly quickly. That
12 would be their first duty to try and work through those three tasks, develop
13 recommendations and get those out quickly recognizing that they are not likely to
14 be comprehensive solutions to the problem. In fact, the idea would be to balance
15 can we take a partially effective or a very effective action, but not a completely
16 effective action, relying on the fact that we have some plans that we think will be
17 affected in the long term. Slide 16.

18 Then as they finish that up or get to the point where they've taken some
19 action on that, that recognizing we have an external review group that we're
20 working hard to make very independent, not channel them too much; certainly give
21 them guidance and provide the information they need. We don't know exactly

1 what they may come back with.

2 They may come back with recommendations that have a very clear
3 implementation line or they may come back with a more general recommendation
4 that this group being assembled can take a look at those and see whether there
5 are things they need to flush out or need to develop in a way that they can be
6 implemented by the staff, make additional recommendations along those lines or
7 perhaps that won't be necessary, but we thought this was a good place to have
8 those recommendations come in to, be looked at, and then try to work through the
9 implementation issues.

10 And then as their next big task recognizing that the external review group is
11 external, is independent, that we would assign certain tasks to this group that we
12 think needed to be done. That they would take a broader look at pre-licensing
13 guidance, that they would have time to think through some things that the previous
14 groups have either decided were not necessary or didn't have time to go through
15 things that weren't available or might take more time to develop.

16 Not limit the review to licensing; recognizing that all the recommendations
17 we have focus on licensing, but we do a lot of things other than licensing. We
18 have an inspection program, we have an IMPEP process that we rely on to assure
19 that our licensing process is effective; to have them look at those things. One of
20 the recommendations was to have increased focus on license reviewers.

21 We think we have a lot of focus on license reviewers. The regional offices

1 do self assessments. The IMPEP process looks at that. Maybe it would be good
2 to look at that again, make sure it's as rigorous as we think it should be. Are there
3 other processes that should be in place? We're giving them -- we recommend
4 giving them a broad charter, but a lot of guidance and say we really want you to
5 look at these things and give a close look at a lot of areas and then also some
6 freedom to identify additional areas where they're thinking and their group work
7 takes them.

8 So try to give them a lot of opportunity to identify other places we ought to
9 go and their reports and recommendations are sort of phased in over the next
10 year. We anticipate that it will take about a year for them to complete the work
11 that we've assigned them. Slide 17.

12 And then turn our attention to two very important programs that are ongoing
13 that in order to respond to the recommendations need a little bit of additional
14 consideration and that's the National Source Tracking System and Web-Based
15 Licensing. I just want to say a minute on each one and then talk about the
16 recommendations.

17 Of course, the National Source Tracking System is envisioned as a place
18 where some group of licensees, under the current rule those who are transferring
19 Category 1 and 2 resources, would record their transactions; where the sources
20 came from and what license they go to and keep track of which licensees
21 essentially have what.

1 Web-Based Licensing is a concept that was originally developed to replace
2 our internal tracking systems, the way that we control our staff work to help our
3 staff do their work more efficiently, to share information internally, and I think we're
4 taking both of those systems and recommending that they continue as designed,
5 but there be some additional considerations.

6 The first thing is to expand the rulemaking associated with National Source
7 Tracking System to consider smaller sources. I think it's important -- one of the
8 things that we thought about as we talked to a large, a great number of people, is
9 the Category 3.5 comes up very frequently. We think it's important to consider
10 that in the rulemaking process.

11 We're not recommending a decision one way or the other, we're simply
12 recommending that there's enough question about that, enough interest in that at
13 the management level within the staff and the Commission, that it should be
14 considered in a formal way and that there be an appropriate cost-benefit balancing
15 because one of the things that became very clear to us is that in fact to include
16 Category 3.5 is an expensive proposition and we've included some resource
17 estimates for that.

18 And then a way of improving the likelihood of controlling authorizations.
19 This is not developed by our group, it's really by the people developing these
20 systems that if there is an interface between the National Source Tracking System
21 and Web-Based Licensing such that someone who goes to enter a transaction in

1 NSTS automatically NSTS queries Web-Based Licensing to see whether that
2 amount of material is authorized by that licensee and then checks its own
3 database to determine whether their inventory would allow it and then can give an
4 answer back to the requestor, the manufacturer and distributor or other licensees.

5 Is this transfer authorized? It sort of jumps over all the questions about
6 counterfeiting. Paper licenses are still important as a communication tool, but the
7 actual authorization would then be handled within the system. That's no small
8 feat. It's a complicated system, but it's a way of solving a number of problems.

9 One of the difficulties, of course, is that while it's effective it will have an
10 impact on the Agreement States. There has to be a way developed to partner with
11 the Agreement States so that they can, on a contemporaneous basis, provide their
12 information to that Web-Based Licensing System and that's an issue that needs to
13 be addressed. That's why we think it's one of the many reasons why it's so
14 important to work with the Agreement States to help them understand where we
15 are headed and try to work through the issues that they are going to have with
16 being able to do that.

17 The staff has a number of ideas for solutions, but we're not sure exactly
18 which one is going to work. It's very clear that it's critical to our success to work
19 with the Agreement States.

20 And the other thing that we didn't mention here is that to be effective with
21 Category 3.5 is in addition to doing a thoughtful, deliberative process, we probably

1 need to communicate more with the outside world, with other agencies when we
2 talk about Category 3.5 since that doesn't appear actually in the Code of Conduct.
3 If I could have slide 18.

4 As we looked, and again I think this is less the task force than other people
5 within the staff recognize the fact that general licensees, while it's been a very
6 effective program in many ways presents a vulnerability. We don't look at and
7 determine who can be general licensees other than in a sense that we write the
8 rules. Individual manufacturers and distributors determine whether the customer
9 is qualified under the regulations and we in our inspection process and the
10 Agreement States in their inspection process determine whether the
11 manufacturers and distributors are implementing that effectively; recognizing that
12 this allows for a small percentage of the generally licensed sources to be at the
13 large and higher risk end of the spectrum.

14 We think it's important to look at that on a short-term basis, develop a short-
15 term action. There's already an ongoing rulemaking which will address the
16 question of should some of these higher risk sources be moved into the
17 specifically licensed arena or should they remain generally licensed. We
18 recommend that that rulemaking go forward.

19 One of the things that the staff working on that rulemaking in their thinking
20 process suggested is that if they could have a little bit more resources, they would
21 like to do what they are calling this framework review. That's sort of a forward look

1 at how do we want that program to look, not just with this rulemaking, but are there
2 other things we should consider. This is a pretty comprehensive rulemaking, but
3 there are other things that perhaps need adjustment in that program.

4 If they had a little bit more resources approved, they would take a good
5 close look at that either factor it into this rulemaking or perhaps suggest some
6 other actions in the future. Slide 19.

7 As we found as we went through this, our recommendations are not
8 inexpensive. There's a lot to be done. We tried to both recommend funding for
9 the actions that we directly recommend and also recommend that there be some
10 funding available for implementing those recommendations. Since we don't know
11 what they were, we'll admit we took what we thought were fairly educated guesses
12 and hopefully there'll be enough to do the things that the various groups will
13 recommend. They're just estimates and we present them as such. If we could
14 have slide 20.

15 So that's the overview of the plan. In summary, we think it is
16 comprehensive and we hope it's responsive to the recommendations. We've tried
17 to incorporate short-term, mid-term and long-term actions. We focused with FSME
18 on the independent, external program review because we know that's an important
19 issue. We think that will be a helpful part of the overall program and we think that
20 a comprehensive internal assessment by current staff are very important. All of
21 these things build on many ongoing actions.

1 We've tried as much as we can to stick with things that are ongoing and
2 we've tried not to just focus on the specifics that come out of the GAO
3 investigation, but to provide for an overall look at potential vulnerabilities. I
4 appreciate the opportunity to speak to you today and happy to answer any of your
5 questions.

6 MR. VIRGILIO: Thank you, John. We are poised to launch the
7 action plan. We look forward to today's dialogue and future direction from the
8 Commission as to how we should proceed from this point. Thank you.

9 CHAIRMAN KLEIN: Thank you for a very detailed presentation.
10 Starting with page 19 first since it's there, I believe our budget process is nearly
11 completed and I think you have a lot of support from this side of the table for the
12 resources needed to do the job because this is a high priority for us. We'll start
13 our questioning with Commissioner Jaczko.

14 COMMISSIONER JACZKO: Probably the biggest worry I have with
15 this proposal, I think, could best be captured in the phrase -- it's not one that I
16 coined and I'm not sure who did -- but the concept of "paralysis by analysis". I'm
17 worried that as I look at the plan there's a lot of working groups, a lot more
18 studying to be done and to report back recommendations in the future, but in
19 terms of tangible actions today there are very few that I see directly in this report,
20 other than things that are ongoing already like National Source Tracking and
21 Web-Based Licensing that don't have completion dates that are well into the

1 future.

2 Certainly, as I look at this paper, one area in particular that I think should be
3 changed to try and get us moving more quickly to a thoughtful solution and that's
4 on the external review. I believe fundamentally that that review should come
5 directly to the Commission. I think that this is an issue that is high profile. It's high
6 profile for this agency and for the nation. I think it's important the Commission be
7 made aware of those recommendations directly as soon as possible.

8 I'm pleased to see that the time that is estimated for that is relatively short,
9 about 120 days. I think that should give people a good opportunity to deal with
10 these things relatively quickly. As I look at this, the area where I expect most of
11 the changes and most of the real important work to come from will be in that red
12 team because I think one of the underlying problems here is really the issue of the
13 good faith presumptions that we have.

14 I think because of that it will be a little bit hard for us as an agency and for
15 the Agreement States to really look and find where some of the problems are
16 because I think we have a culture here where we've looked at these issues in a
17 different way. I think that's why that external review will be really enlightening and
18 helpful to us to maybe find some specific things.

19 By way of a question that I might ask, are there any specific items that were
20 talked about and discussed that you could see, for instance, could you address the
21 issue authentication? That's one area where I think there must be some answers

1 before we get to Web-Based Licensing about how we can authenticate and verify
2 some license transfers, whether it's telephone calls or something like that. Are
3 there any things right now that you have or could suggest?

4 MR. PANGBURN: We have talked about some things. In particular,
5 most of the transfers that take place as authorized by 30.41 and that provides a
6 number of opportunities for people to do that. It can be by telephone call. It can
7 be by a copy of the license. It can be by several other things and actually in an
8 emergency situation could be done by simply a phone call between licensees to
9 verify that they do have that.

10 COMMISSIONER JACZKO: Again, in the situation that we had with
11 the GAO sting was two licensees - well, one was a fraudulent licensee, the other
12 was a legitimate licensee and there were some transactions that were not
13 appropriate that could have gone on. What about introducing a phone call to the
14 NRC or to an Agreement State to verify that transaction?

15 MR. PANGBURN: That's one of the things we've been considering.
16 Do we have an ability here to say maybe 30.41 isn't the way to go for the near
17 term until such time as Web-Based Licensing is in place, might we have a
18 mechanism whereby the only approach that we're going to use is going to be a
19 telephone call. There are obviously resource implications for the regional offices
20 which we have addressed, I think, through the plan but also for the States if
21 suddenly they're going to get several hundred calls a year about transfers. We are

1 considering that as a shorter term action. By shorter-term, I mean by the end of
2 the calendar year.

3 COMMISSIONER JACZKO: We would expect to see that as part of
4 the material working group recommendations?

5 MR. PANGBURN: I think that's where it figures under the plan.

6 MR. KINNEMAN: Yes, sir. If you look at the recommendation G1, in
7 fact, we've asked them to try and finish or at least make a recommendation out by
8 October 30th. That's one of the things that we kind of built into the charter both
9 trying to give them suggestions, but also some freedom. That's an obvious way to
10 go; 30.41 is a longstanding regulation and we would need to change that in some
11 way probably by an order, but to have them think through that process, partner
12 with the Agreement States how they would need to do it, but that's an obvious
13 approach.

14 Before you transfer this amount of material, call the regulator that issued
15 the license. We would certainly have done that in the regions on an irregular
16 basis. Somebody calls up and says, "I can't read this license or I can't get with this
17 licensee, can you fax me a copy." We certainly do that. We'll just make that an
18 institutionalized process.

19 COMMISSIONER JACZKO: As I said, one of the most important
20 things for me is getting to those concrete proposals because I think we need to get
21 to the point of making decisions about the actions specifically we're going to be

1 taking. We have done a lot of work in this area and I think it's important to
2 recognize that this is not a new area for this agency, for the Agreement States.
3 We've been focusing on security for a long time and ever since September 11th in
4 particular.

5 I think there has been a lot of good work done particularly to establish some
6 of the risk thresholds in a good sense of those activities.

7 Some other specific questions. I noticed looking at the schedule for the
8 National Source Tracking to update or to include Category 3 that I think that's
9 anticipated to the Commission in March of '08 or something around that time
10 frame. Is there a way to accelerate that?

11 Again, that may not be an area - certainly the rule language, I think, is a
12 relatively trivial change. I suspect the work there is really in the technical basis in
13 developing the technical basis. I'm wondering if there's an opportunity to
14 accelerate that and get that to the Commission sooner.

15 MR. PANGBURN: We have pressed the staff on that and had those
16 kinds of discussions. I think that is a fairly firm date in which we think we can do
17 that. The technical basis as you mentioned is a substantial part of the whole
18 rulemaking and I think that is our best shot. We worked it backwards from original
19 estimates.

20 COMMISSIONER JACZKO: What do you think is the biggest
21 contributor to the time it will take to get that completed?

1 MR. PANGBURN: Probably it's going to be gathering information
2 about the regulated community and interacting - just basic gathering of information
3 about the extent and sweep of what would be included by Category 3.

4 COMMISSIONER JACZKO: We'll certainly if there's opportunities to
5 accelerate that and if the Commission can be helpful in getting that information
6 and those responses back more quickly and gathering that information, it's
7 certainly an area where I think it would be helpful for us to do that.

8 The other issues - again, I guess this is more a question about specific
9 details. Right now, do we know how many general license devices there are that
10 are greater than Category 3 or approximately? I know we did get some
11 information from the staff recently and I don't have that my fingertips.

12 MR. PANGBURN: I don't have that information at my hands, but we
13 can certainly see what we can come up with.

14 COMMISSIONER JACZKO: Again, just to get a sense of the scope
15 of the issue that we're dealing with as we move forward on this.

16 The last question I would ask. This has to do with a slightly related, but
17 perhaps longer term issue. But again, as we're looking at these things I think it's
18 important as we look long term at where we want to be. There has been a lot of
19 requests and a lot of information about doing something more in line with a real
20 time tracking kind of program for sources. Again, looking at the higher risk
21 sources; Category 1, 2, and 3, something like that.

1 COMMISSIONER JACZKO: I'm sorry; did Charlie want to say
2 something?

3 MR. MILLER: Thank you, Mr. Chairman. I just wanted to
4 supplement some of what the staff said before we move on to Commissioner
5 Lyons to address some of your concerns Commissioner Jaczko. In his
6 presentation, John mentioned a Regulatory Information Summary we're going to
7 put out. We're going to have that out this week. Until such time that we can get
8 even something interim in place with the manufacturers and distributors and the
9 rest of the industry, this will put them on alert to give even more extra vigilance to
10 making sure that transactions are scrutinized.

11 If there's any questions, we've included in that Regulatory Information
12 Summary, if they have any questions, or doubt, they can call the NRC or an
13 Agreement State to further verify. We're trying to get them on alert as something
14 we can do immediately.

15 CHAIRMAN KLEIN: Thanks.

16 COMMISSIONER LYONS: Thank you. Certainly, my compliments to
17 the staff and especially to you, John, for the very complete briefing. I know that
18 you've been under tremendous time pressure to pull this together. I think we all
19 feel that time pressure. But I very much appreciate the extra efforts that you've all
20 gone through.

21 You mentioned, John, at least one point in your briefing, the need to look

1 for, I don't remember if you used "partially effective" or "glass half full" solutions,
2 but I very much like to second that. I think that even though we need to maintain a
3 long-term focus on solutions that approach perfection, I think as we look toward
4 short-term actions I think you're very, very right that we should be looking at as
5 effective a solution as possible, as quickly as possible. If it's not 100%, we still
6 ought to, I think, be quite willing to take that partial solution.

7 Commissioner Jaczko mentioned the independent review panel and that's
8 also a subject that I'm very interested in. I don't know how widely it's known that
9 Commissioner McGaffigan and I had a COM that was ready to be released based
10 on the IG report calling for that independent review panel, even suggesting names.
11 That was overtaken by the GAO sting. Ed was certainly, as were all of us and
12 certainly I was working with Ed on that COM, were very, very interested in moving
13 ahead on that independent review panel and doing it as quickly as possible.

14 I think as Commissioner Jaczko said, I too, would be very interested in
15 receiving periodic reports from that independent review panel. I'm not suggesting
16 that it has to be a Commission-formed or blessed group. I'm quite happy to have it
17 done through the staff, but I think that the level of Commission interest should be
18 certainly communicated to that panel and reflected perhaps in periodic briefings
19 from that panel to the Commission in some form. Maybe some of them can be
20 through TA briefs. Maybe some of them can be directly in public meetings
21 depending on exactly where they are in the process.

1 I want very, very much to be kept informed on the work of all of these
2 groups and that certainly includes the independent review panel. I'll probably --
3 I'm going to go to your slide 17, John. I have several comments and questions on
4 that, but let me just reference that slide.

5 You summarized on that slide a number of very, very important activities. I
6 just wanted to give my perspective on some of them. Expanding the rulemaking to
7 consider the Category 3.5. I've certainly been very interested in looking at
8 expanding the National Source Tracking System with the proviso that I have
9 always wanted to be sure that we're not compromising what we're doing on
10 Category 1 and 2. If we can with confidence state now that we want to go to
11 Category 3.5, I'm happy to do that, but my primary concern, my first concern is that
12 we do nothing to compromise the timescale for execution on Category 1 and 2.

13 I believe in our risk informed approach. That's the path we've been taking.
14 If there truly is no delay in Category 1 and 2 by adding 3.5, okay. But let's make
15 sure we get 1 and 2 right and do it as quickly as possible.

16 On your second bullet on the interface between National Source Tracking
17 System and the Web-Based Licensing, I'd just like to add to that. I think this is
18 implicit in some of your other materials that we have. I think that at the same time
19 you're looking for that interface, we ought to be looking for the interface with
20 DNDO. I don't know exactly what DNDO is going to need in terms of a national
21 approach to tracking and verification of licenses with whatever they end up doing

1 with their portal alarm system, but I've gathered discussions with some of you and
2 certainly with some of the Agreement States that those discussions are certainly
3 ongoing with DNDO and it strikes me that an appropriate solution here ought to
4 blend everybody's interest. I don't see why this can't be perhaps one system that
5 accomplishes a number of different goals.

6 MR. KINNEMAN: If I could just comment on that, Commissioner. In
7 speaking to the staff, we're doing that work. They're very aware of that opportunity
8 and see it as an opportunity, but a difficult one to bring to fruition. So we didn't
9 want to present that as the solution, but I can say in speaking to the staff that they
10 are well aware of that opportunity.

11 COMMISSIONER LYONS: I appreciate that you're keeping that in
12 mind because if we can avoid creating still another system, that's certainly
13 positive. Your point on the next line about effective solution for assuring
14 authorization, Commissioner Jaczko commented on that. I, too, am extraordinarily
15 interested in finding some short-term solutions.

16 Yes, there's going to be long term, if you will, ultimate or perfect solutions,
17 but I'm extremely interested in having short-term solutions. You mentioned
18 telephone notification. It makes great sense to me.

19 Your next line on impact on the Agreement States. Yes, I'm very interested
20 in working with the Agreement States in making sure that they're brought along
21 and brought on board throughout this process, but I also don't feel that we should

1 necessarily wait for the Agreement States. If we can implement a solution very
2 quickly for the NRC licenses that is consistent with what the Agreement States can
3 do, I'm very happy, again, with the idea of glass half full, glass half empty.

4 I'm very comfortable in moving ahead as quickly as possible with what we
5 can do, certainly doing something that will be consistent with how the Agreement
6 States can participate and hoping that the Agreement States can join in a system
7 as quickly as possible. But I don't think we have to wait until all the Agreement
8 States and the NRC is aligned on even a short-term action. I would much prefer to
9 see a short-term partial solution, even if it's only the NRC.

10 MR. PANGBURN: Just to offer some thoughts on that. Some of the
11 recommendations here as John points out in the paper are broad and complex. In
12 this case, for example, if we move towards telephone verification as being the way
13 to do it for NRC licensees, that creates a situation where the manufacturers and
14 distributors, many of whom are in Agreement States, but who serve as licensees
15 in the Agreement States as well, may have two sets of requirements; a
16 requirement for NRC licensees and those for Agreement States.

17 Certainly, we're sympathetic to pressing forward with all due speed in an
18 effort to get short-term solutions in place as rapidly as possible and to the extent
19 that we can we want to make sure those are coordinated with the States. I'm
20 sensitive to both aspects of your remarks.

21 COMMISSIONER LYONS: I appreciate your comment, George, and

1 I know it will be a challenge. I'll still stick with my comment that to the extent we
2 can find partial solutions that are proceeding on a track that can involve the
3 Agreement States, perhaps at a later date, I'm very, very comfortable with moving
4 ahead with that partial solution.

5 Another comment I wanted to make on this slide and I think it's already
6 implicit in some of the answers to Commissioner Jaczko's questions. If the short
7 term solutions involve orders to the M&Ds, I'm perfectly happy to consider that. I
8 understand your point, George, that we could be putting some dual requirements
9 on the manufacturers and distributors. Hopefully, if we did that it would be for a
10 short period of time while we move beyond orders into a more organized
11 framework. But I'm quite willing to consider such orders to the manufacturers and
12 distributors if that can help us move more expeditiously.

13 The only other question I had was related to the point that the Chairman
14 made at the start of the questioning. That was on the budgeting. I believe it was
15 just last Thursday or Friday that we finalized Commission guidance to the staff. I
16 thought we were including most or all of these resources. I just want to be sure
17 that that was the way it ended up.

18 CHAIRMAN KLEIN: Yes.

19 COMMISSIONER LYONS: That was the origin of your comments
20 that we have all acted appropriately to cover the funding for this.

21 CHAIRMAN KLEIN: Both for '08 and '09.

1 COMMISSIONER LYONS: Okay. That was my memory, too, but
2 there were so many versions of the SRM , I just wanted to be very, very sure.

3 MR. PANGBURN: It was a moving target for John in preparing his
4 slides because we weren't sure we were going to have an SRM, but we did and
5 we do.

6 MR. KINNEMAN: That's why I didn't say thank you for approving the
7 resources because I didn't want to be presumptuous and miss where we were in
8 the process.

9 COMMISSIONER LYONS: Thank you, sir.

10 CHAIRMAN KLEIN: Thanks. Obviously, my first question is going to
11 go to Janet. As I think everyone knows, I am a strong supporter of the Agreement
12 States because that's where a lot of the activity occurs. Are we communicating
13 with them enough on this process?

14 MS. SCHLUETER: I believe we are. We're trying to look for every
15 existing opportunity and create new ones. For example, we invited the current
16 chair of CRCPD and the incoming chair of OAS today so they're here in person to
17 hear the discussion and be able to take that back. We've done it through routine
18 phone calls. We've done it through letters. We'll have a lengthy session at the
19 upcoming annual OAS meeting at the end of September. We'll continue to look for
20 new opportunities.

21 They'll also as I think others have mentioned be members on any existing

1 working group and steering committees that we have as well.

2 CHAIRMAN KLEIN: I agree with Commissioner Lyons that we don't
3 need to wait, but on the other hand I don't think they're mutually exclusive. That if
4 we go down this path as partners, then I think we'll all be better served.

5 One of the issues that I had made a note and Commissioner Jaczko
6 mentioned the State of Washington's letter. The Department of Defense tries to
7 keep up with the NRC with acronyms and so they have a program that's very well
8 established called TTL, Tag, Track and Locate. I guess I would encourage you to
9 look at some systems that already exist for some of these radioactive sources to
10 look at those.

11 MS. HOLAHAN: We actually had somebody from DITRA --
12 somebody that's on the Interagency Coordinating Committee come and talk about
13 the systems that they have at DITRA. They were talking about passive systems
14 and active systems. And the problem we're encountering is if we're tracking a
15 source, the radiation field is going to cause interference. If we're tracking a
16 package, it's a much simpler matter.

17 CHAIRMAN KLEIN: Although I would think that one could shield the
18 device that will transmit, there are some systems that are passive until you turn
19 them on.

20 MS. HOLAHAN: Yes. We're looking into those.

21 CHAIRMAN KLEIN: Good. Just going through some of your slides

1 sort of in order. On page five, you had a comment where two suppliers had
2 agreed to sell the materials for this particular GAO sting. I received a letter from
3 Mr. Troxler who makes a lot of these density gauges and while two suppliers might
4 have agreed to sell them, his comment was they all come back to him because he
5 makes them. If someone came in with an order for 45 moisture density gauges, it
6 would have set off significant indications of a problem. Could you comment on
7 that?

8 MR. KINNEMAN: Yes. I think that's one of the reasons why we are
9 pursuing the risk because there are certainly things that manufacturers and
10 distributors would note and we were aware of the letter that Mr. Troxler provided
11 and I decided not to put it in the presentation just to save some space and
12 confusion.

13 The GAO's belief is they did have two suppliers who were going to provide
14 them with material. I think what would have happened is exactly as you say that if
15 the order had come back to Troxler, they would have and did in fact say they
16 would shut it down. We were aware of that. I think that such a large order would
17 set off alarm bells at most suppliers.

18 On the other hand, at the other supplier was a much smaller order and it
19 was much less likely to produce as much suspicion. So certainly, it is a good
20 point. It's something the manufacturer - one of the things in my own experience of
21 being in the field most of the time in dealing with licensees is most of our licensees

1 put a very intelligent view on security and really think through what they're doing,
2 not that they'll catch everything, but just like Mr. Troxler said people don't order 45
3 moisture density gauges right out of the box. Usually they start small. If they can
4 afford two and then they do better and they get more.

5 I'm not sure if that's what you were looking for, but I think it's true that our
6 manufacturers and distributors, the ones that are licensed are intelligent. They
7 think through what they are doing. They won't guarantee to get everything, but I
8 think they really do make an effort to do a good job in this area.

9 CHAIRMAN KLEIN: Thanks. On page nine, the Senate staff
10 recommendation was to regulate Category 3 more closely. Any comment on
11 Category 4?

12 MR. KINNEMAN: As I recall, they did not mention it.

13 CHAIRMAN KLEIN: On the GAO Sting, could you remind me what
14 category they actually got?

15 MR. KINNEMAN: The argument they make is they actually got
16 individual Category 4 sources and were able if they had consummated all of these
17 things that they would have gotten a Category 3 amount of material.

18 CHAIRMAN KLEIN: I just wanted to confirm my memory on that one.

19 MR. KINNEMAN: That is correct, sir.

20 MR. VIRGILIO: That is in part why we're looking at this Category 3.5
21 notion as the aggregation.

1 CHAIRMAN KLEIN: The comment on page 15 about the general
2 license as a potential vulnerability. I guess having been at the University of Texas,
3 we had a general license. Within the University of Texas general license system,
4 we had a lot of internal requirements and controls. So we were under the
5 Agreement State and so we had a general license, but yet there were a lot of
6 details we did within that.

7 I guess my question is when you're looking at the general license potential
8 vulnerabilities, are you looking at the next level down on other requirements that
9 those general licenses might have?

10 MR. KINNEMAN: I think for the short term action the concern is that
11 there are some devices that are approved as general license on a safety basis
12 which have a fairly large amount of radioactivity in them which probably not likely
13 to be used at the university level where they do have a lot of systems in place, but
14 might be ordered by a manufacturer of another product who may or may not have
15 a comprehensive set of controls in place. We hope they do.

16 If you look through 31.5, it actually does have a number of requirements if
17 they're implemented are quite effective, but the vulnerability we're concerned
18 about is the potential for someone to come in again and masquerade as a coal
19 miner. A lot of these are used in coal chutes and coal tipples and have larger
20 amounts because they have a good distance to traverse. They come in and say
21 we're cranking up a coal mine. In fact, that's typically what happens. Coal price

1 goes up or they think they can make some money. They need the device. They
2 go straight to the manufacturer, not to the Agreement State, not to the NRC and
3 present themselves as needing this system.

4 The manufacturer decides whether it's the appropriate system for them,
5 whether they seem to be qualified, whether they can pay for it, those kinds of
6 things, and then provides the system, and that that is a similar thing that someone
7 who has malevolent intent could perhaps present themselves in the same way.
8 That's really where we're focused is that initial part.

9 And there's a second part which is many of these as you're winding down
10 over the years see a lot of opportunity where, okay I'm finished with this, now
11 there's somebody else out there who would like to use it and it's in fact one of the
12 things the regions and the Agreement States have to watch closely as well, I've
13 got this device, you'd like this device, we'll change some money. I'll send you the
14 device, what's the problem? It's something that's not within the regulations; many
15 of the times there's no intent to violate, but again an opportunity for somebody
16 where they have malevolent intent to not be dealing with a manufacturer and
17 distributor who has a lot of experience with that but just with another manufacturer
18 who is done with a piece of equipment and try and deal with all those kind of
19 issues.

20 CHAIRMAN KLEIN: Okay. Thanks. On page 20, on your plan
21 you've got short-term, mid-term and long-term actions. I assume you have time

1 lines and all those details worked out of when you expect those to happen?

2 MR. KINNEMAN: We did. If you look at the action plan, I think the
3 written places in the action plan showed that. We did put a pen to that time line,
4 which I have to admit I didn't do as good a job on as I wish I had. In juggling
5 through this, we didn't update that to include, we pull back some dates and moved
6 them around and didn't do as good a representation as I would have liked to
7 present you, but our intent was to present that in a sequence and to have them
8 happen in sequence.

9 CHAIRMAN KLEIN: I'd like to comment on Commissioner Lyons'
10 viewpoint that we don't have to wait for the 100% solution. The 70% or 80% to get
11 started may be better than we currently have and so I think that's a good idea.

12 MR. VIRGILIO: In listening to your questions I've come to conclude
13 we didn't do a very effective job of communicating that, in fact, we are looking for
14 interim solutions. We are going to take steps and embed it in this plan. I admit
15 you have to go back and do some research, but you do see dates of October. You
16 do see dates of December and I'm talking about 2007 for actions that we plan to
17 take.

18 So there are interim steps and we fully align. We've had these discussions
19 amongst ourselves that we do need to take interim actions. We do need to look
20 for the low hanging fruit, act on those and then move forward with the longer term
21 activities.

1 CHAIRMAN KLEIN: Since both Commissioner Jaczko and Lyons
2 commented on the external review panel, I'll add my comments as well. I believe
3 the correct place for the external review panel to report would be the EDO. I want
4 to bring that to the highest level within the staff, but I would also as indicated by
5 my fellow Commissioners, like to have an update as to where they are going and
6 what's being done because I think this is a strong enough issue that I think the
7 Commission would like to hear what they are finding in those periodic updates.
8 Commissioner Jaczko? More questions?

9 COMMISSIONER JACZKO: I had one brief question and then just a
10 comment. On slide seven, you talked about having gone through and looked
11 backwards at some recently issued licenses and took some steps. Maybe you
12 could just outline the steps that you took and any brief lessons that you got from
13 that process of verifying and how those activities might be useful as we go forward
14 and changes we might want to make in terms of how we verify.

15 MR. KINNEMAN: As I understand what was done is each of the
16 regions selected anywhere from 100% to about 50% of the licenses that they had
17 issued within the past, I believe, a year or 14 months. They essentially made a list
18 and they looked at what do we know based on what's in the application. They did
19 some of the things that in fact have been suggested, some of the kind of things
20 Mr. Troxler suggested and other staff were well aware of. They went and did a
21 quick Internet search for some of them, are there mentions, do they have

1 advertisements on the Web? Are there other references to them on the Web?
2 They looked at have we done an inspection there already because we're
3 supposed to inspect every license we issue within a year and therefore what were
4 the results of the inspection. Was there enough information gained during
5 inspection that you can come to a conclusion that this is a legitimate licensee?

6 I believe in some cases they called them up and had some additional
7 conversations with them. Where are you? Have you received - one of the
8 problems sometimes these licensees - we all have long-term plans, you get a
9 license, maybe you don't obtain the material. That puts off the inspection. Again,
10 they called some of them up and talked to them.

11 I believe in some other cases they did some things like talk to the State.
12 Are there other relationships that we can look into? That's one of the things the
13 pre-licensing group is looking at, like say a coal mine has to have many other
14 permits and licenses. Did they show up on the State list of people doing that kind
15 of activity so that it adds some sort of authenticity to their activities? So there was
16 a spectrum of things that were done.

17 COMMISSIONER JACZKO: I'm assuming in that spectrum we also
18 did some site visits?

19 MR. KINNEMAN: I don't know if we did any specific site visits in
20 response to those.

21 MR. PANGBURN: I think the only site visits are the ones that John's

1 alluding to which happened in the 12 months after a new license was issued.

2 COMMISSIONER JACZKO: So they hadn't had an inspection yet or
3 something like that?

4 MR. PANGBURN: Some had. Some might have been closer to
5 when the actual license was issued may not have had one as a post-licensing but
6 pre-licensing.

7 COMMISSIONER JACZKO: Thank you. The only comment I'd
8 make, again, I think echoing some of the previous thoughts. Certainly, I
9 appreciate the quick turnaround for the staff on this. I think this was a very good
10 product in a very short period of time and I hope that we will continue in that spirit
11 going forward. I think as Commissioner Lyons said and the Chairman said that
12 what we're looking for here are good solutions, not necessarily the perfect
13 solutions, but good solutions and practical things.

14 I think its worth as we go forward bringing to the Commission's attention
15 more of those specific actions that I think you've already thought about and
16 worked through. I recall when we had the OAS/CRCPD meeting last week. I think
17 it was Paul Schmidt walked through a list of ways that Agreement States do some
18 kind of pre-licensing verification. It didn't always involve a site visit, but I think the
19 one that stuck out in my head was the State of Nebraska, where I think they called
20 the local law enforcement to check -- did local law enforcement know this
21 particular individual -- not necessarily from the perspective of having had a run-in

1 with local law enforcement, but in the community, it maybe a small community; is it
2 someone that they know.

3 I think there's a lot of good ideas out there and I think really we're at this
4 stage of really wanting to implement as many of those good ideas as we can and
5 not needing to wait too long for the perfect solution. A good solution now I think is
6 most important. Thank you.

7 CHAIRMAN KLEIN: Commissioner Lyons?

8 COMMISSIONER LYONS: Just three fairly quick comments that I
9 haven't already made. On that same slide seven that Commissioner Jaczko was
10 just referencing, I had stopped I think you, John, on whether those retrospective
11 examinations were just NRC or the States. I think it would be worthwhile -- I'll be
12 suggesting that to the States that they consider if they have any license issued in
13 the last 12 months that are even vaguely suspicious that perhaps they do a little bit
14 of extra scrutiny as we've done.

15 Another point, not a minor point; a major point, but I don't know quite how to
16 do it and that is I've expressed interest many times and I know the Chairman has
17 too on finding ways to provide additional resources to the States. I am worried
18 with the amount -- with the number of demands that we're making on the States.
19 We're certainly in the process of talking about ways to assist in training and that's
20 certainly a very appropriate way.

21 I realize there's probably some legal limits on what we can do much beyond

1 that, but I can't help wondering if in the process of these discussions we could
2 explore whether perhaps other agencies, perhaps through DNDO and I'm
3 speaking way out of school here, but I'm just wondering if we could explore on a
4 staff level whether other agencies have any greater flexibility to provide funding for
5 some of the State activities and at the same time I'm very interested in our going
6 as far as we can to try and supplement state resources and recognize that we are
7 dramatically increasing the demands on the States.

8 And the only other comment I wanted to make was just a point I had meant
9 to make with regard to the partial solution and discussion that I went through on
10 slide 17 and my colleagues have certainly gone through, too. On the Web-Based
11 Licensing and some of the background material there's the suggestion that the
12 complete full solution involving the Agreement States could go as long as 2011.
13 That to me is an example of an unacceptable date.

14 And certainly amplified my concern with suggesting that we need to find
15 shorter-term approaches that get us a significant degree of effectiveness far, far
16 sooner than any date like that. That was all I had. Thank you, Mr. Chairman.

17 CHAIRMAN KLEIN: Thanks. I just have sort of three summary
18 comments. One, can we do it sooner? Two, so we don't get analysis by paralysis
19 that we look for interim actions as opposed to interim plans. And then finally, that
20 Janet has heard this before, but continue working with the Agreement States to
21 make sure that we are in partnership with those. Any comments?

1 Well, I'd like to thank the staff for their hard work and I'd also like to thank
2 members of the two other organizations in the audience for making their way into
3 the D.C. area. Thank you very much. Meeting is adjourned.

4