

NOTICE OF FINAL RULEMAKING
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD
[25 PA CODE CHAPTER 215]
Security Rule for Radioactive Material

The Environmental Quality Board (Board) by this order amends Chapter 215 (relating to general provisions) to read as set forth in Annex A. Chapter 215 is amended to include a reference to the new 10 CFR Part 37 Nuclear Regulatory Commission (NRC) security regulation. The Bureau of Radiation Protection incorporates by reference all applicable NRC radiation protection and control of radioactive materials regulations from Title 10 of the Code of Federal Regulations (CFR).

This final-form rulemaking was adopted by the Board at its meeting on _____, 2015.

A. Effective Date

These amendments will go into effect on January 1, 2016.

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. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This final-form rulemaking is available electronically through the Department of Environmental Protection's (Department) Web site at www.dep.state.pa.us (select Public Participation, then select Environmental Quality Board).

C. Statutory Authority

This final-form rulemaking is authorized by the Radiation Protection Act, July 10, 1984 (P.L. 688, No. 147), 35 P.S. Sec. 7110.301 and 35 P.S. Sec. 7110.302, and Section 1920-A of the Administrative Code, April 9, 1929 (P.L. 177, No. 175), as amended, 71 P.S. Sec. 510-20.

D. Background and Purpose

When then-Governor Rendell signed the Agreement with the Chairman of the NRC in March 2008 to oversee and regulate licensure of radioactive materials for Pennsylvania entities, Pennsylvania committed to being compatible with the NRC regulations. The Department fulfills this requirement by incorporating by reference NRC regulations. Currently, Pennsylvania licensees are following security orders issued by the NRC in November 2005 following the terrorist attacks of September 11, 2001. The orders were re-issued by the Department in 2008, after Pennsylvania 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 the 10 CFR Part 37 regulations that were implemented by the NRC in March 2014. The orders require licensees to secure, from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas, as well as control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. The orders also impose fingerprinting and criminal history records check requirements for unescorted access to certain radioactive material.

E. Summary of Regulatory Requirements

The following discussion outlines the regulatory requirements that have been affected by the final-form regulations and describes the basis for the amendments.

Section 215.1 – Purpose and Scope

Subsection (e) includes a reference to Title 10 Chapter I (Nuclear Regulatory Commission) for Part 37, incorporating by reference this new Part.

Subsection (e)(10) designates the Part 37 sections that are not being incorporated, such as Sections 37.3(b)(2) (relating to imports and exports of category 1 or category 2 quantity of radioactive material); 37.13 (relating to information collection requirements contained in this part to the Office of Management and Budget (OMB)); 37.73(d) and (e) (relating to licensees that import or export); 37.107 (relating to violations); and 37.109 (relating to criminal penalties). These sections are not being incorporated because they apply to the NRC only. Subsequent paragraphs are proposed to be appropriately renumbered.

Subsection (h)(5) deletes the transitional language that had been added in anticipation of Pennsylvania becoming an Agreement State. In addition, language has been added codifying the requirement for licensees to send criminal history records to the NRC.

F. Summary of Comments and Responses on the Proposed Rulemaking

On March 21, 2015, the Board published a *Pennsylvania Bulletin* notice of proposed rulemaking and written public comment period on the proposed amendments to Chapter 215. The comment period closed on April 20, 2015, and no comments on the proposed rulemaking were received. The Independent Regulatory Review Commission (IRRC) reviewed the proposed rulemaking and did not have any objections, comments, or recommendations.

G. 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 regulation.

Compliance Assistance Plan

Current IC licensees are being informed by DEP during annual inspections that the orders they are required to comply with will be codified in Pennsylvania regulation with the promulgation of this rulemaking. DEP has recently notified all IC licensees through a written Information Notice that 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 National Nuclear Security Administration of the US Department of Energy participated to provide technical assistance.

Paperwork Requirements

The final-form rulemaking will not revise the current paperwork requirements.

H. Pollution Prevention

N/A

I. Sunset Review

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

J. 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, published at 45 Pa.B. 1367 (March 21, 2015), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final rulemaking, the Department has considered all comments from IRRC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on _____, 2015, these final-form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 2015, and approved the final-form regulations.

K. Findings of the Board

The Board finds that:

- (1) Public notice of the proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pennsylvania Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law, and all comments were considered.
- (3) These regulations do not enlarge the purpose of the proposal published at 45 Pennsylvania Bulletin 1367 (March 21, 2015).
- (4) These regulations are necessary and appropriate for the administration and enforcement of the acts identified in Section C of this order.

L. Order of the Board

The Board, acting under the authorizing statutes, orders that:

- (a) The regulations of the Department of Environmental Protection, 25 Pennsylvania Code, Chapter 215, are amended to read as set forth in Annex A.
- (b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.
- (c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.
- (d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.
- (e) This order shall take effect immediately.

John Quigley
Chairperson
Environmental Quality Board