

March 31, 2015

Pamela Henderson, Deputy Director
Division Material Safety, State,
Tribal and Rulemaking Programs
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission T8-E18
Washington, D.C. 20555-001

Dear Deputy Director Henderson:

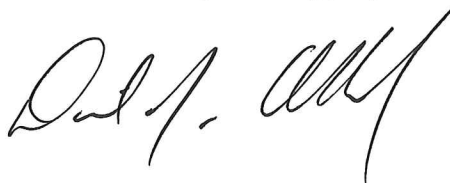
Enclosed is a copy of the proposed revisions to the Pennsylvania Radiological Health regulations 25 Pa. Code Chapter 215, General Provisions Security Rule Radioactive Material. The proposed revisions were made available for public comment on March 21, 2015 with a request for comments by April 20, 2015. We request NRC's review and comments by April 30, 2015. The proposed regulations are an incorporation by reference of 10 CFR Part 37 and therefore we do not anticipate any compatibility issues. The proposed regulations are identified by bold text (deletions are bracketed) and correspond to the following equivalent amendment to NRC's regulations.

<u>Rats ID</u>	<u>Title</u>	<u>State Section</u>
2013-1	Physical Protection of Byproduct Material	25 Pa. Code Chapter 215

We believe that adoption of these revisions satisfies the compatibility and health and safety categories established in the Office of Nuclear Material Safety and Safeguards (NMSS) Procedure SA-200.

If you have any questions, please feel free to contact me at 717-787-2480, or Joseph Melnic of my staff at 717-787-3720 or jmelnic@pa.gov.

Sincerely,



David J. Allard, CHP
Director,
Bureau of Radiation Protection

Enclosure

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 215]

Security Rule for Radioactive Material

[45 Pa.B. 1367]

[Saturday, March 21, 2015]

The Environmental Quality Board (Board) proposes to amend Chapter 215 (relating to general provisions) to read as set forth in Annex A. The proposed rulemaking would amend Chapter 215 to include a reference to the new Nuclear Regulatory Commission (NRC) security regulation in 10 CFR Part 37 (relating to physical protection of category 1 and category 2 quantities of radioactive material). The Bureau of Radiation Protection incorporates by reference all applicable NRC radiation protection and control of radioactive materials regulations from 10 CFR (relating to energy).

This proposed rulemaking was adopted by the Board at its meeting on October 21, 2014.

A. *Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Joseph Melnic, Chief, Division of Radiation Control, P. O. Box 8469, Rachel Carson State Office Building, Harrisburg, PA 17105-8469, (717) 783-9730; or Keith Salador, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 783-8075. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) web site at www.dep.state.pa.us (select "Public Participation Center," then select "The Environmental Quality Board").

C. *Statutory Authority*

This proposed rulemaking is being made under the authority of sections 301 and 302 of

the Radiation Protection Act (35 P. S. §§ 7110.301 and 7110.302) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

D. Background and Purpose

When then Governor Rendell signed the Agreement with the Chairperson of the NRC in March 2008 to oversee and regulate licensure of radioactive materials for Pennsylvania entities, the Commonwealth committed to being compatible with the NRC regulations. The Department fulfills this requirement by incorporating by reference NRC regulations. Currently, licensees in this Commonwealth are following security orders issued by the NRC in November 2005 following the terrorist attacks of September 11, 2001. The orders were reissued by the Department in 2008 after the Commonwealth became an Agreement State, for security controls, also referred to as Increased Controls (IC), for these high-activity licensees. The orders were used to develop 10 CFR Part 37 as implemented by the NRC in March 2014.

E. Summary of Regulatory Requirements

The following discussion outlines the regulatory requirements that have been affected by the proposed rulemaking and describes the basis for the amendments.

§ 215.1. Purpose and scope

In subsection (e), the Department is proposing to add a reference to 10 CFR Part 37, incorporating by reference this new part.

Proposed subsection (e)(10) designates that 10 CFR 37.3(b)(2), 37.13, 37.73(d) and (e), 37.107 and 37.109 are not being incorporated. These sections are not being incorporated because they apply to the NRC only. Subsequent paragraphs are proposed to be renumbered.

Proposed amendments to subsection (h)(5) delete the transitional language that was added in anticipation of the Commonwealth becoming an Agreement State. In addition, language is proposed to be added codifying the requirement for licensees to send criminal history records to the NRC.

F. Benefits, Costs and Compliance

Benefits

Codifying orders into regulation will result in optimizing compliance authority. Benefits of the regulation are prevention of unnecessary radiation exposure to the public and radiation workers from terrorist acts using large quantities of radioactive material.

Compliance costs

No additional financial, economic or social impact will result from this proposed rulemaking.

Compliance Assistance Plan

Current IC licensees are being informed by the Department during annual inspections that the orders they are required to comply with will be codified in Pennsylvania regulation with the promulgation of this proposed rulemaking. The Department has recently notified all IC licensees through a written Information Notice that 10 CFR Part 37 is anticipated to be incorporated by March 19, 2016. In addition, a series of workshops were conducted in September 2014 in which the NRC, the National Nuclear Security Administration of the United States Department of Energy and various local law enforcement agencies participated to provide technical assistance.

Paperwork requirements

The proposed rulemaking will not revise the current paperwork requirements.

G. Pollution Prevention

This is not applicable to this proposed rulemaking.

H. Sunset Review

The regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 9, 2015, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

J. Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Board. Comments, suggestions or objections must be received by the Board by April 20, 2015. In addition to the submission of comments, interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by the Board by April 20, 2015. The one-page summary will be distributed to the Board and available publicly prior to the meeting when the final-form rulemaking will be considered.

Comments, including the submission of a one-page summary of comments, may be

submitted to the Board online, by e-mail, by mail or express mail as follows. If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Comments may be submitted to the Board by accessing the Board's online comment system at www.ahs.dep.pa.gov/RegComments. Comments may also be submitted to the Board by e-mail at RegComments@pa.gov. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission.

Written comments should be mailed to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

JOHN QUIGLEY,
Acting Chairperson

Fiscal Note: 7-493. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE V. RADIOLOGICAL HEALTH

CHAPTER 215. GENERAL PROVISIONS

GENERAL PROVISIONS

§ 215.1. Purpose and scope.

* * * * *

(e) Title 10 Chapter I (Nuclear Regulatory Commission) Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 70, 71 and §§ 150.1, 150.2, 150.3, 150.11 and 150.20 of the CFR are incorporated by reference with the exceptions set forth in paragraphs (1)—~~[(13)]~~ (14). Notwithstanding the requirements incorporated by reference, nothing in this article relieves or limits a person from complying with the laws of the Commonwealth, including the act and the Low-Level Radioactive Waste Disposal Act (35 P. S. §§ 7130.101—7130.905).

(1) Sections 19.4, 19.5, 19.8, 19.30 and 19.40 are not incorporated.

(2) Sections 20.1006, 20.1009, 20.2206(a)(1), (3), (4) and (5), 20.2401 and 20.2402 are not incorporated.

(3) Sections 30.5, 30.6, 30.8, 30.21(c), 30.34(d) and (e)(1) and (3), **[30.41(a)(6)] 30.41 (b)(6)**, 30.55, 30.63 and 30.64 are not incorporated.

* * * * *

(9) Sections 36.5, 36.8, 36.91 and 36.93 are not incorporated.

(10) Sections 37.3(b)(2), 37.13, 37.73(d) and (e), 37.107 and 37.109 are not incorporated.

[(10)] (11) Sections 39.5, 39.8, 39.101 and 39.103 are not incorporated.

[(11)] (12) Sections 40.6, 40.8, 40.12(b), 40.23, 40.27, 40.28, 40.31(k) and (i), 40.32(d), (e) and (g), 40.33, 40.38, 40.41(d), (e)(1) and (3) and (g), 40.51(b)(6), 40.64, 40.66, 40.67, 40.81 and 40.82 are not incorporated.

[(12)] (13) Sections 70.1(c), (d) and (e), 70.5, 70.6, 70.8, 70.13, 70.13a, 70.20a, 70.20b, 70.21(a)(1), (c), (f), (g) and (h), 70.22(b), (c), (f), (g), (h), (i), (j), (k), (l), (m) and (n), 70.23 (a)(6), (7), (8), (9), (10), (11) and (12) and (b), 70.23a, 70.24, 70.25(a), 70.31(c), (d) and (e), 70.32(a)(1), (4), (5), (6) and (7), 70.32(b)(1), (3) and (4), (c), (d), (e), (f), (g), (h), (i), (j) and (k), 70.37, 70.40, 70.42(b)(6), 70.44, 70.51(c), (d) and (e), 70.52, 70.53, 70.54, 70.55(c)(1), (2) and (3), 70.56(c) and (d), 70.57, 70.58, 70.59, 70.62, 70.71 and 70.72 are not incorporated.

[(13)] (14) Sections 71.2, 71.6, 71.14(b), 71.19, 71.31, 71.33, 71.35, 71.37, 71.38, 71.39, 71.41, 71.43, 71.45, 71.51, 71.55, 71.59, 71.61, 71.63, 71.64, 71.65, 71.71, 71.73, 71.74, 71.75, 71.77, 71.99, 71.100, 71.101(c)(2), (d) and (e), 71.107, 71.109, 71.111, 71.113, 71.115, 71.117, 71.119, 71.121, 71.123 and 71.125 are not incorporated.

* * * * *

(h) To reconcile differences between this chapter and the incorporated sections of Federal regulations and to effectuate their joint enforcement, the following words and phrases shall be substituted for the language of the Federal regulations:

* * * * *

(5) Notifications, reports and correspondence referenced in the incorporated parts of 10 CFR shall be directed to the Department **[and, for NRC licenses, to the NRC until agreement state status is in effect], except as noted in 10 CFR 37.27 (relating to requirements for criminal history records checks of individuals granted unescorted access to category 1 or category 2 quantities of radioactive material).**

[Pa.B. Doc. No. 15-501. Filed for public inspection March 20, 2015, 9:00 a.m.]

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