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COMMENT (2)
 PUBLICATION DATE:
 11/14/2019
 CITATION 84 FR 64113

Docket: NRC-2018-0170

NUREG-2155, Revision 2, "Implementation Guidance for 10 CFR Part 37, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material"

Comment On: NRC-2018-0170-0001

Guidance for Implementation of Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material

Document: NRC-2018-0170-DRAFT-0002

Comment on FR Doc # 2019-25163

Submitter Information

Name: Chikaodi Agumadu

General Comment

On behalf of TCEQ, please see our comments on the Nuclear Regulatory Commission (NRC) Notice: Guidance for Implementation of Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.

If you have any questions concerning the enclosed comments, please contact Mr. Brad Broussard of the Radioactive Materials Division, at (512) 239-6380, or at brad.broussard@tceq.texas.gov.

Thank you,

Chikaodi Agumadu
 Texas Commission on Environmental Quality
 Intergovernmental Relations Division

Attachments

NRC_Comments _02182020

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 18, 2020

Office of Administration, Mail Stop: TWFN-7-A60M
U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001
ATTN: Program Management, Announcements and Editing Staff

Re: U.S. Nuclear Regulatory Commission draft NUREG-2155, Revision 2,
"Implementation Guidance for 10 CFR part 37, Physical Protection of Category 1
and Category 2 Quantities of Radioactive Material." (Docket Number NRC-2018-
0170)

Dear Sir/Madam:

The Texas Commission on Environmental Quality (TCEQ) appreciates the opportunity to comment on the U.S. Nuclear Regulatory Commission (NRC) draft NUREG-2155, Revision 2, "Implementation Guidance for 10 CFR part 37, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material." Enclosed please find the TCEQ's detailed comments relating to the NRC's draft guidance referenced above. If you have any questions concerning the enclosed comments, please contact Mr. Brad Broussard of the Radioactive Materials Division, at (512) 239-6380, or at brad.broussard@tceq.texas.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Toby Baker".

Toby Baker, Executive Director
Texas Commission on Environmental Quality

AF/bb

**Texas Commission on Environmental Quality (TCEQ) Comments on the U.S.
Nuclear Regulatory Commission (NRC) draft NUREG-2155, Revision 2,
Implementation Guidance for 10 CFR part 37, Physical Protection of
Category 1 and Category 2 Quantities of Radioactive Material.
Docket Number NRC-2018-0170**

Background: On November 20, 2019, the U.S. Nuclear Regulatory Commission published in the Federal Register Notice of a draft NUREG-2155, Revision 2, "Implementation Guidance for 10 CFR part 37, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material." NUREG-2155, Revision 2 is intended to provide guidance on, and to assist applicants and licensees in, the implementation of part 37 of title 10 of the *Code of Federal Regulations*, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material." This guidance describes methods that the NRC finds acceptable for implementing the regulations. The purpose of this notice is to provide the public with an opportunity to review and provide comments on draft NUREG-2155, Revision 2.

The TCEQ offers the following comments:

1. Page 164, "[Question] 3: Do licensees need to protect their physical license to possess Category 1 and Category 2 radioactive material as sensitive information?"

[Answer] 3: Although not required by 10 CFR Part 37, as explained in NRC RIS 2005-31, Revision 1, licensees should protect the license as sensitive information because it contains information that identifies specific authorization types, activities, and locations of use which, if disclosed, could inhibit the security of the licensed material. Documents that contain security-related sensitive information should be protected from public disclosure through the use of methods similar to those for protecting proprietary information."

Comment: Radioactive material licenses are public documents and the state regulator is required under state law to provide access to these documents. For the licenses issued by the Texas Commission on Environmental Quality (TCEQ), licensees are required to place draft licenses in a public place for members of the public to view for minor amendments, major amendments, renewals, and new issuances. Under the Texas Public Information Act, if TCEQ is prohibited by law (such as the Texas Homeland Security Act) from releasing certain information, the Attorney General has consistently ruled that the information must be withheld from public disclosure. The TCEQ respectfully requests that the NRC provide clarification of this issue in Answer 3.

2. Page 218, "[Question] 4: Can a licensee conduct their annual security program review at the same time as the annual audit of their radiation safety program, and if so, can the review and audit be documented together?"

[Answer] 4: A licensee may conduct their annual security program review at the same time they conduct the annual audit of their radiation safety program, and may document both the review and audit together, if they choose to do so. Regardless of the timing and documentation of the security program review, in accordance with the requirements in 10 CFR 37.55, it should be clear that the security program review includes a review of the radioactive material security program content and implementation, and the documentation should reflect the review along with any recommendations."

Comment: The results of the radiation safety program audit is likely to be considered public under the Texas Public Information Act, whereas, the security program review is likely to be considered confidential under the Texas Public Information Act and should not be accessible to a member of the public. Consequently, including the security program review in the same document as the radiation safety program audit would be preventing a publicly accessible document from being viewed by a member of the public. Under the Texas Public Information Act, if TCEQ is prohibited by law (such as the Texas Homeland Security Act) from releasing certain information, the Attorney General has consistently ruled that the information must be withheld from public disclosure under the TPIA. The TCEQ respectfully requests that this issue be clarified in Answer #4.