

Working Group On Implementation of Part 37, Physical Protection Of Byproduct Material

CHARTER

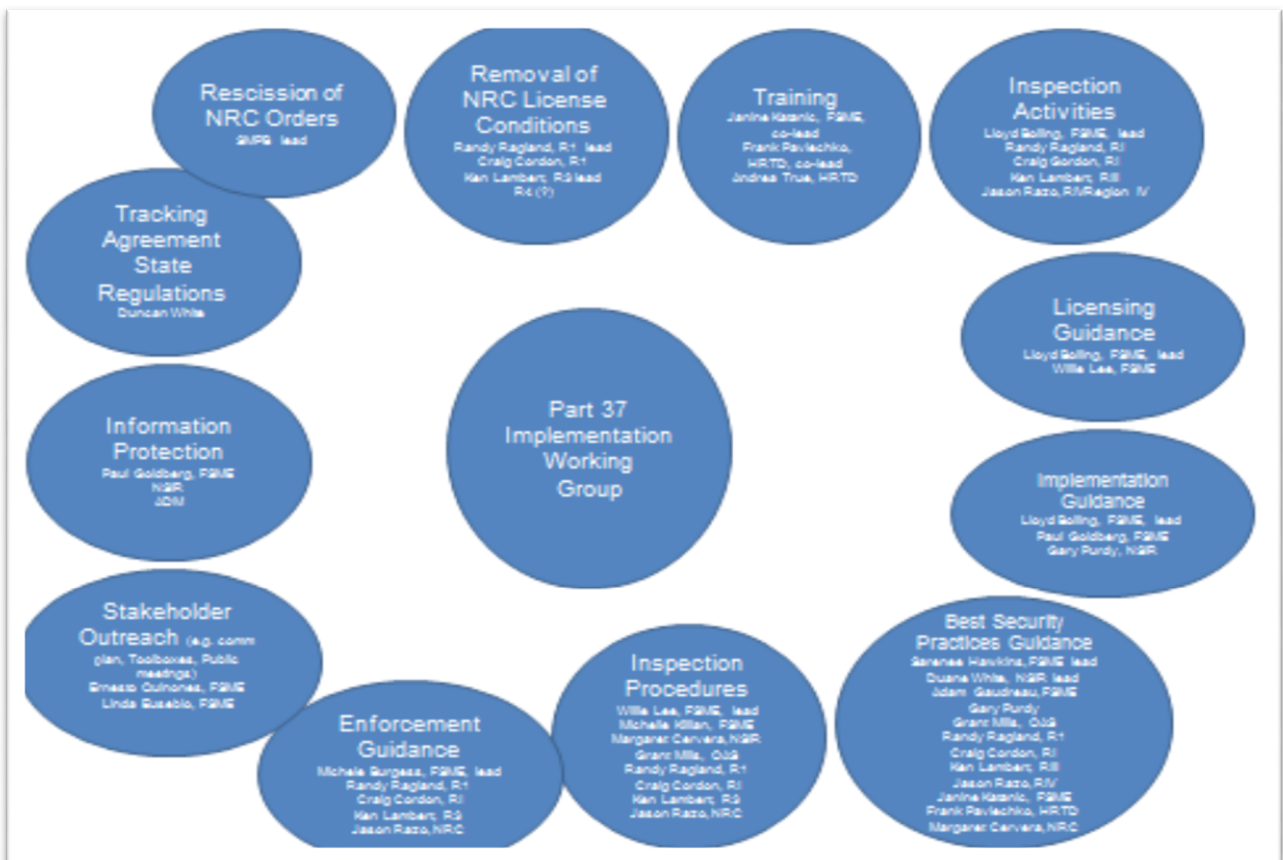
PURPOSE

The Part 37 rule was affirmed by the U. S. Nuclear Regulatory Commission (NRC or The Commission) on March 16, 2012 and published in the *Federal Register* on March 19, 2013. It is effective on May 20, 2013 and compliance is required for NRC licensees by March 19, 2014. Agreement States will issue rules or other compatible legally binding requirements within three years of publication in the *Federal Register*. The rule establishes security requirements for byproduct radioactive materials in Category 1 and Category 2 quantities. The Working Group (WG) on Implementation of Part 37 will consider and decide on the actions necessary to put Part 37 into practice and recommend their incorporation into plans and schedules for action by NRC and Agreement States. The WG will be organized into 12 subgroups with leaders responsible for the individual tasks.

MEMBERSHIP

The following personnel will serve on the WG. The diagram below shows the subgroups on which members serve. Members may participate in other subgroups. The WG may also add members and consult with other staff as necessary.

Paul Goldberg, NRC, FSME, Co-chair
Grant Mills, OAS (NC), State Co-chair
Willie Lee, NRC, FSME
Michele Burgess, NRC, FSME
Janine Katanic, NRC, FSME
Lloyd Bolling, NRC, FSME
Randy Ragland, NRC, RI
Craig Gordon, NRC, RI
Gary Purdy, NRC, NSIR
Ken Lambert, NRC, RIII
Jason Razo, NRC, RIV
Frank Pavlechko, NRC, TTC
Sarenee Hawkins, NRC, FSME
Michelle Killian, NRC, FSME
Margaret Cervera, NRC, NSIR
Duane White, NRC, NSIR
Ernesto Quinones, NRC, FSME
Don Oesterle OAS (CA)
Dan Lenehan, NRC, OGC
Andrea True, NRC, TTC
Linda Eusebio, NRC, FSME



STEERING COMMITTEE

The following personnel will participate on the steering committee (SC):

Adelaide Giantelli, NRC, FSME, Co-chair
 Lee Cox, OAS (NC), Co-chair
 Tammy Bloomer/Aaron McCraw, NRC, RI
 Blake Welling, NRC, RI
 Duncan White, NRC, FSME
 Chris Einberg, NRC, FSME
 Margie Kotzalas, NRC, FSME
 Norman St. Amour/James Biggins, NRC, OGC
 Sandra Wastler, NRC, NSIR

OBJECTIVES

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

1. Tracking the implementation status of Agreement State regulations or other legally binding requirements (LBRs)
2. Rescinding NRC-issued security orders
3. Removal of security-related license conditions as appropriate

4. Development of training courses specific to requirements in Part 37 and tracking the training of NRC and Agreement State personnel
5. Tracking NRC inspection activities and State inspection activities for licensees under NRC-issued security orders.
6. Updating licensing guidance as necessary.
7. Providing guidance on the rule to licensees in light of licensing and inspection experience.
8. Developing licensee guidance on physical security considerations.
9. Issuing inspection procedures and related guidance for Part 37 requirements.
10. Updating enforcement guidance as necessary.
11. Updating guidance for protection of sensitive information.
 - Decontrol of Safeguards Information-Modified Handling (SGI-M)
 - NRC licensees when SGI-M rule and Part 37 are effective
 - AS licensees: draft template letters, issue when AS issues LBRs
 - RIS 2005-31
 - Difference between Part 37 list of nuclides (16), NSTS list (20), and RIS 2005-031 list (15)
 - Marking and Handling Guidance
12. Stakeholder outreach, including a communications plan, any public meetings considered necessary, and developing additional tools, similar to the existing Increased Controls (IC) toolbox, to provide a lookup resource for reviewers, inspectors, and enforcement specialists.

These tasks are explained in more detail below.

1. Tracking Agreement State Regulations

The majority of licensees affected by the rule are Agreement State licensees. After the issuance of the final rule, each Agreement State has the responsibility to promulgate LBRs that satisfy the compatibility requirement of Section 274 of the Atomic Energy Act of 1954, as amended. States generally fulfill that responsibility through promulgation of regulations but may also issue orders or license conditions that give effect to the provisions of the rule. Because each Agreement State possesses detailed knowledge of its own requirements, Agreement States are best able to determine that their regulations or other generic LBRs are compatible with NRC regulations and where there are significant differences which could affect compatibility. Agreement States, and all States seeking an Agreement with NRC, are requested to submit for NRC staff review proposed amendments to their regulations or other proposed generic LBRs. States have up to three years from the date of publication of the final rule to promulgate compatible regulations. The NRC-issued security orders will remain in effect for the Agreement State licensees until compatible regulations are promulgated and implemented by the respective Agreement States. NRC staff will review the state regulations for compatibility, and must maintain awareness of the effective dates and implementation periods associated with the state regulations.

States will generally implement LBRs after NRC implements Part 37 and different States will implement the LBRs at different times, leaving sources under different regulatory frameworks and raising potential conflicts with respect to issues such as reciprocity and information protection. Sources shipped from a State under NRC jurisdiction or an Agreement State that has adopted Part 37 LBRs to an Agreement State that has not adopted LBRs (or vice-versa) will be changing from one regulatory framework to another. The Working Group will track the development and implementation of Agreement State LBRs.

2. Rescission of Security Orders

To ensure continuous protection of radioactive material, the security requirements of the NRC-issued orders must remain in effect until the final rule or State LBR is issued and the specified implementation period is complete. Table 1 at the end of this document describes the orders to be rescinded and estimates the number of licensees affected, based on information from FSME's order tracking database. Table 2 lists the orders specifically and discusses the rescission strategy for each type of order. These include orders for protection of Safeguards Information and for fingerprinting and background checks.

FSME will send rescission letters to NRC licensees or remove license conditions to coincide with the end of the implementation period specified in the regulation. The WG will develop templates for these letters, as necessary, including information on removing the SGI-M designation from documents. The WG will decide on the most efficient ways to rescind orders and remove license conditions, with the advice of OGC. FSME will coordinate with NRR and NMSS so they may rescind the orders affecting the licensees under their purview.

For Agreement State licensees, the NRC orders will be rescinded once compatible state regulations or other LBRs are in place, and the implementation periods specified in the state regulations or other LBRs are complete, a process that may take several years. FSME will send rescission letters to Agreement State licensees that received orders under NRC common defense and security authority: specifically panoramic and underwater irradiators, manufacturers and distributors (M&Ds), service providers and to licensees transporting radioactive material in quantities of concern (RAMQC). The Implementation Working Group will track the implementation process, including establishment of compatible State regulations and rescission or relaxation of NRC-issued orders using FSME's tracking database.

The Increased Controls were issued under the NRC's authority to protect public health and safety and the Agreement States issued LBRs to put enhanced security measures, identical to the Increased Controls, in place for licensees under that State's regulatory jurisdiction. The Agreement States are therefore responsible to rescind the legally binding requirements imposed on their licensees during implementation of the Increased Controls. The Group will coordinate with Agreement States to track the rescission of their LBRs.

3. Removal of License Conditions (NRC licensees only)

In the case of NRC licensees whose Increased Control requirements are in license conditions, the WG will consult with OGC to determine if the conditions can be removed by an order or notification that Part 37 supersedes them so that Regions will not have to take action to remove the conditions from licenses.

4. Training

NRC provides training to NRC, Agreement State, and master material inspectors for the increased control orders, including fingerprinting for increased control licensees, which were issued under NRC's authority to protect public health and safety. The scope of the Part 37 Rule includes some new or changed requirements for recipients of the increased controls and fingerprinting orders. In addition, the rule incorporates new or changed security requirements for large panoramic and underwater irradiators, manufacturers and distributors and licensees that transport RAMQC. Therefore, the NRC must modify inspector training programs, and both NRC and Agreement State inspectors will require supplemental training or retraining to successfully perform the inspections of Part 37 requirements.

The orders for panoramic and underwater irradiators, M&Ds and RAMQC were issued under NRC's common defense and security authority and contained safeguards information. A new rule eliminating the category of Safeguards Information-Modified Handling (SGI-M) will obviate the need to inspect compliance with the information protection requirements for SGI-M. Except for a few states that performed inspections under Section 274.i agreements, these requirements have been inspected by NRC inspectors. When the NRC rescinds its orders, the inspection and enforcement related to these types of licensees will become the responsibility of the Agreement States. The current increased controls course does not specifically address security requirements related to these types of facilities. Therefore, the training will also need to be revised or a new training module developed to address any specific requirements related to these licensees as well as the changed requirements of Part 37. The Working Group will aid FSME in coordinating with HR to develop the new or revised training programs and materials.

5. Inspection Activities

After the rule goes into effect for NRC licensees, NRC inspectors will begin to inspect NRC licensees under the Part 37 regulations. Because the Agreement States have up to three years to develop and implement compatible regulations, the inspection interval for many Agreement State licensees will lapse during their implementation period. This presents a challenge for inspecting the security requirements, since some States will not yet have their regulations in place. In these cases the NRC-issued security orders will still be in effect; the inspections for Irradiators, M&Ds and RAMQC will be performed by NRC inspectors, or by State inspectors through 274 (i) agreements. The Agreement States will continue to perform IC inspections against their legally binding requirements. This activity will be tracked by the Implementation Working Group. As the Agreement States transition to implementing their regulations, NRC will rescind the security orders and cease performing the inspections in those states. The Group will track the inspection status of and inspection results for NRC licensees and will consider the possibility of tracking for the Agreement States.

6. Licensing Guidance

Update licensing guidance in NUREG-1556 series and other documents to include any measures necessary for licensing under Part 37.

7. Guidance for Licensees

Implementation guidance for the rule (NUREG-2155) was issued to coincide with the release of the final rule. The guidance uses a question and answer format similar to that used for guidance on the orders. The Implementation Working Group 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 website, or take other measures to resolve the concerns, as required. If the Safeguards Information-Modified Handling (SGI-M) rule (SECY13-0045) is approved as a direct final rule, page changes will be made to NUREG-2155 to account for changes in protection of information.

8. Guidance on physical security considerations

In addition to the existing 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 other comments from licensees, NRC plans to develop and 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.

9. Inspection Procedure

The group will develop and issue a new inspection procedure and related guidance documents to replace the inspection procedures used to inspect the security requirements for panoramic and underwater irradiators and M&Ds and the temporary instructions currently in use for inspecting the IC and RAMQC orders. The revised inspection procedures are important inputs to the development of updated training programs. These will also be modified as necessary based on experience during implementation.

10. Enforcement Guidance

The working group will also recommend updating enforcement guidance as necessary to the Office of Enforcement. In connection with the removal of the SGI-M designation, there may be a need for enforcement discretion for cases in which, for example, an Agreement State licensee provides SGI-M information to a NRC licensee whose information has been removed from the SGI-M category by the new rule. The group will recommend revised guidance on exercise of enforcement discretion, if appropriate, and notify OE prior to any significant subgroup effort such that OE may participate in order to enhance effectiveness and efficiency in development of the final enforcement documents.

11. Updating guidance for protection of sensitive information

The working group will take the lead in updating guidance on Sensitive Unclassified Non-Safeguards Information for licensees, NRC staff, and Agreement States, particularly RIS 2005-31. The group will consider the differences among the Part 37 list of nuclides (16 nuclides), the RIS 2005-031 list (15 nuclides), and the NSTS list of nuclides (20 nuclides). The group will also consider the need for any changes in marking and handling guidance.

The SGI-M designation for security-related information for large irradiators, M&Ds, and RAMQC licensees will be removed by a rule to become effective at the same time as Part 37. NRC licensees will thus be notified in rescission letters to remove the SGI designation from information when the SGI-M rule and Part 37 are effective. Agreement State licensees will be notified by rescission letters issued when State LBRs take effect.

12. Stakeholder Outreach

The group will develop a communication plan to determine the needs for interaction with the public, Agreement States, and licensees, whether it takes the form of meetings, review of documents, or consultations.

The group will develop additional tools, similar to the existing Increased Controls (IC) 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 Part 37 requirements will be developed and made readily available to NRC and Agreement State staff. The working group will develop means of communicating on the eventual products of the group to stakeholders.

SCHEDULE

Activity	Start	Due	Lead	Comment
Tracking LBR Implementation	3/19/14	2017	ASPB	Planning
Rescinding NRC-issued security orders	11/14/12	3/19/14	SMPB	Planning
Removal of license conditions	11/14/12	3/19/14	RRagland	Planning
Training	11/14/12	7/15/13	JKatanic FPavlechko	Course Review 8/24/13
Tracking inspection activities	3/19/14		LBolling	Planning
Updating licensing guidance as necessary	11/14/12		LBolling	In progress
Guidance for licensees	11/14/12		LBolling	Implementing Guidance issued
Physical Security Guidance	11/14/12	11/13	DWhite	Being drafted
Develop Inspection Procedure	11/14/12	10/7/13	SMPB	Complete draft 8/15/13
Enforcement Guidance	11/14/12	10/13	MBurgess	Planning
Updating sensitive information guidance	11/14/12			Planning
Stakeholder Outreach	11/14/12		SMPB	In progress

LEVEL OF EFFORT EXPECTED OF PARTICIPANTS

The group will meet on a regular schedule, anticipated initially to be biweekly. Once established, the group may meet on a monthly basis. WG 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. See the milestones above for an indication of when work will be completed.

Table 1- Number of NRC and Agreement State Licensees Under Security Orders

Order	NRC Licensees	Agreement State Licensees
Panoramic Irradiators	9	45
Panoramic Irradiators (fingerprinting)	9	45
Manufacturers and Distributors	8	38
Manufacturers and Distributors (fingerprinting)	8	38
RAMQC	12	18
RAMQC (fingerprinting)	12	23
Increased Controls	727	~1,800
Increased Controls (fingerprinting)	821	~1,800
Protection of SGI cxd	27	85
Increased Controls imposed through license conditions	53	Not tracked by NRC
Non-M&D Service Providers	3	5

Table 2 – Main NRC Orders to be Rescinded (these are orders that were issued to large numbers of licensees; in some cases, orders were issued to individual licensees)

Regulated Activity	Post 9/11 Security Orders	Description	Order Sunset
Irradiators	EA-02-249 6/6/2003	Compensatory Measures for Panoramic and Underwater Irradiators $\geq 10,000$ Ci	For NRC licensees, orders will be rescinded after the implementation period defined in the rule. For AS licensees, rescinded on a variable schedule in coordination with implementation of compatible state regulations.
	EA-06-155 8/21/2006	Fingerprinting Requirements for Access to SGI	
	EA-06-248 10/27/2006	Fingerprinting for Access to Material (Irradiator Order Recipients)	
M&Ds	EA-03-225 1/12/2004	Additional Security Measures to Manufacturing and Distribution Licensees	For NRC licensees, orders will be rescinded after the implementation period defined in the rule.
	EA-06-155 8/21/2006	Fingerprinting Requirements for Access to SGI	

Regulated Activity	Post 9/11 Security Orders	Description	Order Sunset
	EA-06-250 10/27/2006	Fingerprinting for access to materials (M&D Order recipients)	For AS licensees, rescinded on a variable schedule in coordination with implementation of compatible state regulations
Other Sources of Concern	EA-05-090 11/14/2005	Order Imposing Increased Controls for Certain Radioactive Materials Licensees	For NRC licensees, orders will be rescinded after the implementation period defined in the rule.
	EA-07-305 12/5/2007	Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material	For AS licensees, rescinded on a variable schedule in coordination with implementation of compatible state regulations
	EA-09-293 12/16/2009 & EA-10-058	Trustworthiness and Reliability Requirements for Unescorted Access to Certain Radioactive Material (Non M&D Service Providers)	
RAMQC Transportation (IAEA Category 1 and 2 Byproduct Material and ≤ 100 grams SNF) "LQRam Transportation" RAMQC (Continued)	EA-05-006 & EA-05-007 ¹ 7/19/05; EA-07-305 ² 12/7/07 EA-06-249 ³ 10/17/06 EA-07-003 ⁴ 5/22/07	Certain Licensees Authorized To Possess and Transfer Items Containing Radioactive Material Quantities of Concern; Order Imposing Additional Security Measures Fingerprint/Criminal History Checks for Unescorted Access Fingerprint/Criminal History Checks for Unescorted Access ASMs, including Fingerprint/Criminal History Checks for Unescorted Access	For NRC licensees, orders will be rescinded after the implementation period defined in the rule. For AS licensees, rescinded on a variable schedule in coordination with implementation of compatible state regulations.

1 ASMs issued to licensees possessing ≥ IAEA Cat 1 &/or ≤ 100 grams SNF. Identical orders subsequently sent to additional licensees 2 more times in 2005 and 2006.

2 Fingerprint/Criminal History Checks for Unescorted Access, for those previously issued ICs. Identical orders subsequently sent to additional licensees 2 more times in 2007 and 2009.

3 Fingerprint/Criminal History Checks for Unescorted Access, for those previously issued ASMs.

4 ASMs, including Fingerprint/Criminal History Checks for Unescorted Access. Identical orders subsequently sent to additional licensees 2 more times in 2008.

Regulated Activity	Post 9/11 Security Orders	Description	Order Sunset
Decommissioning Reactors	EA-09-204 11/23/2009	Order Imposing Increased Controls for Power Reactor Licensees Undergoing Decommissioning	NRC licensees, orders will be rescinded after the implementation period defined in the rule.
	EA-09-205 11/23/2009	Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material	

Approved: _____
 Brian McDermott, Director, Division of Materials Safety and State Agreements

Approved: _____
 Mark Satorius, Director, Division of Materials Safety and State Agreements

Approved: _____
 Stephen James, Chair, Organization of Agreement States

Regulated Activity	Post 9/11 Security Orders	Description	Order Sunset
Decommissioning Reactors	EA-09-204 11/23/2009	Order Imposing Increased Controls for Power Reactor Licensees Undergoing Decommissioning	NRC licensees, orders will be rescinded after the implementation period defined in the rule.
	EA-09-205 11/23/2009	Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material	

Approved: _____

Brian McDermott, Director, Division of Materials Safety and State Agreements

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Stephen James, Chair, Organization of Agreement States

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DATE	8/ /2013	8/ /2013	8/ /2013	8/ /2013

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