

**PROPOSED RULEMAKING  
ENVIRONMENTAL QUALITY BOARD  
[25 PA CODE CHAPTER 215]  
Security Rule for Radioactive Material**

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 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 CFR.

This proposed rulemaking was adopted by the Board at its meeting on \_\_\_\_\_, 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 proposal appears in Section J of this preamble. 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 proposal is available electronically through the Department of Environmental Protection's (Department) Web site at [www.dep.state.pa.us](http://www.dep.state.pa.us) (select Public Participation, then select Environmental Quality Board).

*C. Statutory Authority*

This proposed rulemaking is being made under the authority of 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.

#### *E. Summary of Regulatory Requirements*

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

##### *Section 215.1 – Purpose and Scope*

Subsection (e) – The Department is proposing to include a reference to Title 10 Chapter I (Nuclear Regulatory Commission) for Part 37, incorporating by reference this new Part.

Subsection (e)(10) – This subsection proposes to designate 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) – Revisions to this subsection proposes to delete 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. 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 proposed amendments will not revise the current paperwork requirements.

#### *G. Pollution Prevention*

N/A

#### *H. Sunset Review*

These regulations 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.

#### *I. Regulatory Review*

In accordance with Section 5(a) of the Regulatory Review Act (71 P.S. §§ 745.5(a)), on \_\_\_\_\_, 2014, the Department submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. 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 after the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

#### *J. Public Comments*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board. Comments, suggestions or objections must be received by the Board by \_\_\_\_\_, 2014, (within 30 days of publication in the *Pennsylvania Bulletin*). 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 \_\_\_\_\_, 2014, (within 30 days of publication in the *Pennsylvania Bulletin*). 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 <http://www.ahs.dep.pa.gov/RegComments>. Comments may be submitted to the Board by e-mail at [RegComments@pa.gov](mailto: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.

DANA K. AUNKST,  
Acting Chairperson