

# **Working Group on Implementation of 10 CFR Part 37, “Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material”**

## **CHARTER**

### **PURPOSE**

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 37 rule establishes security requirements for byproduct radioactive materials in Category 1 and Category 2 quantities. The rule was affirmed by the U. S. Nuclear Regulatory Commission (NRC) on March 16, 2012, and published in the *Federal Register* on March 19, 2013. It became effective on May 20, 2013, and compliance was required for NRC licensees by March 19, 2014. Agreement States issued rules or other compatible legally binding requirements within 3 years of publication of the rule in the *Federal Register*, on or before March 19, 2016.

The Working Group on Implementation of 10 CFR Part 37 (Working Group) was formed in November 2012, to consider and decide on the actions necessary to effectively implement 10 CFR Part 37 and recommend their incorporation into plans and schedules for action by NRC and Agreement States. It includes NRC staff and representatives of the Organization of Agreement States (OAS). This revised charter is intended to provide a plan for the future work of the Working Group. The Steering Committee on the Implementation of Part 37 (Steering Committee), consisting of representatives of NRC headquarters offices, NRC regional offices, and OAS, oversees the activities of the Working Group. The original charters for the Working Group and the Steering Committee are in the NRC’s Agencywide Document Access and Management System (ADAMS) under Accession Nos. ML16287A759 and ML16287A761, respectively. The Working Group is organized into eight subgroups with leaders responsible for each subgroup.

### **MEMBERSHIP**

The following personnel serve on the Working Group. Members may participate in one or more subgroups as needed. The Working Group may also add members and consult with other staff as necessary.

Paul Goldberg, NRC, NMSS, Co-chair  
Travis Cartoski, OAS (OR), Agreement State Co-chair  
Stephen James, OAS (OH)  
Randy Ragland, NRC, RI  
Craig Gordon, NRC, RI  
Debbie Piskura, NRC, RIII  
Janine Katanic, NRC, RIV  
James Thompson, NRC, RIV  
Frank Pavlechko, NRC, TTC  
Andrea True, NRC, TTC  
Gary Purdy, NRC, NSIR  
Duane White, NRC, NSIR  
Rick Costa, NRC, NSIR  
Ray Gibson, NRC, NSIR

Angela Coggins, NRC, OGC  
 Steve Garry, NRC, NRR  
 Juan Peralta, NRC, NRR  
 Willie Lee, NRC, NMSS  
 Michele Burgess, NRC, NMSS  
 George Smith, NRC, NMSS  
 Margaret Cervera, NRC, NMSS  
 Ernesto Quinones, NRC, NMSS  
 Linda Eusebio, NRC, NMSS  
 Kim Lukes, NRC, NMSS  
 Lizette Roldan-Otero, NRC, NMSS  
 Anthony McMurtray, NRC, NMSS

## SUBGROUPS

The eight subgroups cover specific areas associated with the clarity of 10 CFR Part 37. The subgroups, with their respective leads, are identified in the table below.

<b>Activity</b>	<b>Lead</b>
1. <b>Removal of license conditions for Increased Control Orders</b>	RRagland KLambert JKatanic
2. <b>Training</b>	JKatanic FPavlechko ATrue
3. <b>Guidance</b>  <i>Licensing guidance</i>  <i>Implementation guidance for licensees</i>  <i>Physical security guidance</i>  <i>Guidance for licensees with Part 73 plans</i>	LRoldan-Otero AMcMurtray  GSmith  DWhite  SGarry
4. <b>Inspection Procedure</b>	WLee
5. <b>Enforcement Guidance</b>	MBurgess
6. <b>Updating sensitive information guidance</b>	PGoldberg
7. <b>Stakeholder Outreach</b>	EQuinones
8. <b>Response to Program Review</b>	GSmith

## **STEERING COMMITTEE**

The following personnel will participate on the Steering Committee:

Sabrina Atack, NRC, NMSS, Co-chair

Lee Cox, OAS (NC), Co-chair

Blake Welling, NRC, RI

Aaron McCraw, NRC, RIII

Ray Kellar, NRC, RIV

Paul Michalak, NRC, NMSS

Douglas Bollock, NRC, NMSS

Hipolito Gonzalez, NRC, NMSS

Norman St. Amour, NRC, OGC

Carrie Safford, NRC, OGC

Tim Mossman, NRC, NSIR

## **INTERACTION WITH STEERING COMMITTEE**

The Working Group should keep the Steering Committee informed of its activities by providing Steering Committee members copies of meeting agendas, meeting minutes, and draft products, as they are prepared. The Working Group should also schedule meetings with the Steering Committee at appropriate points in time to allow the Steering Committee to review and provide guidance on issues identified by the Working Group; to review and provide comments on draft products prepared by Working Group; and to review progress of Working Group activities. Steering Committee guidance and advice should be provided by the Steering Committee, as documented by minutes of meetings agreed by the Chairpersons of the Working Group and Steering Committee. The Working Group, however, has the flexibility to interact with individual members of the Steering Committee to obtain, for example, clarification and additional information on comments offered by individual committee members. The Working Group will consider individual Steering Committee member comments and points of discussion raised during, Steering Committee meetings but does not need to act on or resolve them unless the full Steering Committee agrees.

During the course of its work, the Working Group may identify issues or matters that require guidance, or advice, from the Steering Committee. Any issues identified should be sent to the Steering Committee for resolution/guidance.

## **OBJECTIVES**

The Working Group and its subgroups will consider issues that arise in the implementation of 10 CFR Part 37 and provide guidance as necessary to resolve them. The Working Group will deal with the following tasks:

1. Removal of security-related license conditions.
2. Development and maintenance of training courses specific to 10 CFR Part 37 requirements.
3. Development of or updates to guidance including: guidance for licensees in light of licensing and inspection experience; guidance for licensees on physical security considerations; and guidance for licensees on application of 10 CFR Part 37 at licensees with Part 73 physical security plans.

4. Issuing and maintaining inspection procedures and related guidance for 10 CFR Part 37 requirements.
5. Updating enforcement guidance as necessary.
6. Updating guidance for protection of sensitive information.
7. Stakeholder outreach, including: any public meetings considered necessary; responses to questions from NRC staff, Agreement States and licensees; generic communications; meetings with industry groups and professional groups and developing additional tools to provide a lookup resource for reviewers, inspectors, and enforcement specialists (such as the Materials Security Toolbox, building on the existing Increased Controls (IC) toolbox).
8. Implementing recommendations from the 10 CFR Part 37 program review for rulemaking, guidance revision, and other courses of actions.

These tasks are explained in more detail below.

1. Removal of License Conditions (NRC licensees only)

In the case of NRC licensees whose Increased Control requirements were in license conditions, this subgroup consulted with the Office of the General Counsel to determine that the conditions could be removed by an order or notification that 10 CFR Part 37 supersedes them to prevent the Regions from having to take action to remove the conditions from licenses. The Regions have chosen to remove the conditions as they complete licensing actions or as they are able to review licenses. This subgroup will continue to track removal of these license conditions until all have been completed. As of November 2016, only a small number remain (~20).

2. Training

This subgroup helps to maintain an up-to-date training program by incorporating elements that arise from inspection experience, new guidance, and technical developments.

3. Guidance

*Licensing guidance*

This subgroup will update licensing guidance in NUREG-1556 series and other documents to include any measures necessary for licensing under 10 CFR Part 37. This subgroup will also update guidance on Pre-licensing and Risk-Significant Radioactive Materials.

*Guidance for licensees*

Implementation guidance for the rule (NUREG-2155) was issued to coincide with the release of the final rule. NUREG-2155, Revision 1, was issued in January 2015. The guidance uses a question and answer format similar to that used for guidance on the orders. This subgroup will address new questions or concerns, including licensee concerns, as they are raised during the implementation period, and provide responses to licensees and updated guidance in the form of frequently asked questions and answers

on the NRC Web site, or take other measures such as issuing generic communications to resolve concerns, as required.

*Guidance on physical security considerations*

In addition to the Implementation Guidance, in response to recommendations in the GAO report, “Nuclear Nonproliferation: Additional Actions Needed to Improve Security of Radiological Sources at U.S. Medical Facilities,” (GAO-12-295) dated September 10, 2012, and comments from licensees, NRC developed NUREG-2166, “Physical Security Best Practices for the Protection of Risk-Significant Radioactive Material,” to provide additional written guidance to instruct licensees on best practices, including specific guidance on the effective application of cameras, alarms, and other relevant physical security measures to consider in the implementation of their security programs. This subgroup continues to deal with questions from licensees, States, and NRC staff on physical security and will update the NUREG as needed.

*Guidance for application of 10 CFR Part 37 at licensees with 10 CFR Part 73 security plans*

This subgroup reviewed concerns related to the application of 10 CFR Part 37 at facilities with Part 73 plans, including operating power reactors, power reactors that are in decommissioning or have decommissioned, new reactors, non-power reactors, fuel cycle facilities, and spent fuel storage facilities. It reviewed a template for reactor security plans developed by the Nuclear Energy Institute (NEI); developed Enforcement Guidance Memorandum 14-001 for violations concerning large components and robust structures at power reactors; developed RIS-15-15 “Information Regarding a Specific Exemption in the Requirements for the Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material” and developed Temporary Instruction 2800/041, “10 CFR Part 37 Materials Security Review at Facilities with a Title 10 *Code of Federal Regulations* Part 73 Physical Protection Program,” which was issued August 27, 2014, and revised on July 1, 2015. This subgroup also issued guidance in the form of three sets of answers to questions from NEI (available in the NRC’s ADAMS under Accession Nos. ML16335A369, ML14307B321, and ML15237A129). This subgroup continues to deal with inspection and enforcement issues and questions from staff and licensees on implementation of the rule and guidance. This subgroup also develops guidance and any other communications needed and will participate in the revision of decommissioning requirements for reactors.

4. Inspection Procedure (IP)

This subgroup developed and issued an inspection procedure, IP 87137, “10 CFR Part 37 Materials Security Programs,” and related guidance documents to provide guidance for inspecting licensees that possess Category 1 and 2 quantities of radioactive material. This subgroup will modify the IP as necessary based on experience during implementation. This subgroup also developed and implemented a Temporary Instruction, 2800/042, “Evaluation of Trustworthiness and Reliability Determinations,” to gather information on licensees’ processes for determining trustworthiness and reliability of personnel who have unescorted access to risk-significant radioactive material and will consider whether the results necessitate any changes to rules or guidance.

5. Enforcement Guidance

This subgroup has developed preliminary enforcement guidance for 10 CFR Part 37 in the form of severity level determinations and will provide input to the Office of Enforcement for use in updating the NRC Enforcement Policy.

6. Updating guidance for protection of sensitive information

The SGI-M designation for security-related information for large irradiators, manufacturers and distributors, and RAMQC licensees was removed by rule. NRC licensees were notified in rescission letters to remove the Safeguards Information (SGI) designation from information when the SGI-M rule took effect. Agreement State licensees were notified by rescission letters issued when State legally binding requirements took effect.

This subgroup has taken the lead in updating guidance on Sensitive Unclassified Non-Safeguards Information for licensees, NRC staff, and Agreement States, particularly RIS 2005-31, "Control of Security-Related Sensitive Unclassified Non-safeguards Information Handled by Individuals, Firms, and Entities Subject to NRC Regulation of the Use of Source, Byproduct, and Special Nuclear Material." This subgroup will also consider the need for any changes in marking and handling guidance.

7. Stakeholder Outreach

This subgroup evaluates and determines the needs for interaction with the public, Agreement States, and licensees, whether it takes the form of meetings, review of documents, or consultations.

This subgroup has developed a Materials Security toolbox to provide a lookup resource for reviewers, inspectors, and enforcement specialists. Relevant guidance, statistics, generic communications, and any other material useful for licensing, inspection, or enforcement of 10 CFR Part 37 requirements will be developed and made readily available to NRC and Agreement State staff using this resource. Additionally, this subgroup will ensure appropriate outreach to stakeholders regarding materials security policy, training, and resource updates through appropriate means.

8. Actions responding to 10 CFR Part 37 Program Review: Revision of 10 CFR Part 37 Rule and Guidance, Other Actions

In SECY-16-0113, "Draft Report to Congress Regarding the Effectiveness of Part 37 of Title 10 of the *Code of Federal Regulations* and Summary of NRC Staff Program Review," the staff provided to the Commission a draft report to Congress on the effectiveness of 10 CFR Part 37 in providing adequate protection of Category 1 and 2 quantities of radioactive material and the results of the staff's comprehensive program review of 10 CFR Part 37. The staff concluded, as a result of the program review, that the requirements in 10 CFR Part 37 are effective to protect risk-significant radioactive material; however, there are specific areas in which revisions to the rule, development or revision of guidance, or enhanced communication efforts with licensees can be undertaken to further enhance the clarity of the regulations and licensees'

implementation of security measures. This subgroup will implement these activities according to the commitments in the report to Congress and the program review, and any subsequent Commission direction.

**LEVEL OF EFFORT EXPECTED OF PARTICIPANTS**

The Working Group will continue to meet on a regular biweekly schedule. Working Group members will help in performing the tasks listed under objectives, including drafting and reviewing documents and other products. The duration of the work depends on the subgroups on which members serve.

APPROVED

<b>/RA/</b>	<b>2/8/2017</b>
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Daniel S. Collins, Director, NRC/NMSS/MSTR	Date
<b>/RA/</b>	<b>4/14/2017</b>
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Matt McKinley, Chair, Organization of Agreement States	Date

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**2/8/2017**

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Date

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**4/14/2017**

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Matt McKinley, Chair, Organization of Agreement States

Date

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<b>DATE</b>	12/05/2016	12/05/2016	2/8/2017

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