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# Regulatory Analysis Form

(Completed by Promulgating Agency)

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency

Department of Environmental Protection

(2) Agency Number:

Identification Number: 7-493

IRRC Number: 3090

(3) PA Code Cite: 25 Pa. Code Article V. Radiological Health, Chapter 215, General Provisions

(4) Short Title: Security Rule for Radioactive Material

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Laura Edinger, 783-8727, ledinger@pa.gov

Secondary Contact: Hayley Book, 783-8727, hbook@pa.gov

(6) Type of Rulemaking (check applicable box):

- Proposed Regulation  
 Final Regulation  
 Final Omitted Regulation

- Emergency Certification Regulation;  
 Certification by the Governor  
 Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The Bureau of Radiation Protection incorporates by reference selected regulations from Title 10 Chapter I of the U.S. Nuclear Regulatory Commission (NRC) Code of Federal Regulations (CFR) relating to radiation protection. Recently NRC implemented new security-related regulations, known as 10 CFR Part 37, which Pennsylvania is required to adopt by March 2016. The purpose of this amendment is to reference the new Part 37.

(8) State the statutory authority for the regulation. Include specific statutory citation.

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

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The regulation is mandated by federal regulation. Compatibility of State and NRC regulations is a requirement for Agreement States.

On March 31, 2008, Pennsylvania licensees received a security order issued under NRC's common defense and security authority; the order will remain in place until compatible requirements are issued. Pennsylvania is obligated to have 10 CFR Part 37 equivalent requirements in effect by March 19, 2016.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Following the terrorist attacks of September 11, 2001, the NRC issued new security orders to address licensees having high-activity radioactive materials. The orders address security controls, also referred to as Increased Controls (IC), for these high-activity licensees. The orders were incorporated into the Code of Federal Regulation as Part 37 in March 2014. Presently, Pennsylvania has 680 specific licensees, of which 64 are considered IC licensees.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no provisions that are more stringent than the federal standards.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Every state is required to be compatible with the federal standards. Incorporating by reference these standards allows Pennsylvania to maintain compatibility. Therefore, this regulation will not put Pennsylvania at a competitive disadvantage.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No other regulations will be affected.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department discussed the need for regulatory revisions with its Radiation Protection Advisory Committee (RPAC) at their March 6, 2014 meeting. At its June 12, 2014 meeting, RPAC endorsed moving forward with the regulatory revision process. The Department will continue to work closely with RPAC in the development of the proposed regulations. 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.

This proposed rulemaking will not be discussed with the Small Business Compliance Advisory Committee because the rulemaking codifies a practice that has been in place since 2005 and does not further impact small businesses in Pennsylvania.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Currently Pennsylvania has 67 IC licensees. These licensees, primarily made up of broad scope medical facilities and industrial radiographers, have been following NRC orders that were implemented on November 14, 2005. These orders will now be codified into Pennsylvania regulation; the proposed regulations will not affect the current operations of these facilities.

(16) List the persons, groups or entities, including small businesses that will be required to comply with the regulation. Approximate the number that will be required to comply.

See response for (15). All licensees will be required to comply and have been complying since the NRC new security orders were issued in 2005. Of the 67 IC licensees, 12 qualify as small business entities. No change in the current fee schedule is proposed with this regulation.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

No additional financial, economic or social impact will result from this regulation. Benefits of the regulation are prevention of unnecessary radiation exposure to the public and radiation workers.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

There are no adverse effects and costs associated with the regulation, as the licensees are already implementing the provisions as required by the NRC orders upon which the proposed regulation is based. The benefit of the prevention of unnecessary radiation exposure to the public and radiation workers cannot be quantified.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There will be no costs and/or savings to the regulated community associated with compliance with the proposed regulation. No change in the current fee schedule is proposed in this regulation.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There will be no costs and/or savings to the local governments associated with compliance with the proposed regulation, as local governments do not possess radioactive material licenses.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There will be no costs and/or savings to the state government associated with compliance. Ensuring compliance with the regulation is and has been part of DEP's annual inspection program since becoming an Agreement State on March 31, 2008.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The NRC 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 NRC also issued orders imposing fingerprinting and criminal history records check requirements for unescorted access to certain radioactive material. No additional recordkeeping or other paperwork will be required by this proposed regulation.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

This amendment will have no effect on fiscal savings and costs.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Savings</b>	0	0	0	0	0	0
<b>COSTS:</b>						
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Costs</b>	0	0	0	0	0	0
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Revenue Losses</b>	0	0	0	0	0	0

(23a) Provide the past three year expenditure history for programs affected by the regulation.

This amendment will have no effect on program expenditures.

<b>Program</b>	<b>FY -3</b> 2011/2012	<b>FY -2</b> 2012/2013	<b>FY -1</b> 2013/2014	<b>Current FY</b> 2014/2015
RP Fund	9,442,000	10,460,000	12,585,000	13,475,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

No one will be adversely affected by the regulation.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

No special provisions needed to be developed.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No special alternative regulatory provisions have been considered or rejected.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The amendment will not have any adverse impact on small businesses.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data is not the basis for this proposed regulation.

(29) Include a schedule for review of the regulation including:

- |   |                      |
|---|----------------------|
| A. The date by which the agency must receive public comments:                               | <u>March 2015</u>    |
| B. The date or dates on which public meetings or hearings will be held:                     | <u>N/A</u>           |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>December 2015</u> |
| D. The expected effective date of the final-form regulation:                                | <u>December 2015</u> |
| E. The date by which compliance with the final-form regulation will be required:            | <u>December 2015</u> |
| F. The date by which required permits, licenses or other approvals must be obtained:        | <u>N/A</u>           |

It is anticipated that the proposed regulations will be published in the *Pennsylvania Bulletin* for a 30-day comment period in February 2015. The final rulemaking will become effective upon publication in the *Pennsylvania Bulletin*. It is anticipated that the final rulemaking will be published in December 2015.

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

No specific change will occur after the regulation is implemented. IC licensees will continue to be inspected on an annual basis.

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DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.  
Attorney General

By:   
(Deputy Attorney General)

DEC 09 2014  
DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections attached.

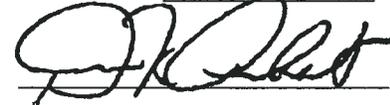
Copy below is hereby certified to be true and  
correct copy of a document issued, prescribed or  
promulgated by:

DEPARTMENT OF ENVIRONMENTAL  
PROTECTION  
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-493

DATE OF ADOPTION October 21, 2014

BY: 

TITLE DANA K. AUNKST  
ACTING CHAIRPERSON

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality  
Executive or Independent Agencies

BY: 

DATE OF APPROVAL

(Executive Deputy General Counsel)  
(Chief Counsel - Independent Agency)  
(Strike inapplicable title)

Check if applicable. No Attorney General Approval  
or objection within 30 days after submission.

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD

Security Rule for Radioactive Material

25 Pa. Code, Chapter 215



**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 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 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 March 9, 2015, 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 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 <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.

JOHN QUIGLEY,  
Acting Chairperson

**PROPOSED RULEMAKING**  
**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**

**§ 215.1. Purpose and scope.**

(a) This article establishes requirements for the protection of public health and safety as related to radiation sources and implements the requirements of the act.

(b) This article, except as otherwise specifically provided in the act, applies to persons who use, manufacture, produce, transport, transfer, receive, acquire, possess, own or dispose of a radiation source.

(c) A person who, when required, fails to register or obtain a license for radiation sources in the possession or control of the person, shall comply with the act or with this article.

(d) This article does not apply to the extent the person is subject to regulation by the NRC.

(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]~~b~~)(6), 30.55, 30.63 and 30.64 are not incorporated.

(4) Sections 31.4 and 31.14 are not incorporated.

(5) Sections 32.8, 32.14, 32.15, 32.16, 32.18, 32.19, 32.20, 32.21, 32.22, 32.23, 32.25, 32.26, 32.27, 32.28, 32.29 and 32.40 are not incorporated.

(6) Sections 33.8, 33.21 and 33.23 are not incorporated.

(7) Sections 34.5, 34.8, 34.121 and 34.123 are not incorporated.

(8) Sections 35.8, 35.4001 and 35.4002 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.

(f) If a provision of the CFR incorporated by reference in this article includes a section which is inconsistent with this title, this title controls to the extent Federal law does not preempt Commonwealth law. If a provision of the CFR incorporated by reference in this article is beyond the scope of authority granted the Department under statute, or is in excess of the statutory authority, the provisions shall be and remain effective only to the extent authorized by the Pennsylvania law.

(g) Appropriate parts of 10 CFR (relating to energy) may be obtained from the following:

(1) The United States Government Printing Office, Book Store, Room 118, Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222, (412) 664-2721.

(2) The United States Government Printing Office, Book Store, 100 North 17th Street, Robert Morris Building, Philadelphia, Pennsylvania 19103, (215) 597-0677.

(3) The United States Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402, (202) 783-3238.

(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:

- (1) A reference to “NRC” or “Commission” means Department.
- (2) A reference to “NRC or agreement state” means Department, NRC or agreement state.
- (3) The definition of “sealed source” includes NARM.
- (4) A reference to “byproduct material” includes NARM.

(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).**



March 9, 2015

David Sumner  
Executive Director  
Independent Regulatory Review Commission  
333 Market Street, 14th Floor  
Harrisburg, PA 17120

Re: Proposed Rulemaking: Security Rule for Radioactive Material (#7-493)

Dear Mr. Sumner:

Pursuant to Section 5(a) of the Regulatory Review Act, please find enclosed a copy of a proposed regulation for review and comment by the Independent Regulatory Review Commission (Commission). This proposal is scheduled for publication in the *Pennsylvania Bulletin* on March 21, 2015, with a 30-day public comment period. The Environmental Quality Board (Board) adopted this proposal on October 21, 2014.

The enclosed proposed rulemaking is authorized by the Radiation Protection Act and incorporates by reference selected regulations from Title 10, Chapter I, of the U.S. Nuclear Regulatory Commission (NRC) Code of Federal Regulations (CFR) relating to radiation protection and control of radioactive materials.

Pennsylvania entered into an Agreement with the Chairman of the NRC in March 2008 to oversee and regulate licensure of radioactive materials for Pennsylvania entities, which committed Pennsylvania to maintaining compatibility with the NRC regulations. The Department of Environmental Protection (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 Department's orders will remain in place until compatible Pennsylvania regulations are issued. Pennsylvania is obligated to have 10 CFR Part 37 equivalent requirements in effect by March 19, 2016.

This proposed rulemaking will affect high activity licenses. No new entities will be affected. All Pennsylvania IC licensees will be required to comply with these proposed regulations. Presently, the Department has 680 specific licensees, of which 67 are considered IC licensees. Current IC licensees are being informed by the Department during annual inspections that the orders they are required to comply with will be included in Pennsylvania regulation with the promulgation of this rulemaking. The Department has recently notified all IC licensees through a written Information Notice that Part 37 is anticipated to be incorporated by March 19, 2016.



March 9, 2015

The Department discussed the need for regulatory revisions with its Radiation Protection Advisory Committee (RPAC) at its March 6, 2014, meeting. At its June 12, 2014, meeting, RPAC endorsed moving forward with the regulatory revision process.

The Department will provide the Commission with the assistance required to facilitate a thorough review of this proposal. Section 5(g) of the Regulatory Review Act provides that the Commission may, within 30 days of the close of the comment period, convey to the agency its comments, recommendations and objections to the proposed regulation. The Department will consider any comments, recommendations or suggestions made by the Commission, as well as the Committees and public commentators, prior to final adoption of this rulemaking.

Please contact me by e-mail at [ledinger@pa.gov](mailto:ledinger@pa.gov) or by telephone at 717.783.8727 if you have any questions or need additional information.

Sincerely,



Laura Edinger  
Regulatory Coordinator

Enclosures




 TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO  
 THE REGULATORY REVIEW ACT

I.D. NUMBER: 7-493 Security Rule for Radioactive material

SUBJECT:

AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

## TYPE OF REGULATION

- Proposed Regulation  
 Final Regulation  
 Final Regulation with Notice of Proposed Rulemaking Omitted  
 120-day Emergency Certification of the Attorney General  
 120-day Emergency Certification of the Governor  
 Delivery of Tolled Regulation  
 a.  With Revisions                      b.  Without Revisions

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RECEIVED  
IRRC

## FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
3/9/15	Shelly Kleane	2 Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Representative John Maher
3/9/15	Terri Koh	1 Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Representative Greg Vitali
3/9/15	Nick Prothro	4 Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Senator Gene Yaw
3/9/15	Yvonne DeLuca	3 Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Senator John Yudichak
3/9/15	K Cooper	6 INDEPENDENT REGULATORY REVIEW COMMISSION David Sumner
		ATTORNEY GENERAL (for Final Omitted only)
3/9/15	Courne Inant	5 LEGISLATIVE REFERENCE BUREAU (for Proposed only)

