

# CHARTER FOR THE WORKING GROUP ON THE IMPLEMENTATION OF THE INCREASED CONTROLS

## Background

Prior to the terrorist attacks of September 11, 2001, both national and international efforts were initiated to improve licensee control over radioactive material sources large enough to pose a significant risk. These efforts recognized the potentially significant health and safety hazards posed by the sources if unauthorized individuals gained unintentional access. Following the attacks, it was recognized that these efforts also should address the need to prevent intentional unauthorized access by individuals intent on malicious acts. The results of these efforts, including the International Atomic Energy Agency *Code of Conduct on the Safety and Security of Radioactive Sources* (Code), seek to increase the licensee control over sources to prevent unintended radiation exposure and to prevent malicious acts.

Recognizing the complementary nature of safety and security in the control of radioactive materials, the Commission in SRM-COMSECY-05-0028, directed the staff to enhance the health and safety requirements imposed on licensees that possess sources containing radionuclides of concern in quantities equal to or greater than the category 2 levels in the Code. The enhanced requirements are to reflect the Code and include adequate control and tracking of the sources. Consistent with this approach, enhanced requirements were prepared under the theme of Increased Control of Sources. The Increased Controls (ICs) are focused on preventing both inadvertent and intentional unauthorized access to radioactive materials (including access with malicious intent).

On November 14, 2005, the Commission issued an Order<sup>1</sup> imposing the Increased Controls on certain licensees, which was published in the Federal Register on December 1, 2005 (70 FR 72128). The Order requires licensees possessing radionuclides of concern in quantities at or above the threshold quantities specified in Table 1 of Attachment B to the Order to implement the ICs specified in Attachment B to the Order. Concurrently, Agreement State Radiation Control Programs (RCPs) imposed essentially identical legally binding requirements on their licensees to implement the ICs.

In accordance with Management Directive 5.3, "NRC [U.S. Nuclear Regulatory Commission] /Agreement State Working Groups," this Working Group on the Implementation of the ICs (IICWG) was created on January 11, 2006, to ensure consistent application of the ICs, resolution of implementation issues, and response to inspection findings.

## Purpose

The purpose and activities of the IICWG are divided into an implementation phase and a compliance phase, which coincide with the licensee implementation and compliance periods for

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<sup>1</sup>Order EA-05-090 was issued in two mailings to NRC licensees; the first on November 14, 2005, and the second on December 22, 2005.

the ICs. During each phase, the IICWG will review and recommend an approach to dispositioning an identified issue. However, applicable processes of the NRC or the State RCPs, as applicable, will be used to disposition the issue, taking into consideration the recommendations of the IICWG.

#### Phase I - Implementation period, through approximately June 2006

Licensees are required to implement the ICs within 180 days. During the implementation period, the purpose of the IICWG is to ensure consistent regulatory implementation of the ICs by reviewing and dispositioning interpretation issues. The issues may arise from licensee questions for additional clarification or requests for relief, and may be initially received by NRC or an Agreement State. During this phase, the IICWG will review implementation issues and recommend an approach to dispositioning the issues that will ensure consistent implementation of the ICs.

#### Phase II - Compliance period, beginning approximately June 2006

During the compliance period, the purpose of the IICWG is to promote regulatory consistency by reviewing and dispositioning issues resulting from the inspection or observation of a licensee's implementation of the ICs. Essentially, the functions of the IICWG during Phase II will be similar to those while in Phase I.

During Phase II, the IICWG will review and approve a proposed approach to dispositioning an issue. These issues may be the result of recurring issues that inspectors identify during inspections or common misinterpretations of the ICs. Representatives of the IICWG will have to determine if an issue is generic or problematic enough to present to the IICWG for review and discussion.

It is important to continue to share information amongst regulatory agencies to help promote consistency during this phase. Initially, examples of significant NRC and Agreement State completed enforcement actions may be presented to and discussed with the IICWG. This sharing of significant completed enforcement actions is encouraged to help promote awareness amongst regulatory agencies of the type of infractions that are being identified during inspections and how these infractions are being addressed through the enforcement process in multiple regulatory jurisdictions. This sharing of examples will help in the effort of promoting consistency in addressing compliance issues during the inspection phase amongst regulatory agencies. However, issuance of any enforcement action will be accomplished through the processes applicable to the agency under whose jurisdiction the finding was identified.

Another key goal is identification of potential generic issues or problems with regard to the Increased Control requirements within certain industries. NRC as well as Agreement State representatives may present these generic issues or problems to the IICWG for discussion and assistance in determining how to disposition the issues or problems by the respective regulatory agency.

#### Actions -

1. Appropriate IICWG representative will develop a write-up of proposed significant compliance issue.

2. Upon receipt of issue from IICWG representative, the Coordinator shall:
  - A. research past findings to determine any similar submissions and consistencies.
  - B. research past recommendations for similar submissions, if applicable.
3. The IICWG members will review the material in preparation for the IICWG meeting.
4. The cognizant representative presents the issue/action to the IICWG with a recommendation or the outcome of the significant compliance issue.
5. The IICWG evaluates the issue or outcome of the significant compliance issue.
6. The IICWG shall come to a consensus on the issue unless extenuating circumstances prevail or the IICWG requires additional information. Every effort should be made to effectively and expeditiously come to consensus on recommendations for dispositioning problematic issues and develop guidance, if needed.

## **Membership**

The IICWG shall consist of designated representatives as decision making members from the Offices of Nuclear Material Safety and Safeguards (NMSS), Nuclear Security and Incident Response (NSIR), General Counsel (OGC), State and Tribal Programs (STP), regional Divisions of Nuclear Material Safety (DNMS), and from Agreement States as appointed by the Organization of Agreement States (OAS) and the Conference of Radiation Control Program Directors (CRCPD). Representatives from other NRC Offices, including the Office of Enforcement (OE), will participate in a non-decision making capacity, as appropriate to the issue. Individual members should have considerable experience in the development, application, or inspection of the ICs, and should have management experience. As needed, other specialists in a particular subject area will be provided by the applicable office above (e.g., NSIR shall ensure participation by security specialists, when needed). The senior representative from NMSS and the Agreement State representative appointed by the OAS, serve as the Co-Chairpersons.

Each participating organization should designate primary and alternate representatives. For flexibility in smaller organizations, the alternate representative may be a senior level staff, but should have similar considerable experience in the development, application, or inspection of the ICs and should be imparted the management's perspective on issues scheduled for consideration by the IICWG. All primary and alternate members should have full authority to concur for the organization on IICWG decisions. The objective of the IICWG is to reach decisions by consensus. A standing steering committee is not being established for this working group because of the management-level requirements for member participation. The Co-Chairpersons will ultimately determine if a general agreement has been reached regarding issues when there is the absence of a representative, either the primary, alternate, or another knowledgeable and authorized proxy, from an organization on the IICWG. A list of the current IICWG members and alternates is attached to this charter.

Each participating organization will decide if their respective organization's primary and/or alternate members, who are supporting the implementation period, will continue their duties as members in the compliance period, or whether other participants will be named for the compliance period effort. Each participating organization should determine whether members with different skill sets would be needed for the compliance period effort.

### **Coordination**

NMSS and the STP shall provide one primary and one backup Coordinator. Either coordinator shall be the point of contact for issues submitted for consideration. These issues, which have been transmitted through various means, have been reviewed by appropriate NRC and Agreement State staff, including the coordinators, to determine whether the issues rise to a level that warrants IICWG review. Using operating procedures developed and approved by the IICWG, the coordinator shall schedule meetings, prepare agendas, distribute submitted issue documentation to the primary and alternate members, and record and distribute summaries of discussions and decisions of the IICWG. The coordinators shall coordinate with the NMSS chair to ensure that all needed background information on issues is available for the chair to present at the IICWG meetings. The coordinator shall also coordinate with the backup coordinator, such that in the event the coordinator becomes unavailable, the backup can immediately fill-in. For Agreement State identified issues, the coordinator shall work with the Agreement State members to ensure that all needed documentation is provided.

### **Level of Effort**

The IICWG is expected to continue for a minimum of one year. Members should expect to devote up to approximately four hours of effort each week a meeting is held reviewing and discussing issues. Meetings are expected to be held at least every other week, and are expected to last for up to two hours. More frequent meetings may be required during the first few months of each phase.

### **Scope**

The IICWG is authorized to review issues related to the implementation of the ICs, implementing guidance, questions and answers, and temporary inspection instruction, to ensure proper interpretation by the licensee and the NRC and Agreement State RCP staff. Issues presented to the IICWG should be limited to those that are either applicable to multiple licensees, or are unique with a high degree of significance or complexity. The IICWG is further authorized to identify good implementation practices and issue them as recommendations.

While the IICWG is not authorized to order specific actions, it is authorized to review proposed responses to licensee questions and requests for relief to ensure that the issues are handled consistently. The IICWG should receive a documented statement of the issue, a recommendation for response, and a statement of the basis for the recommendation from the cognizant NRC or Agreement State program staff. The IICWG should review the issue and recommended response for potential interpretation errors, and issue recommendations for

dispositioning the issue. Outcomes of the IICWG may include recommendations on the need for further clarification of an Order requirement and/or associated implementing guidance for affected licensees. If implementation issues are deemed by the IICWG to be generic to a majority or class of licensees, aspects of the generic issue may be included in the existing ICs Implementing Guidance with Questions and Answers and in the Supplemental Questions and Answers (see <http://www.nrc.gov/reading-rm/doc-collections/enforcement/security/index.html#8>).

Formal responses to licensee questions or requests for relief shall follow the procedures of the cognizant agency. The IICWG does not replace any portion of the agency procedures for issuance of a formal response to a licensee inquiry.

The IICWG is authorized to propose amendments to this charter as needed to meet unanticipated problems or unexpected issues. Before they become effective, all amendments to this charter must be concurred on by the participating organizations.

## **Products**

The IICWG is chartered to produce the following products:

1. A final IICWG charter for Phase I by March 13, 2006.
2. An amended charter to address compliance issues during Phase II by approximately June 1, 2006.
3. Statements of the issues considered and recommended resolutions.
4. Recommendations of good practices identified, as appropriate.

Products created by the IICWG that are sensitive will be withheld from publicly availability pursuant to 10 CFR 2.390, and will be marked and handled in accordance with applicable Sensitive Unclassified Non-Safeguards Information (SUNSI) procedures.

## **Schedule of Meetings**

The IICWG should meet for the first time prior to January 30, 2006. Subsequent meetings will be held at least once every other week, but may be more frequent during the initial period of each phase. The initial and subsequent meetings will be held at the NRC headquarters complex, with offsite members participating via teleconference. The coordinator will identify to members the need for more frequent meetings, which will be scheduled at the option of the IICWG.

Meetings of the IICWG are not subject to the requirements of the Federal Advisory Committee Act, and will not be publicly announced in advance. Maximum use will be made of appropriate media for facilitating interaction with offsite members; for example, phone or teleconference calls, facsimiles, and electronic mail.

Due to the sensitive nature of the issues discussed, meetings will normally be closed to the public. When sensitive issues are to be discussed, only persons with official need-to-know

should attend the IICWG meetings. Meeting minutes and draft and final documents produced by the IICWG that contain sensitive information will be withheld from publicly availability pursuant to 10 CFR 2.390, and will be marked and handled in accordance with applicable SUNSI procedures.

For NRC technical staff, the following Technical Assignment Control Numbers should be used to record participation in the IICWG:

CFor implementation issues - **A10527**

CFor compliance issues - **A10158**

**Attachment:** List of Members and Additional Support

### WORKING GROUP MEMBERS

Organization	Primary	Phone	Alternate	Phone
NMSS/IMNS	Tom Essig	301-415-7231	Patricia Holahan	301-415-8125
STP	Janet Schlueter	301-415-3340	Dennis Rathbun	301-415-2325
OGC	Stuart Treby	301-415-1644	Susan Chidakel	301-415-1535
NSIR	Jeffrey Cruz	301-415-0599	Michael Layton	301-415-5751
State of Texas (appointed by OAS)	Pete Myers	512-834-6688 x2209	Richard Ratliff	512-834-6679
DNMS/RI	John Kinneman	610-337-5252	George Pangburn	610-337-5381
DNMS/RIII	Steve Reynolds	630-829-9800	Gary Shear	630-829-9801
DNMS/RIV	Vivian Campbell	817-860-8143	Chuck Cain	817-860-8186
States of Massachusetts and Maine (appointed by CRCPD)	Bob Gallagher	617-242-3035 x2017	Shawn Seeley	207-287-5696

### ADDITIONAL SUPPORT

	Primary	Phone	Alternate	Phone
NRC Coordinators	Kim Karcagi, NMSS	301-415-6701	Joshua Palotay, STP	301-415-6231
Materials Safety & Inspection Branch Participant	Greg Morell	301-415-6613		
Energy Policy Act Task Force Participant	Doug Broaddus	301-415-5847		