



To: Members of the State Board of Health

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Through: Jennifer T. Opila, Division Director *JTO*

Date: June 17, 2020

Subject: Request for a Rulemaking Hearing concerning 6 CCR 1007-1 Part 22, Physical protection of category 1 and category 2 quantities of radioactive material, and 6 CCR 1007-1 Part 17, Transportation of radioactive materials

The radiation program is proposing minor technical and editorial changes to Part 22 and Part 17 of the radiation regulations primarily for conformance to final regulations of the U.S. Nuclear Regulatory Commission (NRC) in 10 CFR Part 37, and Part 71. Changes to these federal rules were published in 2018 and 2019. Consistent with its agreement with the NRC, Colorado must maintain its radiation regulations compatible with those of NRC and therefore is proposing changes to Colorado rules.

Part 22 provides specific physical security requirements for certain licensees who possess and use higher quantities and of radioactive materials and devices deemed to be risk significant per federal regulation. Part 17 as used in conjunction with 10 CFR Part 71 and 49 CFR, provides requirements for transportation and shipping of radioactive materials.

The changes to the proposed rules are primarily non-substantive technical corrections and edits with minimal impacts on licensees. The proposed changes include clarification that the oath and affirmation documents required under Part 22 are to be submitted to the Department, consistent with current licensing practices; changes in NRC division names and contact information due to NRC organizational changes; correction of the website and contact information for submission of fingerprints under Part 22; clarification that the list of individuals with unescorted access required by Part 22 must be protected in a manner similar to other security related documents; clarification in Part 17 that the quality assurance program information for certain packages be sent to the Department for review (rather than NRC); and typographical error and formatting additions and corrections throughout both rules. Amendment of these regulations will help ensure consistency with the national framework for regulation of radioactive materials.

Throughout the rule, new text appears as red bold text while deleted current text of this regulation is shown in strikethrough.

At the June 17, 2020 request for rulemaking, the Radiation Program requests that the Board of Health set a rulemaking hearing for August 19, 2020.

STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY
for Amendments to

6 CCR 1007-1, Part 22, Physical protection of category 1 and category 2 quantities of
radioactive material
6 CCR 1007-1, Part 17, Transportation of radioactive material

Basis and Purpose.

The proposed amendments make minor technical and formatting changes to select provisions in the Part 22 and Part 17 rules based on 2018 and 2019 changes in parallel federal regulation and to address past comments of NRC from a prior rulemaking. The proposed changes are outlined below for each section by rule.

Changes throughout Part 22

- Updates and modifications to the standard language pertaining to documents incorporated by reference, consistent with the intent and requirements of the Colorado Administrative Procedure Act.
- Correction of typographical and formatting for alignment of rule text.
- The addition of section headers to Part 22 for consistency with the format of federal rule.

Changes to provision 22.2 of Part 22

- Updates to the incorporation by reference language for consistency with the APA and other regulations.

Changes to provision 22.4 of Part 22

- The addition of email contact information where information may be sent to the Department.

Changes to provision 22.9 of Part 22

- Adding clarification that the oath and affirmation information for reviewing officials should be sent to the Department within 30 days of changes or additions of individuals, or when such designation is revoked.

Changes to provision 22.11 of Part 22

- Updating the contact information where licensees must submit fingerprint information to the U.S. Nuclear Regulatory Commission (NRC). Information was updated as a result of NRC organizational and contact information.

Changes to provision 22.16 of Part 22

- Language is added to clarify that the list of individuals that have been approved for unescorted access must be protected in a manner similar to other security related documents.

Changes to provision 22.27 of Part 22

- Clarifying language is added to specify that advance notification of shipments of category 1 quantities of radioactive material must also be made to the Department, along with the governor of each state through which the material is being shipped.

The amended language also includes the NRC information where contact information can be found.

Changes throughout Part 17

- Updates to the standard language pertaining to documents incorporated by reference, consistent with the Colorado Administrative Procedure Act and other regulatory parts.
- Correction of typographical, formatting and numbering errors.
- Removal of specific dates referencing federal regulations in rule body.
- The addition of the word "Part" in references to federal regulation.

Changes to provision 17.7 of Part 17

- Clarification that only NRC can provide an alternate approval for a package and only NRC issues the certificates of compliance.

Changes to provision 17.10 of Part 17

- When a package falls within the requirements of Subpart H of 10 CFR Part 71, a licensee using such package must submit their applicable quality assurance program requirements to the Department for review.

Changes to provision 17.11 of Part 17

- Incorporation of and updates to NRC Division names due to reorganization changes at NRC.

Specific Statutory Authority.

Statutes that require or authorize rulemaking:

25-1.5-101(1)(k), 25-1.5-101(1)(l), 25-11-103, 25-11-104, and 25-1-108, C.R.S.

Is this rulemaking due to a change in state statute?

Yes, the bill number is _____. Rules are ___ authorized ___ required.

No

Does this rulemaking include proposed rule language that incorporate materials by reference?

Yes URL

No

Does this rulemaking include proposed rule language to create or modify fines or fees?

Yes

No

Does the proposed rule language create (or increase) a state mandate on local government?

No.

- The proposed rule does not require a local government to perform or increase a specific activity for which the local government will not be reimbursed;
- The proposed rule requires a local government to perform or increase a specific activity because the local government has opted to perform an activity, or;

- The proposed rule reduces or eliminates a state mandate on local government.

Has an elected official or other representatives of local governments disagreed with this categorization of the mandate? ___Yes __X_No. If "yes," please explain why there is disagreement in the categorization.

Please elaborate as to why a rule that contains a state mandate on local government is necessary.

While most radioactive materials licensee facilities in Colorado are privately owned, some facilities may be wholly or partially owned or operated by a local government, town, county or special district. However, for consistency with the national framework for regulation of radioactive materials and consistent with Colorado's agreement with the U.S. Nuclear Regulatory Commission, all facilities regardless of ownership, must adhere to the same public health and safety requirements and regulations for use of radioactive materials within the state. The proposed rule changes are mostly non-substantial, technical and editorial changes that will not significantly impact the level of service or mandate and will therefore similarly impact all types of facilities using radioactive materials whether privately or governmentally owned or operated. The Department does not collect or maintain data regarding the governmental or private ownership status of licensed facilities.

REGULATORY ANALYSIS

6 CCR 1007-1, Part 22, Physical protection of category 1 and category 2 quantities of radioactive material

6 CCR 1007-1, Part 17, Transportation of radioactive material

1. A description of the classes of persons affected by the proposed rule, including the classes that will bear the costs and the classes that will benefit from the proposed rule.

Group of persons/entities Affected by the Proposed Rule	Size of the Group	Relationship to the Proposed Rule Select category: C/CLG/S/B
All active specific radioactive materials licensees. This includes the subset of licensees that are required to implement the enhanced security requirements of Part 22 and licensees that transport or ship radioactive materials under the requirements of Part 17. Note: The proposed changes to Part 17 are unlikely to impact any Colorado licensees as the primary changes relate to transport of nuclear (reactor) waste and no Colorado licensees are typically involved in shipment of nuclear waste.	306	C / CLG
Stakeholders and other entities who collectively represent radioactive materials licensees or are otherwise interested in their activities. This includes associations, professional organizations, advocacy organizations, and members of the public who have expressed interest in receiving notification of proposed radiation regulation changes.	378	S
Members of the public who may be impacted if a licensee fails to follow the regulatory requirements.	Not easily quantifiable	B

While all are stakeholders, groups of persons/entities connect to the rule and the problem being solved by the rule in different ways. To better understand those different relationships, the following relationship categorization key is used:

- C = individuals/entities that implement or apply the rule.
- CLG = local governments that must implement the rule in order to remain in compliance with the law.
- S = individuals/entities that do not implement or apply the rule but are interested in others applying the rule.
- B = the individuals that are ultimately served, including the customers of our customers. These individuals may benefit, be harmed by or be at-risk because of the standard communicated in the rule or the manner in which the rule is implemented.

More than one category may be appropriate for some stakeholders.

2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

Economic outcomes

Summarize the financial costs and benefits, include a description of costs that must be incurred, costs that may be incurred, any Department measures taken to reduce or eliminate these costs, and any financial benefits.

All stakeholders - C, CLG, S, B: The proposed rule changes consist of technical, non-substantial changes. There are expected to be no economic impacts or financial costs or benefits when implemented by licensees.

Non-economic outcomes

Summarize the anticipated favorable and non-favorable non-economic outcomes (short-term and long-term), and, if known, the likelihood of the outcomes for each affected class of persons by the relationship category.

Adding clarity to the rule language and addressing minor errors is expected to make it easier for impacted licensees in Category C / CLG to follow, as the rules will be made more consistent with the regulations of NRC and those in other states who have adopted the federal rule changes. Those licensees required by the rules to submit information to the NRC or the Department will have the correct mailing and contact information, thereby saving time.

3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.
- A. Anticipated CDPHE personal services, operating costs or other expenditures: None. The proposed changes are expected to be neutral for the Department.
- Anticipated CDPHE Revenues: N/A
- B. Anticipated personal services, operating costs or other expenditures by another state agency: N/A
4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

Along with the costs and benefits discussed above, the proposed revisions:

- Comply with a statutory mandate to promulgate rules.
- Comply with federal or state statutory mandates, federal or state regulations, and department funding obligations.
- Maintain alignment with other states or national standards.
- Implement a Regulatory Efficiency Review (rule review) result
- Improve public and environmental health practice.
- Implement stakeholder feedback.

Advance the following CDPHE Strategic Plan priorities (select all that apply):

<p>1. Reduce Greenhouse Gas (GHG) emissions economy-wide from 125.716 million metric tons of CO₂e (carbon dioxide equivalent) per year to 119.430 million metric tons of CO₂e per year by June 30, 2020 and to 113.144 million metric tons of CO₂e by June 30, 2023.</p> <p><input type="checkbox"/> Contributes to the blueprint for pollution reduction</p> <p><input type="checkbox"/> Reduces carbon dioxide from transportation</p> <p><input type="checkbox"/> Reduces methane emissions from oil and gas industry</p> <p><input type="checkbox"/> Reduces carbon dioxide emissions from electricity sector</p>
<p>2. Reduce ozone from 83 parts per billion (ppb) to 80 ppb by June 30, 2020 and 75 ppb by June 30, 2023.</p> <p><input type="checkbox"/> Reduces volatile organic compounds (VOC) and oxides of nitrogen (NO_x) from the oil and gas industry.</p> <p><input type="checkbox"/> Supports local agencies and COGCC in oil and gas regulations.</p> <p><input type="checkbox"/> Reduces VOC and NO_x emissions from non-oil and gas contributors</p>
<p>3. Decrease the number of Colorado adults who have obesity by 2,838 by June 30, 2020 and by 12,207 by June 30, 2023.</p> <p><input type="checkbox"/> Increases the consumption of healthy food and beverages through education, policy, practice and environmental changes.</p> <p><input type="checkbox"/> Increases physical activity by promoting local and state policies to improve active transportation and access to recreation.</p> <p><input type="checkbox"/> Increases the reach of the National Diabetes Prevention Program and Diabetes Self-Management Education and Support by collaborating with the Department of Health Care Policy and Financing.</p>
<p>4. Decrease the number of Colorado children (age 2-4 years) who participate in the WIC Program and have obesity from 2120 to 2115 by June 30, 2020 and to 2100 by June 30, 2023.</p> <p><input type="checkbox"/> Ensures access to breastfeeding-friendly environments.</p>
<p>5. Reverse the downward trend and increase the percent of kindergartners protected against measles, mumps and rubella (MMR) from 87.4% to 90% (1,669 more kids) by June 30, 2020 and increase to 95% by June 30, 2023.</p> <p><input type="checkbox"/> Reverses the downward trend and increase the percent of kindergartners protected against measles, mumps and rubella (MMR) from 87.4% to 90% (1,669 more kids) by June 30, 2020 and increase to 95% by June 30, 2023.</p> <p><input type="checkbox"/> Performs targeted programming to increase immunization rates.</p> <p><input type="checkbox"/> Supports legislation and policies that promote complete immunization and exemption data in the Colorado Immunization Information System (CIIS).</p>
<p>6. Colorado will reduce the suicide death rate by 5% by June 30, 2020 and 15% by June</p>

<p>30, 2023.</p> <ul style="list-style-type: none"> ___ Creates a roadmap to address suicide in Colorado. ___ Improves youth connections to school, positive peers and caring adults, and promotes healthy behaviors and positive school climate. ___ Decreases stigma associated with mental health and suicide, and increases help-seeking behaviors among working-age males, particularly within high-risk industries. ___ Saves health care costs by reducing reliance on emergency departments and connects to responsive community-based resources.
<p>7. The Office of Emergency Preparedness and Response (OEPR) will identify 100% of jurisdictional gaps to inform the required work of the Operational Readiness Review by June 30, 2020.</p> <ul style="list-style-type: none"> ___ Conducts a gap assessment. ___ Updates existing plans to address identified gaps. ___ Develops and conducts various exercises to close gaps.
<p>8. For each identified threat, increase the competency rating from 0% to 54% for outbreak/incident investigation steps by June 30, 2020 and increase to 92% competency rating by June 30, 2023.</p> <ul style="list-style-type: none"> ___ Uses an assessment tool to measure competency for CDPHE's response to an outbreak or environmental incident. ___ Works cross-departmentally to update and draft plans to address identified gaps noted in the assessment. ___ Conducts exercises to measure and increase performance related to identified gaps in the outbreak or incident response plan.
<p>9. 100% of new technology applications will be virtually available to customers, anytime and anywhere, by June 20, 2020 and 90 of the existing applications by June 30, 2023.</p> <ul style="list-style-type: none"> ___ Implements the CDPHE Digital Transformation Plan. ___ Optimizes processes prior to digitizing them. ___ Improves data dissemination and interoperability methods and timeliness.
<p>10. Reduce CDPHE's Scope 1 & 2 Greenhouse Gas emissions (GHG) from 6,561 metric tons (in FY2015) to 5,249 metric tons (20% reduction) by June 30, 2020 and 4,593 tons (30% reduction) by June 30, 2023.</p> <ul style="list-style-type: none"> ___ Reduces emissions from employee commuting ___ Reduces emissions from CDPHE operations
<p>11. Fully implement the roadmap to create and pilot using a budget equity assessment by June 30, 2020 and increase the percent of selected budgets using the equity assessment from 0% to 50% by June 30, 2023.</p> <ul style="list-style-type: none"> ___ Used a budget equity assessment

___ Advance CDPHE Division-level strategic priorities.

- Identify division strategic plan item or strategic priority

The costs and benefits of the proposed rule will not be incurred if inaction was chosen. Costs and benefits of inaction not previously discussed include:

The cost of inaction will result in Colorado regulations being inconsistent with the national framework and federal regulations pertaining to use, security and transportation of select radioactive materials at facilities. Failing to have final regulations that are compatible with those of the NRC could result in enhanced regulatory oversight of the radiation program and potential revocation of authorization as an agreement state.

5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

Rulemaking is proposed when it is the least costly method or the only statutorily allowable method for achieving the purpose of the statute or state agreement. The specific revisions proposed in this rulemaking make no substantive changes and impose no new requirements. Local stakeholders were given the opportunity to provide feedback regarding these proposed changes, but no comments were received. The benefits, risks and costs of these proposed revisions were compared to the costs and benefits of other options. The proposed revisions provide the most benefit for the least amount of cost, are the minimum necessary or are the most feasible manner to achieve compliance with statute and federal regulations.

6. Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.

No alternative rules or alternative rulemaking was considered as the proposed changes are primarily informational in nature and do not substantially modify existing regulations. No stakeholders provided comments or feedback pertaining to either rule. To varying degrees, Colorado's rules pertaining to radiation control must be maintained consistent with the regulations of the U.S. NRC in order to maintain its status as an Agreement State.

7. To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.

With a few exceptions, the proposed changes to the requirements in Part 22 and Part 17 are primarily based upon changes to the overarching federal regulations which establish a national and consistent framework for regulation and transport of certain radioactive materials. The discussion, considerations, and evaluation that resulted in the final federal rule changes may be found through the following documents:

[NRC RATS \(Regulatory Action Tracking System\) 2018-2](#)

[NRC RATS 2018-3](#)

[NRC RATS 2019-1](#)

[NRC RATS 2019-2](#)

Links and information for the associated federal register entry are contained within the above NRC regulatory tracking system documents.

STAKEHOLDER ENGAGEMENT

for Amendments to

6 CCR 1007-1, Part 22, Physical protection of category 1 and category 2 quantities of radioactive material

6 CCR 1007-1, Part 17, Transportation of radioactive material

State law requires agencies to establish a representative group of participants when considering to adopt or modify new and existing rules. This is commonly referred to as a stakeholder group.

Early Stakeholder Engagement:

The following individuals and/or entities were invited to provide input and included in the development of these proposed rules:

Organization	Representative Name and Title (if known)
All specific radioactive materials licensees in Colorado (-306+).	Radiation Safety Officer(s)
Professional associations, societies and organizations.	NA
Other stakeholders with interest in changes to rules and regulations pertaining to radiation control.	NA

Stakeholders were notified of the opportunity to comment on the proposed draft rules, which were posted on the Department website. Due to the limited scope and anticipated impact of the proposed rule changes, no stakeholder meetings were held. No comments were received during the comment period held April 6 through May 7, 2020.

Stakeholder Group Notification

The stakeholder group was provided notice of the rulemaking hearing and provided a copy of the proposed rules or the internet location where the rules may be viewed. Notice was provided prior to the date the notice of rulemaking was published in the Colorado Register (typically, the 10th of the month following the Request for Rulemaking).

- Not applicable. This is a Request for Rulemaking Packet. Notification will occur if the Board of Health sets this matter for rulemaking. This is selected for the request for rulemaking.
- Yes. This is selected for the rulemaking to document that timely division notification occurred.

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department’s efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

The Department received no stakeholder feedback or comments regarding the proposed rules.

No major factual or policy issues were encountered during the rulemaking process.

Please identify the determinants of health or other health equity and environmental justice considerations, values or outcomes related to this rulemaking.

Overall, after considering the benefits, risks and costs, the proposed rule:

Select all that apply.

	Improves behavioral health and mental health; or, reduces substance abuse or suicide risk.		Reduces or eliminates health care costs, improves access to health care or the system of care; stabilizes individual participation; or, improves the quality of care for unserved or underserved populations.
	Improves housing, land use, neighborhoods, local infrastructure, community services, built environment, safe physical spaces or transportation.		Reduces occupational hazards; improves an individual's ability to secure or maintain employment; or, increases stability in an employer's workforce.
	Improves access to food and healthy food options.	X	Reduces exposure to toxins, pollutants, contaminants or hazardous substances; or ensures the safe application of radioactive material or chemicals.
X	Improves access to public and environmental health information; improves the readability of the rule; or, increases the shared understanding of roles and responsibilities, or what occurs under a rule.		Supports community partnerships; community planning efforts; community needs for data to inform decisions; community needs to evaluate the effectiveness of its efforts and outcomes.
	Increases a child's ability to participate in early education and educational opportunities through prevention efforts that increase protective factors and decrease risk factors, or stabilizes individual participation in the opportunity.		Considers the value of different lived experiences and the increased opportunity to be effective when services are culturally responsive.
X	Monitors, diagnoses and investigates health problems, and health or environmental hazards in the community.		Ensures a competent public and environmental health workforce or health care workforce.
	Other: _____ _____		Other: _____ _____

1 DRAFT 1 05/28/2020

2 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

3 Hazardous Materials and Waste Management Division

4 RADIATION CONTROL - TRANSPORTATION OF RADIOACTIVE MATERIALS

5 6 CCR 1007-1 Part 17

6 [Editor's Notes follow the text of the rules at the end of this CCR Document.]

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8 Adopted by the Board of Health September 20, 2017August 19, 2020, effective date November 14,
9 2017October 15, 2020.

10 PART 17: TRANSPORTATION OF RADIOACTIVE MATERIALS

11 GENERAL PROVISIONS

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13 [* * * INDICATES NO CHANGES TO THIS PORTION OF THE RULE]
14 * * *

15 17.1.4 Applicability.

16 17.1.4.1 This part applies to any person who transports radioactive material or delivers
17 radioactive material to a carrier for transport.

18 (1) This part applies in particular to any licensee authorized by specific or general
19 license to receive, possess, use, or transfer licensed material, if the licensee
20 delivers that material to a carrier for transport, transports the material outside the
21 site of usage as specified in the license, or transports that material on a public
22 highway.

23 (2) The transport of licensed material or delivery of licensed material to a carrier for
24 transport is subject to the:

- 25 (a) General provisions of 17.1 through 17.5, including referenced DOT
26 regulations;
- 27 (b) Quality assurance requirements of 10 CFR Part 71; and
- 28 (c) Operating controls and procedures requirements of 17.11 through 17.17.

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30 * * *

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32 17.1.5 Published Material Incorporated by Reference.

Commented [JSJ1]:
Editorial note 1: All comments (such as this one) shown in the right side margin of this draft document are for information only to assist the reader in understanding the proposed rule change during the review and comment process.

These side margin notes are **not** part of the rule and all comments will be deleted prior to publication of the final rule.

Editorial note 2: Alignment and formatting corrections and minor typographical adjustments may be made in the rule and may not be specifically identified with a side margin comment.

Editorial note 3: The acronym "RATS-20##-#" refers to the U.S. Nuclear Regulatory Commission (NRC) regulatory action tracking system. This system is used to identify and summarize changes to federal regulations that may be required for adoption by an NRC agreement state. To maintain agreement state status, Colorado's radiation regulations must be compatible with federal regulations of the NRC.
NRC RATS items may be found online at https://scp.nrc.gov/rss_regamendents.html.

Colorado statute also prescribes that the radiation control regulations must be consistent with the model regulations of the Conference of Radiation Control Program Directors, Inc. (CRCPD). To date, the CRCPD model regulation equivalent to part 17 has not been updated for consistency with the 2018 federal rule changes.

Commented [JSJ2]: These dates reflect anticipated adoption and effective dates based on the current rulemaking schedule. Dates are subject to change pending additional review, approvals, and department rulemaking and Board of Health schedule.

Commented [JSJ3]: Provisions are added and revised for this section for consistency with the Colorado Administrative Procedure Act (24-4-103(12.5)(a)(2), CRS).

33 In accordance with Section 24-4-103(12.5)(c), CRS, <https://www.colorado.gov/cdphe/radregs>
34 identifies where incorporated material is available to the public on the internet at no cost. If the
35 incorporated material is not available on the internet at no cost to the public, copies of the
36 incorporated material has been provided to the State Publications Depository and Distribution
37 Center, also known as the State Publications Library. The State Librarian at the State Publication
38 Library retains a copy of the material and will make the copy available to the public.

39 **17.1.5.1** Throughout this Part 17, federal regulations, state regulations, and
40 standards or guidelines of outside organizations have been adopted and
41 incorporated by reference. Unless a prior version of the incorporated
42 material is otherwise specifically indicated, the materials incorporated by
43 reference cited herein include only those versions that were in effect as of
44 the most recent effective date of this Part 17 (October 2020), and not later
45 amendments or editions of the incorporated material.

46 **17.1.5.2** Materials incorporated by reference are available for public inspection, and
47 copies (including certified copies) can be obtained at reasonable cost,
48 during normal business hours from the Colorado Department of Public
49 Health and Environment, Hazardous Materials and Waste Management
50 Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246.
51 Additionally, <https://www.colorado.gov/cdphe/radregs> identifies where the
52 incorporated material is available to the public on the internet at no cost.
53 Due to copyright restrictions, certain materials incorporated in this Part are
54 available for public inspection at the state publications depository and
55 distribution center.

56 **17.1.5.3** Availability from Source Agencies or Organizations.

57 (1) All federal agency regulations incorporated by reference herein are
58 available at no cost in the online edition of the Code of Federal
59 Regulations (CFR) hosted by the U.S. Government Printing Office,
60 online at www.govinfo.gov.

61 (2) All state regulations incorporated by reference herein are available
62 at no cost in the online edition of the Code of Colorado Regulations
63 (CCR) hosted by the Colorado Secretary of State's Office, online at
64 <https://www.sos.state.co.us/CCR/RegisterHome.do>.

65 17.2 Definitions.

66 17.2.1 Definitions of general applicability to these regulations are in Part 1, Section 1.2.2.

67 17.2.2 Terms used in Part 17 have the definitions set forth as follows.

68 "Certificate holder" means a person who has been issued a Certificate of Compliance or other
69 package approval by the NRC.

70 "Certificate of Compliance" (COC) means the certificate issued by the NRC under subpart D of 10
71 CFR **Part** 71 which approves the design of a package for the transportation of radioactive
72 material.

73
74 * * *

75 Criticality Safety Index (CSI)" means the dimensionless number (rounded up to the next tenth)
 76 assigned to and placed on the label of a fissile material package, to designate the degree of
 77 control of accumulation of packages, overpacks, or freight containers containing fissile material
 78 during transportation. Determination of the criticality safety index is described in 10 CFR **Part**
 79 71.22, 71.23, and 71.59. The criticality safety index for an overpack, freight container,
 80 consignment or conveyance containing fissile material packages is the arithmetic sum of the
 81 criticality safety indices of all the fissile material packages contained within the overpack, freight
 82 container, consignment or conveyance.

83

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86 "Low specific activity material" (LSA material) means radioactive material with limited specific
 87 activity which is nonfissile or is excepted under Part 17 and which satisfies the descriptions and
 88 limits set forth in the following section. Shielding materials surrounding the LSA material may not
 89 be considered in determining the estimated average specific activity of the package contents. The
 90 LSA material must be in one of three groups:

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* * *

93 (3) LSA-III. Solids (e.g., consolidated wastes, activated materials), excluding
 94 powders, that satisfy the requirements of 10 CFR **Part** 71.77, in which:

95

96

* * *

97

98 "Packaging" means the assembly of components necessary to ensure compliance with the
 99 packaging requirements of 10 CFR **Part** 71. It may consist of one or more receptacles, absorbent
 100 materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or
 101 absorbing mechanical shocks. The vehicle, tie-down system, and auxiliary equipment may be
 102 designated as part of the packaging.

103

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* * *

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106 "Regulations of the DOT" means the regulations in 49 CFR Parts 100-189 and Parts 390-397
 107 (~~October 1, 2016~~).

108 "Regulations of the NRC" means the regulations in 10 CFR **Part** 71 (~~January 1, 2016~~) for
 109 purposes of Part 17.

110

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113 **LICENSE-RELATED REGULATORY REQUIREMENTS**

114 17.3 Requirement for License.

115 No person shall transport radioactive material or deliver radioactive material to a carrier for
116 transport except as authorized in a general or specific license issued by the Department, an
117 Agreement State, a Licensing State, or NRC, or as exempted in 17.4

118 17.4 Exemptions.

119 17.4.1 Common and contract carriers, freight forwarders, and warehouse workers which are subject to
120 the requirements of the DOT in 49 CFR **Part** 170 through 189, or the U.S. Postal Service in the
121 Postal Service Manual (Domestic Mail Manual), are exempt from the requirements of Part 17 to
122 the extent that they transport or store radioactive material in the regular course of their carriage
123 for others or storage incident thereto. Common and contract carriers who are not subject to the
124 requirements of the DOT or U.S. Postal Service are subject to 17.3 and other applicable
125 requirements of these regulations.

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129 17.4.3 Fissile materials meeting the requirements of one of the paragraphs (a) through (f) in 10 CFR
130 **Part** 71.15 are exempt from classification as fissile material, and from the fissile material package
131 standards of 10 CFR **Part** 71.55 and 10 CFR **Part** 71.59, but are subject to all other requirements
132 of 10 CFR **Part** 71, except as noted in paragraphs (a) through (f) in 10 CFR **Part** 71.15.

133

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136 17.7 General License: NRC-Approved Packages.

137 17.7.1 A general license is hereby issued to any licensee of the Department to transport, or to deliver to
138 a carrier for transport, licensed material in a package for which a license, ~~NRC-issued~~ Certificate
139 of Compliance, or other approval has been issued by the ~~NRC~~Department.

140 17.7.2 This general license applies only to a licensee who has a quality assurance program approved by
141 the Department as satisfying the provisions of Subpart H (excluding 71.101(c)(2), (d), and (e) and
142 71.107 through 71.125) of 10 CFR **Part** 71.

143 17.7.3 Each licensee issued a general license under Section 17.7.1 shall:

144 17.7.3.1 Maintain a copy of the ~~NRC-issued~~ Certificate of Compliance, or other approval
145 of the package, and the drawings and other documents referenced in the
146 approval relating to the use and maintenance of the packaging and to the actions
147 to be taken before shipment;

148 17.7.3.2 Comply with the terms and conditions of the license, ~~NRC-issued~~ Certificate of
149 Compliance, or other approval ~~issued~~ by the ~~Department~~NRC, as applicable,

Commented [JSJ4]: Language is updated in 17.7 based on a prior NRC comment in correspondence dated March 8, 2018 associated with [RATS 2015-3](#), for consistency with the current [10 CFR Part 71.17](#).

The proposed language clarifies that only NRC issues the Certificate of Compliance document and grants the general license for transportation.

Provision 17.7 is also formatted for alignment.

NRC Compatibility B.

Commented [JSJ5]: Based on NRC comments in correspondence dated [April 24, 2020](#) received during the 2020 comment period, the current rule language is retained to continue to require that the Department reviews the (package) quality assurance program for a Colorado licensee.

NRC Compatibility B.

150 and the applicable requirements of Subparts A (excluding 71.11), G (excluding
151 71.85(a)-(c), and 71.91(b)), and H (excluding 71.101(c)(2), (d), and (e) and
152 71.107 through 71.125) of 10 CFR **Part 71**; and

153 **17.7.3.3** ~~Prior to the licensee's first use of the package, submit to the Department in~~
154 ~~writing: Submit in writing before the first use of the package to: ATTN:~~
155 ~~Document Control Desk, Director, Division of Fuel Management, Office of~~
156 ~~Nuclear Material Safety and Safeguards, using an appropriate method~~
157 ~~listed in 10 CFR Part 71.1(a), the licensee's name and license number and~~
158 ~~the package identification number specified in the package approval.~~

159 ~~(1) The licensee's name and license number; and~~

160 ~~(2) The package identification number specified in the package approval.~~

161 17.7.4 The general license in 17.7.1 applies only when the package approval authorizes use of the
162 package under this general license.

163 17.7.5 For a Type B or fissile material package, the design of which was approved by NRC before April
164 1, 1996, the general license in 17.7.1 is subject to additional restrictions of 10 CFR **Part 71.19**.

165 17.8 General Licenses: Use of Foreign-Approved and Other Approved Packages

166 17.8.1 A general license is issued to any licensee of the Department to transport, or to deliver to a
167 carrier for transport, licensed material in a package, the design of which has been approved in a
168 foreign national competent authority certificate, that has been revalidated by the DOT as meeting
169 the applicable requirements of 49 CFR **Part 171.23**.

170 **17.8.2** Except as otherwise provided in this section, the general license applies only to a licensee who
171 has a quality assurance program approved by the Department as satisfying the applicable
172 provisions of 10 CFR **Part 71.101** through 71.137, excluding 71.101(c)(2), (d), and (e) and 71.107
173 through 71.125.

174 17.8.3 This general license applies only to shipments made to or from locations outside the United
175 States.

176 17.8.4 Each licensee issued a general license under Section 17.8.1 shall:

177 (1) Maintain a copy of the applicable certificate, the revalidation, and the drawings
178 and other documents referenced in the certificate, relating to the use and
179 maintenance of the packaging and to the actions to be taken before shipment;
180 and

181 (2) Comply with the terms and conditions of the certificate and revalidation, and with
182 the applicable requirements of Part 17, sections 17.1 through 17.5, 17.10 through
183 17.17, and Subparts A (excluding 71.11), G (excluding 71.85(a)-(c), and
184 71.91(b)), and H (excluding 71.101(c)(2), (d), and (e) and 71.107 through 71.125)
185 of 10 CFR **Part 71**.

186 17.9 General Licenses: Fissile Material Transport

187 17.9.1 A general license is hereby issued to any licensee to transport fissile material, or to deliver fissile
188 material to a carrier for transport, if the licensee meets the requirements of 10 CFR **Part 71.22**
189 and the material is shipped in accordance with 10 CFR **Part 71.22** and each applicable
190 requirement of Part 17.

Commented [JSJ6]: For consistency with 10 CFR 71.17(c)(3), NRC comments dated [March 8, 2018](#) rescind a prior (2017) comment indicating the licensee should submit documentation to the Department before the first use of an NRC approved package. As indicated in the proposed draft language, this documentation should instead be submitted to appropriate NRC Division for review.

NRC [RATS 2019-2](#)
NRC Compatibility B.

Commented [JSJ7]: The text of provisions (1) and (2) are incorporated into 17.7.3.3 above, following the format and flow of the federal rule.

Commented [JSJ8]: Based on NRC comments in correspondence dated [April 24, 2020](#) received during the 2020 comment period, the current rule language is retained to continue to require that the Department reviews the (package) quality assurance program for a Colorado licensee.

NRC Compatibility B.

191 17.9.2 A general license is hereby issued to any licensee to transport fissile material in the form of
 192 plutonium-beryllium (Pu-Be) special form sealed sources, or to deliver fissile material in the form
 193 of plutonium-beryllium (Pu-Be) special form sealed sources to a carrier for transport, if the
 194 licensee meets the requirements of 10 CFR **Part** 71.23 and the material is shipped in accordance
 195 with 10 CFR **Part** 71.23 and each applicable requirement of Part 17.

196 QUALITY ASSURANCE

197 17.10 Quality Assurance Requirements.

198 **17.10.1** Subpart H of 10 CFR **Part** 71 describes quality assurance requirements applying to design,
 199 purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing,
 200 operation, maintenance, repair, and modification of components of packaging that are important
 201 to safety. As used in Subpart H of 10 CFR **Part** 71, "quality assurance" comprises all those
 202 planned and systematic actions necessary to provide adequate confidence that a system or
 203 component will perform satisfactorily in service. Quality assurance includes quality control, which
 204 comprises those quality assurance actions related to control of the physical characteristics and
 205 quality of the material or component to predetermined requirements.

Commented [JSJ9]: Language is updated in 17.10.1 to address editorial comments in NRC correspondence dated [March 8, 2018](#).

206 **17.10.2** Each licensee is responsible for satisfying the **applicable** quality assurance requirements that
 207 apply to its use of a packaging for the shipment of licensed material subject to the applicable
 208 requirements ~~of set forth in~~ Subpart H of 10 CFR **Part** 71 (excluding **10 CFR** 71.101(c)(2), (d),
 209 and (e) and **10 CFR** 71.107 through 71.125).

Commented [JSJ10]: Provision is numbered and language is updated in 17.10.2 to address editorial comments in NRC correspondence dated [March 8, 2018](#).

210 **17.10.3** **Before the use of any package for the shipment of licensed material subject to Subpart H**
 211 **of 10 CFR Part 71, each licensee shall obtain Department approval of its quality assurance**
 212 **program. Each licensee shall file with the Department, a description of its quality**
 213 **assurance program, including a discussion of which requirements of Subpart H of 10 CFR**
 214 **Part 71 are applicable and how they will be satisfied.**

Commented [JSJ11]: Provision added for consistency with 10 CFR Part 71.101(c)(1).

As annotated by NRC in [RATS 2019-2](#), the proposed language clarifies that for Agreement State (Colorado) licensees, the Department rather than NRC is to approve the quality assurance program before the use of a package for shipment of licensed material that is subject to the requirements of Subpart H of 10 CFR Part 71.

215 17.10.24 Radiography containers.

216 A program for transport container inspection and maintenance limited to radiographic exposure
 217 devices, source changers, or packages transporting these devices and meeting the requirements
 218 of Part 5, sections 5.12(4), 4 through 5.12(6), 6 or equivalent Agreement State or NRC
 219 requirement, is deemed to satisfy the requirements of 17.7.2 and 10 CFR **Part** 71.101(b).

NRC Compatibility C.

220 **17.11** Advance Notification of Shipment of Nuclear Waste.

Commented [JSJ12]: Section 17.11 formatted for alignment.

221 17.11.1 As specified in 17.11.3, 17.11.4, and 17.11.5, each licensee shall provide advance notification to
 222 the governor of a state, or the governor's designee, of the shipment of licensed material (nuclear
 223 waste), within or across the boundary of the state, before the transport, or delivery to a carrier, for
 224 transport, of licensed material outside the confines of the licensee's plant or other place of use or
 225 storage.

226 17.11.2 As specified in 17.11.3, 17.11.4, and 17.11.5 of this section, after June 11, 2013, each licensee
 227 shall provide advance notification to the Tribal official of participating Tribes referenced in
 228 17.11.4.3(3), or the official's designee, of the shipment of licensed material, within or across the
 229 boundary of the Tribe's reservation, before the transport, or delivery to a carrier, for transport, of
 230 licensed material outside the confines of the licensee's plant or other place of use or storage.

231 17.11.3 Advance notification is also required under this section for the shipment of licensed material,
 232 other than irradiated fuel, meeting the following three conditions:

233 17.11.3.1 The licensed material is required by this part to be in Type B packaging for
 234 transportation;

- 235 17.11.3.2 The licensed material is being transported to or across a state boundary en route
236 to a disposal facility or to a collection point for transport to a disposal facility; and
- 237 17.11.3.3 The quantity of licensed material in a single package exceeds the least of the
238 following:
- 239 (1) 3000 times the A_1 value of the radionuclides as specified in Appendix 17A, Table
240 A1 for special form radioactive material; or
- 241 (2) 3000 times the A_2 value of the radionuclides as specified in Appendix 17A, Table
242 A1 for normal form radioactive material; or
- 243 (3) 1000 TBq (27,000 Ci).
- 244 17.11.4 Procedures for submitting advance notification
- 245 17.11.4.1 The notification must be made in writing to:
- 246 (1) The office of each appropriate governor or governor's designee;
- 247 (2) The office of each appropriate Tribal official or Tribal official's designee;
- 248 (3) The Department; **and**
- 249 **(4) The NRC Director, Office of Nuclear Security and Incident Response.**
- 250 17.11.4.2 A notification delivered by mail must be postmarked at least 7 days before the
251 beginning of the 7 day period during which departure of the shipment is
252 estimated to occur.
- 253 17.11.4.3 A notification delivered by any other means than mail must reach the office of the
254 governor or of the governor's designee or the Tribal official, or Tribal official's
255 designee at least 4 days before the beginning of the 7-day period during which
256 departure of the shipment is estimated to occur.
- 257 (1) A list of the names and mailing addresses of the governors' designees receiving
258 advance notification of transportation of nuclear waste was published in the
259 Federal Register on June 30, 1995 (60 FR 34306)
- 260 (2) Contact information for each State, including telephone and mailing addresses of
261 governors and governors' designees, and participating Tribes, including
262 telephone and mailing addresses of Tribal officials and Tribal official's designees,
263 is available on the NRC Web site at: <https://scp.nrc.gov/special/designee.pdf>.
- 264 (3) A list of the names and mailing addresses of the governor's designees and Tribal
265 official's designees of participating Tribes is available on request from the
266 Director, Division of ~~Material Safety, State, Tribal, and Rulemaking~~ **Materials**
267 **Safety, Security, State, and Tribal** Programs, Office of Nuclear Material Safety
268 and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-
269 0001.
- 270 17.11.4.4 The licensee shall retain a copy of the notification as a record for 3 years.
- 271 17.11.5 Information to be furnished in advance notification of shipment.

Commented [JSJ13]:

Based on NRC comments dated [April 24, 2020](#), language is modified and added to ensure the appropriate NRC office is notified of these shipments, and for consistency with 10 CFR Part 71.97.

NRC Compatibility B.
NRC RATS 2018-2.

Commented [JSJ14]: Due to an NRC organizational change, the Division title is updated, consistent with the 2018 changes to [10 CFR 71.97\(c\)\(3\)\(iii\)](#).

NRC Compatibility B
NRC [RATS 2018-3](#)

- 272 17.11.5.1 Each advance notification of nuclear waste shall contain the following
273 information:
- 274 (1) The name, address, and telephone number of the shipper, carrier, and receiver
275 of the nuclear waste shipment;
- 276 (2) A description of the nuclear waste contained in the shipment, as required by 49
277 CFR **Part** 172.202 and 172.203(d);
- 278 (3) The point of origin of the shipment and the 7-day period during which departure
279 of the shipment is estimated to occur;
- 280 (4) The 7-day period during which arrival of the shipment at state boundaries or
281 Tribal reservation boundaries is estimated to occur;
- 282 (5) The destination of the shipment, and the 7-day period during which arrival of the
283 shipment is estimated to occur; and
- 284 (6) A point of contact with a telephone number for current shipment information.
- 285 17.11.6 Revision notice
- 286 17.11.6.1 A licensee who finds that schedule information previously furnished to a governor
287 or governor's designee or a Tribal official or Tribal official's designee, in
288 accordance with this section, will not be met, shall:
- 289 (1) Telephone a responsible individual in the office of the governor of the state or of
290 the governor's designee or the Tribal official or Tribal official's designee an inform
291 that individual of the extent of the delay beyond the schedule originally reported;
292 and
- 293 (2) Maintain a record of the name of the individual contacted for 3 years.
- 294 17.11.7 Cancellation notice
- 295 17.11.7.1 Each licensee who cancels a nuclear waste shipment, for which advance
296 notification has been sent, shall:
- 297 (1) Send a cancellation notice to the governor of each state, or governor's designee
298 previously notified, each Tribal official or Tribal official's designee previously
299 notified and to the Department;
- 300 (2) State in the notice that it is a cancellation and identify the advance notification
301 that is being cancelled; and
- 302 (3) Retain a copy of the notice for 3 years.
- 303
- 304 * * *
- 305
- 306 17.14 Preliminary Determinations.

307 Before the first use of any packaging for the shipment of radioactive material the licensee shall ascertain
 308 that the determinations in paragraphs (a) through (c) of 10 CFR **Part** 71.85 have been made by the
 309 certificate holder.

310 17.15 Routine Determinations.

311

312

* * *

313

314 17.15.7 Any structural part of the package which could be used to lift or tie down the package during
 315 transport is rendered inoperable for the purpose unless it satisfies design requirements specified
 316 in 10 CFR **Part** 71.45;

317 17.15.8 The level of non-fixed (removable) radioactive contamination on the external surfaces of each
 318 package offered for shipment is as low as reasonably achievable and within the limits specified in
 319 49 CFR **Part** 173.443.

320 17.15.8.1 Determination of the level of non-fixed (removable) contamination shall be based
 321 upon wiping an area of 300 square centimeters of the surface concerned with an
 322 absorbent material, using moderate pressure, and measuring the activity on the wiping
 323 material.

324 (1) The number and location of measurements shall be sufficient to yield a
 325 representative assessment of the removable contamination levels.

326 (2) Other methods of assessment of equal or greater detection efficiency may be
 327 used.

328 17.15.8.2 In the case of packages transported as exclusive use shipments by rail or
 329 highway only, the non-fixed (removable) radioactive contamination:

330 (1) At the beginning of transport shall not exceed the levels specified in 49 CFR **Part**
 331 173.443; and

332 (2) At any time during transport shall not exceed 10 times the levels specified in 49
 333 CFR **Part** 173.443.

334 17.15.9 External radiation levels around the package and around the vehicle, if applicable, shall not
 335 exceed:

336 17.15.9.1 2 mSv/h (200 millirem per hour) at any point on the external surface of the
 337 package at any time during transportation;

338 17.15.9.2 A transport index of 10.0.

339 17.15.10 For a package transported in exclusive use by rail, highway or water, radiation levels
 340 external to the package may exceed the limits specified in 17.15.9 but shall not exceed
 341 any of the following:

342 17.15.10.1 2 mSv/h (200 millirem per hour) on the accessible external surface of the
 343 package unless the following conditions are met, in which case the limit is 10
 344 mSv/h (1000 millirem per hour);

Commented [JSJ15]:
 Sections 17.15.9 through 7.15.15 are formatted for alignment
 of text.

- 345 (1) The shipment is made in a closed transport vehicle,
- 346 (2) Provisions are made to secure the package so that its position within the vehicle
347 remains fixed during transportation, and
- 348 (3) No loading or unloading operation occurs between the beginning and end of the
349 transportation.
- 350 17.15.10.2 2 mSv/h (200 millirem per hour) at any point on the outer surface of the vehicle,
351 including the upper and lower surfaces, or, in the case of a flat-bed style vehicle,
352 with a personnel barrier, at any point on the vertical planes projected from the
353 outer edges of the vehicle, on the upper surface of the load (or enclosure, if
354 used), and on the lower external surface of the vehicle;
- 355 (1) A flat bed style vehicle with a personnel barrier shall have radiation levels
356 determined at vertical planes.
- 357 (2) If no personnel barrier is in place, the package cannot exceed 2 mSv/h (200
358 millirem per hour) at any accessible surface.
- 359 17.15.10.3 0.1 mSv/h (10 millirem per hour) at any point 2 meters from the vertical planes
360 represented by the outer lateral surfaces of the vehicle, or, in the case of a flat-
361 bed style vehicle, at any point 2 meters from the vertical planes projected from
362 the outer edges of the vehicle; and
- 363 17.15.10.4 0.02 mSv/h (2 millirem per hour) in any normally occupied positions of the
364 vehicle, except that this provision does not apply to private motor carriers when
365 persons occupying these positions are provided with special health supervision,
366 personnel radiation exposure monitoring devices, and training in accordance with
367 10.3; and
- 368 17.15.11 For shipments made under the provisions of Section 17.15.10, the shipper shall provide
369 specific written instructions to the carrier for maintenance of the exclusive use shipment
370 controls. The instructions must be included with the shipping paper information.
- 371 17.15.12 The written instructions required for exclusive use shipments must be sufficient so that,
372 when followed, they will cause the carrier to avoid actions that will:
- 373 17.15.12.1 Unnecessarily delay delivery; or
- 374 17.15.12.2 Unnecessarily result in increased radiation levels or radiation exposures to
375 transport workers or members of the general public.
- 376 17.15.13 A package must be prepared for transport so that in still air at 100 degrees Fahrenheit
377 (38 degrees Celsius) and in the shade, no accessible surface of a package would have a
378 temperature exceeding 50 degrees Celsius (122 degrees Fahrenheit) in a nonexclusive
379 use shipment or 82 degrees Celsius (185 degrees Fahrenheit) in an exclusive use
380 shipment. Accessible package surface temperatures shall not exceed these limits at any
381 time during transportation.
- 382 17.15.14 A package may not incorporate a feature intended to allow continuous venting during
383 transport.
- 384 17.15.15 Before delivery of a package to a carrier for transport, the licensee shall ensure that any
385 special instructions needed to safely open the package have been sent to the consignee,

386 or otherwise made available to the consignee, for the consignee's use in accordance with
387 4.32.5.2.

388

389 * * *

390

391 17.17.1.4 Type and quantity of licensed material in each package, and the total quantity of
392 each shipment;

Commented [JSJ16]: Formatted for alignment of text.

393

* * *

394 17.17.1.10 Results of the determinations required by 17.15 and by the conditions of the
395 package approval.

Commented [JSJ17]: Formatted for alignment of text.

396

397 * * *

398 **Appendix 17A - Determination of A1 and A2**

Commented [JSJ18]: Prior to final publication, ensure that Appendix 7A begins on a new page.

399 17A1 Values of A₁ and A₂ for individual radionuclides, which are the bases for many activity limits
400 elsewhere in these regulations are given in Table 17A1. The curie (Ci) values specified are
401 obtained by converting from the Terabecquerel (TBq) value. The Terabecquerel values are the
402 regulatory standard. The curie values are for information only and are not intended to be the
403 regulatory standard. Where values of A₁ or A₂ are unlimited, it is for radiation control purposes
404 only. For nuclear criticality safety, some materials are subject to controls placed on fissile
405 material.

406 17A2 For individual radionuclides whose identities are known, but which are:

407 17A2.1 Not listed in Table 17A1:

- 408 (1) The A₁ and A₂ values Table 17A3 may be used.
- 409 (2) Otherwise, the licensee shall obtain prior NRC approval of the A₁ and A₂ values
410 for radionuclides not listed in Table 17A1, before shipping the material. The
411 licensee shall submit such request for prior approval to NRC in accordance with
412 10 CFR **Part** 71.1.

413

414 * * *

415

416 [NO CHANGES TO REMAINDER OF RULE OR SUBSEQUENT TABLES]

417

1 **DRAFT 1 05/28/2020**

2 **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

3 **Hazardous Materials and Waste Management Division**

4 **RADIATION CONTROL – PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2**
5 **QUANTITIES OF RADIOACTIVE MATERIAL**

6 **6 CCR 1007-1 Part 22**

7 *[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

8

9 **Adopted by the Board of Health on ~~May 17, 2017~~ August 19, 2020; effective ~~June 30, 2017~~ October**
10 **15, 2020.**

11 **Affected licensees shall be compliant with this Part on or before March 19, 2016**

12 **PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE**
13 **MATERIAL**

14 **22.1 Authority.**

15 22.1.1 Rules and regulations set forth herein are adopted pursuant to the provisions of section 25-1-108,
16 25-1.5-101(1)(k) and (1)(l), and 25-11-104, CRS.

17 **Section A – General provisions**

18 **22.2 Scope, Purpose and Applicability.**

19

20 [* * * INDICATES NO CHANGES TO THIS PORTION OF THE RULE]

21 * * *

22 22.2.2 Applicability.

23 22.2.2.1 ~~This Part applies~~ **Sections B and C of this part apply** to any person who, under
24 ~~these~~ regulations of ~~22.8 through 22.23~~, possesses or uses at any site, an
25 aggregated category 1 or category 2 quantity of radioactive material.

26 22.2.2.2 ~~This Part~~ **Section D of this part** applies to any person who, under ~~these~~
27 regulations ~~of 22.24 through 22.29~~:

28 (1) Transports or delivers to a carrier for transport in a single shipment, a category 1
29 or category 2 quantity of radioactive material; or

30 (2) Imports or exports a category 1 or category 2 quantity of radioactive material; the
31 provisions only apply to the domestic portion of the transport.

32 ~~22.2.2.3~~ ~~In accordance with Section 24-4-103(12.5)(c), CRS,~~
33 ~~<https://www.colorado.gov/cdphe/radregs> identifies where incorporated material is~~
34 ~~available to the public on the internet at no cost. If the incorporated material is not~~

Commented [JSJ19]:
Editorial note 1: All comments (such as this one) shown in the right side margin of this draft document are for information purposes only to assist the reader in understanding the proposed rule change during the review and comment process. These side margin notes are **not** part of the rule and all comments will be deleted prior to publication of the final rule.

Editorial note 2: Alignment and formatting corrections and minor typographical adjustments may be made in the rule and may not be specifically identified with a side margin comment.

Editorial note 3: The acronym "RATS-20##-##" refers to the U.S. Nuclear Regulatory Commission (NRC) regulatory action tracking system. This system is used to identify and summarize changes to federal regulations that may be required for adoption by an NRC agreement state. To maintain agreement state status, Colorado's radiation regulations must be compatible with federal regulations of the NRC. NRC RATS items may be found online at https://scp.nrc.gov/rss_reqamendents.html.

Colorado statute also prescribes that the radiation control regulations must be consistent with the model regulations of the Conference of Radiation Control Program Directors, Inc. (CRCPD). To date, the CRCPD model regulation equivalent to part 22 has not been updated for consistency with the 2018 or later federal rule changes.

Commented [JSJ20]: These dates reflect anticipated adoption and effective dates based on the current rulemaking schedule. Dates are subject to change pending additional review, approvals, and department rulemaking and Board of Health schedules.

Commented [JSJ21]: Here and throughout the rule, section designations (section A, section B, etc.) are added to parallel the subpart structure found in 10 CFR Part 37. These section headers are then referenced in the rule body/text, consistent with the equivalent provisions referenced in 10 CFR Part 37.

Commented [JSJ22]: Section 22.2 is formatted for alignment.

Commented [JSJ23]: This provision is replaced by the new/revised provisions in 22.2.3.

CODE OF COLORADO REGULATIONS 6 CCR 1007-1 Part 22
Hazardous Materials and Waste Management Division

available on the internet at no cost to the public, copies of the incorporated material has been provided to the State Publications Depository and Distribution Center, also known as the State Publications Library. The State Librarian at the State Publication Library retains a copy of the material and will make the copy available to the public.

22.2.3 Published material incorporated by reference.

22.2.3.1 Throughout this Part 22, federal regulations, state regulations, and standards or guidelines of outside organizations have been adopted and incorporated by reference. Unless a prior version of the incorporated material is otherwise specifically indicated, the materials incorporated by reference cited herein include only those versions that were in effect as of the most recent effective date of this Part 22 (October 15, 2020), and not later amendments or editions of the incorporated material.

22.2.3.2 Materials incorporated by reference are available for public inspection, and copies (including certified copies) can be obtained at reasonable cost, during normal business hours from the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246. Additionally, <https://www.colorado.gov/cdphe/radregs> identifies where the incorporated federal and state regulations are available to the public on the internet at no cost. A copy of the materials incorporated in this Part is available for public inspection at the state publications depository and distribution center.

22.2.3.3 Availability from Source Agencies or Organizations.

(1) All federal agency regulations incorporated by reference herein are available at no cost in the online edition of the Code of Federal Regulations (CFR) hosted by the U.S. Government Printing Office, online at www.govinfo.gov.

(2) All state regulations incorporated by reference herein are available at no cost in the online edition of the Code of Colorado Regulations (CCR) hosted by the Colorado Secretary of State's Office, online at <https://www.sos.state.co.us/CCR/RegisterHome.do>.

22.3 Definitions.

* * *

"Approved individual" means an individual whom the licensee has determined to be trustworthy and reliable for unescorted access in accordance with 22.8 through 22.14 section B of this part and who has completed the training required by 22.16.3.

* * *

22.4 Communications.

Except where otherwise specified, all communications, reports, and notifications concerning or required by the regulations in this Part shall be sent via email to CDPHE_hmradmat@state.co.us. Hardcopy documents should be mailed to Radiation Program - HMWMD, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246-1530.

22.5 Reserved.

Commented [JSJ24]: Provisions in section 22.2.3, are revised and amended for consistency with the Colorado Administrative Procedure Act (24-4-103(12.5)(a)(2), CRS) regarding documents incorporated by reference.

Commented [JSJ25]: As the department is continuing to move towards less paper documents, this provision updated to include an email address where documents may be sent.

CODE OF COLORADO REGULATIONS 6 CCR 1007-1 Part 22
Hazardous Materials and Waste Management Division

78 **22.6 Specific Exemptions.**

79 **22.6.1** The Department may, upon application of any interested person or upon its own initiative, grant
80 such exemptions from the requirements of the regulations in this Part as it determines are
81 authorized by law and will not endanger life or property or the ~~common defense and~~
82 ~~security~~**physical protection of material**, and are otherwise in the public interest.

Commented [JSJ26]: Language revised as Colorado may not have the authority specified in the original language.

83 **22.6.2** A licensee that possesses radioactive waste that contains category 1 or category 2 quantities of
84 radioactive material is exempt from the requirements of ~~22.8 through 22.29~~**sections B, C and D**
85 **of this part**. Except that any radioactive waste that contains discrete sources, ion-exchange
86 resins, or activated material that weighs less than 2,000 kg (4,409 lbs) is not exempt from the
87 requirements of this Part. The licensee shall implement the following requirements to secure the
88 radioactive waste:

- 89 A. Use continuous physical barriers that allow access to the radioactive waste only through
90 established access control points;
- 91 B. Use a locked door or gate with monitored alarm at the access control point;
- 92 C. Assess and respond to each actual or attempted unauthorized access to determine
93 whether an actual or attempted theft, sabotage, or diversion occurred; and
- 94 D. Immediately notify the LLEA and request an armed response from the LLEA upon
95 determination that there was an actual or attempted theft, sabotage, or diversion of the
96 radioactive waste that contains category 1 or category 2 quantities of radioactive
97 material.

98 **22.7 Reserved**

99 ~~Background Investigations and Access Authorization Program~~**Section B – Background investigations**
100 ~~and access authorization program~~

101 **22.8 Personnel Access Authorization Requirements for Category 1 or Category 2 Quantities of**
102 **Radioactive Material.**

103 **22.8.1 General.**

104 A. Each licensee that possesses an aggregated quantity of radioactive material at or above
105 the category 2 threshold shall establish, implement, and maintain its access authorization
106 program in accordance with the requirements of **section B** of this Part.

107 B. An applicant for a new license and each licensee that would become newly subject to the
108 requirements of this ~~Part~~**section B** upon application for modification of its license shall
109 implement the requirements of this ~~section B~~**Part**, as appropriate, before taking
110 possession of an aggregated category 1 or category 2 quantity of radioactive material.

111 C. Any licensee that has not previously implemented the NRC Security Orders or been
112 subject to the provisions of ~~22.8 through 22.14~~**this section B** shall implement the
113 provisions of ~~22.8 through 22.14~~**this section B** before aggregating radioactive material to
114 a quantity that equals or exceeds the category 2 threshold.

115 * * *

116 D. Licensees may include individuals needing access to safeguards information-modified
117 handling under 10 CFR Part 73 in the access authorization program under **section B** of
118 ~~this Part~~**22.8 through 22.14**.

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- 119 **22.9 Access Authorization Program Requirements.**
- 120 22.9.1 Granting unescorted access authorization.
- 121 A. Licensees shall implement the requirements of **section B** of this Part for granting initial
122 or reinstated unescorted access authorization.
- 123 B. Individuals who have been determined to be trustworthy and reliable shall also complete
124 the security training required by 22.16.3 before being allowed unescorted access to
125 category 1 or category 2 quantities of radioactive material.
- 126 22.9.2 Reviewing officials.
- 127 A. Reviewing officials are the only individuals who may make trustworthiness and reliability
128 determinations that allow individuals to have unescorted access to category 1 or category
129 2 quantities of radioactive materials possessed by the licensee.
- 130 **B.** Each licensee shall name one or more individuals to be reviewing officials. After
131 completing the background investigation on the reviewing official, the licensee shall
132 provide under oath or affirmation, a certification that the reviewing official is deemed
133 trustworthy and reliable by the licensee. **Provide oath or affirmation certifications to**
134 **the Department.** The fingerprints of the named reviewing official must be taken by a law
135 enforcement agency, Federal or State agencies that provide fingerprinting services to the
136 public, or commercial fingerprinting services authorized by a State to take fingerprints.
137 The licensee shall re-certify that the reviewing official is deemed trustworthy and reliable
138 every 10 years in accordance with 22.10.3.
- 139 **1. The oath or affirmation certifications required by 22.9.2.B shall be provided**
140 **to the Department within 30 days of naming a new or additional individual**
141 **as a reviewing official.**
- 142 **2. The licensee shall notify the Department in writing within 30 days of**
143 **revoking a reviewing official certification.**
- 144 C. Reviewing officials must be permitted to have unescorted access to category 1 or
145 category 2 quantities of radioactive materials or access to safeguards information or
146 safeguards information-modified handling, if the licensee possesses safeguards
147 information or safeguards information modified handling.
- 148 D. Reviewing officials cannot approve other individuals to act as reviewing officials.
- 149 E. A reviewing official does not need to undergo a new background investigation before
150 being named by the licensee as the reviewing official if:
- 151 1. The individual has undergone a background investigation that included
152 fingerprinting and an FBI criminal history records check and has been
153 determined to be trustworthy and reliable by the licensee; or
- 154 2. The individual is subject to a category listed in 22.12.1.
- 155 22.9.3 Informed consent.
- 156 A. Licensees may not initiate a background investigation without the informed and signed
157 consent of the subject individual. This consent must include authorization to share
158 personal information with other individuals or organizations as necessary to complete the
159 background investigation. Before a final adverse determination, the licensee shall provide
160 the individual with an opportunity to correct any inaccurate or incomplete information that

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This provision is updated to add clarifying language regarding submission of documentation, consistent with the intent of the 2018 amendments to [10 CFR Part 37.23\(b\)\(2\)](#).

Although the proposed language is new to Part 22, the requirement for submission of the reviewing official documentation and notification to the department has been in effect for a number of years through existing licensing activities.

NRC Compatibility B
NRC [RATS 2018-3](#)

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- 161 is developed during the background investigation. Licensees do not need to obtain
162 signed consent from those individuals that meet the requirements of 22.10.2. A signed
163 consent must be obtained prior to any reinvestigation.
- 164 B. The subject individual may withdraw his or her consent at any time. Licensees shall
165 inform the individual that:
- 166 1. If an individual withdraws his or her consent, the licensee may not initiate any
167 elements of the background investigation that were not in progress at the time
168 the individual withdrew his or her consent; and
- 169 2. The withdrawal of consent for the background investigation is sufficient cause for
170 denial or termination of unescorted access authorization.
- 171 22.9.4 Personal history disclosure.
- 172 A. Any individual who is applying for unescorted access authorization shall disclose the
173 personal history information that is required by the licensee's access authorization
174 program for the reviewing official to make a determination of the individual's
175 trustworthiness and reliability. Refusal to provide, or the falsification of, any personal
176 history information required by **section B of this Part** is sufficient cause for denial or
177 termination of unescorted access.
- 178 22.9.5 Determination basis.
- 179 A. The reviewing official shall determine whether to permit, deny, unfavorably terminate,
180 maintain, or administratively withdraw an individual's unescorted access authorization
181 based on an evaluation of all of the information collected to meet the requirements of
182 **section B of this Part**.
- 183 B. The reviewing official may not permit any individual to have unescorted access until the
184 reviewing official has evaluated all of the information collected to meet the requirements
185 of **section B of this Part** and determined that the individual is trustworthy and reliable.
186 The reviewing official may deny unescorted access to any individual based on
187 information obtained at any time during the background investigation.
- 188 * * *
- 189 22.9.6 Procedures.
- 190 A. Licensees shall develop, implement, and maintain written procedures for implementing
191 the access authorization program. The procedures must include provisions for the
192 notification of individuals who are denied unescorted access. The procedures must
193 include provisions for the review, at the request of the affected individual, of a denial or
194 termination of unescorted access authorization. The procedures must contain a provision
195 to ensure that the individual is informed of the grounds for the denial or termination of
196 unescorted access authorization and allow the individual an opportunity to provide
197 additional relevant information.
- 198 22.9.7 Right to correct and complete information.
- 199 A. Prior to any final adverse determination, licensees shall provide each individual subject to
200 **section B of this Part 22.8 through 22.14** with the right to complete, correct, and explain
201 information obtained as a result of the licensee's background investigation. Confirmation
202 of receipt by the individual of this notification must be maintained by the licensee for a
203 period of 1 year from the date of the notification.

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204 B. If, after reviewing his or her criminal history record, an individual believes that it is
 205 incorrect or incomplete in any respect and wishes to change, correct, update, or explain
 206 anything in the record, the individual may initiate challenge procedures. These
 207 procedures include direct application by the individual challenging the record to the law
 208 enforcement agency that contributed the questioned information or a direct challenge as
 209 to the accuracy or completeness of any entry on the criminal history record to the Federal
 210 Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, ATTN:
 211 SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306 as set forth in 28 CFR
 212 **Part** 16.30 through 16.34. In the latter case, the Federal Bureau of Investigation (FBI) will
 213 forward the challenge to the agency that submitted the data, and will request that the
 214 agency verify or correct the challenged entry. Upon receipt of an official communication
 215 directly from the agency that contributed the original information, the FBI Identification
 216 Division makes any changes necessary in accordance with the information supplied by
 217 that agency. Licensees must provide at least 10 days for an individual to initiate action to
 218 challenge the results of an FBI criminal history records check after the record being made
 219 available for his or her review. The licensee may make a final adverse determination
 220 based upon the criminal history records only after receipt of the FBI's confirmation or
 221 correction of the record.

222 * * *

223 **22.10 Background Investigations.**

224 **22.10.1** Initial investigation.

225 A. Before allowing an individual unescorted access to category 1 or category 2 quantities of
 226 radioactive material or to the devices that contain the material, licensees shall complete a
 227 background investigation of the individual seeking unescorted access authorization. The
 228 scope of the investigation must encompass at least the 7 years preceding the date of the
 229 background investigation or since the individual's eighteenth birthday, whichever is
 230 shorter. The background investigation must include at a minimum:

- 231 1. Fingerprinting and an FBI identification and criminal history records check in
 232 accordance with 22.11;
- 233 2. Verification of true identity. Licensees shall verify the true identity of the individual
 234 who is applying for unescorted access authorization to ensure that the applicant
 235 is who he or she claims to be. A licensee shall review official identification
 236 documents (e.g., driver's license; passport; government identification; certificate
 237 of birth issued by the state, province, or country of birth) and compare the
 238 documents to personal information data provided by the individual to identify any
 239 discrepancy in the information. Licensees shall document the type, expiration,
 240 and identification number of the identification document, or maintain a photocopy
 241 of identifying documents on file in accordance with 22.13. Licensees shall certify
 242 in writing that the identification was properly reviewed, and shall maintain the
 243 certification and all related documents for review upon inspection;
- 244 3. Employment history verification. Licensees shall complete an employment history
 245 verification, including military history. Licensees shall verify the individual's
 246 employment with each previous employer for the most recent 7 years before the
 247 date of application;
- 248 4. Verification of education. Licensees shall verify that the individual participated in
 249 the education process during the claimed period;
- 250 5. Character and reputation determination. Licensees shall complete reference
 251 checks to determine the character and reputation of the individual who has

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Section 22.10.1 is modified for formatting to remove unneeded spaces.

Note that these changes are not shown by strikeout or other indicators.

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- 252 applied for unescorted access authorization. Unless other references are not
 253 available, reference checks may not be conducted with any person who is known
 254 to be a close member of the individual's family, including but not limited to the
 255 individual's spouse, parents, siblings, or children, or any individual who resides in
 256 the individual's permanent household. Reference checks under **section B** of this
 257 Part must be limited to whether the individual has been and continues to be
 258 trustworthy and reliable;
- 259 6. The licensee shall also, to the extent possible, obtain independent information to
 260 corroborate that provided by the individual (e.g., seek references not supplied by
 261 the individual); and
- 262 7. If a previous employer, educational institution, or any other entity with which the
 263 individual claims to have been engaged fails to provide information or indicates
 264 an inability or unwillingness to provide information within a time frame deemed
 265 appropriate by the licensee but at least after 10 business days of the request or if
 266 the licensee is unable to reach the entity, the licensee shall document the refusal,
 267 unwillingness, or inability in the record of investigation; and attempt to obtain the
 268 information from an alternate source.
- 269 **22.10.2** Grandfathering.
- 270 A. Individuals who have been determined to be trustworthy and reliable for unescorted
 271 access to category 1 or category 2 quantities of radioactive material under the fingerprint
 272 Orders or equivalent Agreement State requirements may continue to have unescorted
 273 access to category 1 and category 2 quantities of radioactive material without further
 274 investigation. These individuals shall be subject to the reinvestigation requirement.
- 275 B. Individuals who have been determined to be trustworthy and reliable under the provisions
 276 of 10 CFR Part 73 or the security orders for access to safeguards information,
 277 safeguards information-modified handling, or risk-significant material may have
 278 unescorted access to category 1 and category 2 quantities of radioactive material without
 279 further investigation. The licensee shall document that the individual was determined to
 280 be trustworthy and reliable under the provisions of 10 CFR Part 73 or a security order.
 281 Security order, in this context, refers to any order that was issued by the NRC that
 282 required fingerprints and an FBI criminal history records check for access to safeguards
 283 information, safeguards information-modified handling, or risk significant material such as
 284 special nuclear material or large quantities of uranium hexafluoride. These individuals
 285 shall be subject to the reinvestigation requirement.
- 286 **22.10.3** Reinvestigations.
- 287 A. Licensees shall conduct a reinvestigation every 10 years for any individual with
 288 unescorted access to category 1 or category 2 quantities of radioactive material. The
 289 reinvestigation shall consist of fingerprinting and an FBI identification and criminal history
 290 records check in accordance with 22.11. The reinvestigations must be completed within
 291 10 years of the date on which these elements were last completed.
- 292 **22.11 Requirements for Criminal History Records Checks of Individuals Granted Unescorted**
 293 **Access to Category 1 or Category 2 Quantities of Radioactive Material.**
- 294 **22.11.1** General performance objective and requirements.
- 295 A. Except for those individuals listed in 22.12 and those individuals grandfathered under
 296 22.10.2., each licensee subject to the provisions of **section B** of this Part shall fingerprint
 297 each individual who is to be permitted unescorted access to category 1 or category 2
 298 quantities of radioactive material. Licensees shall transmit all collected fingerprints to the

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 unneeded spaces.

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299 U.S. Nuclear Regulatory Commission for transmission to the FBI. The licensee shall use
300 the information received from the FBI as part of the required background investigation to
301 determine whether to grant or deny further unescorted access to category 1 or category 2
302 quantities of radioactive materials for that individual.

303 * * *

304 D. Fingerprints do not need to be taken if an individual who is an employee of a licensee,
305 contractor, manufacturer, or supplier has been granted unescorted access to category 1
306 or category 2 quantities of radioactive material, access to safeguards information, or
307 safeguards information-modified handling by another licensee, based upon a background
308 investigation conducted under **section B** of this Part, the Fingerprint Orders, or 10 CFR
309 Part 73. An existing criminal history records check file may be transferred to the licensee
310 asked to grant unescorted access in accordance with the provisions of 22.13.3.

311 * * *

312 22.11.2 Prohibitions.

313 * * *

314 B. Licensees may not use information received from a criminal history records check
315 obtained under **section B** of this Part in a manner that would infringe upon the rights of
316 any individual under the First Amendment to the Constitution of the United States, nor
317 shall licensees use the information in any way that would discriminate among individuals
318 on the basis of race, religion, national origin, gender, or age.

319 22.11.3 Procedures for processing of fingerprint checks.

320 ~~A. For the purpose of complying with this Part, licensees shall submit to the U.S. Nuclear~~
321 ~~Regulatory Commission, Director, Division of Facilities and Security, 11545 Rockville~~
322 ~~Pike, Rockville, MD 20852-2738, ATTN: Criminal History Program, Mail Stop TWB-05~~
323 ~~B32M, one completed, legible standard fingerprint card (Form FD-258,~~
324 ~~ORIMDNRCOOOZ), electronic fingerprint scan or, where practicable, other fingerprint~~
325 ~~record for each individual requiring unescorted access to category 1 or category 2~~
326 ~~quantities of radioactive material. Copies of these forms may be obtained by writing the~~
327 ~~Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission,~~
328 ~~Washington, DC 20555-0001, by calling 1-630-829-9565, or by email to~~
329 ~~FORMS.Resource@nrc.gov. Guidance on submitting electronic fingerprints can be found~~
330 ~~at http://www.nrc.gov/site-help/e-submittals.html. For the purposes of complying with~~
331 ~~this section B, licensees shall use an appropriate method listed in 10 CFR Part 37.7~~
332 ~~to submit to the U.S. Nuclear Regulatory Commission, Director, Division of~~
333 ~~Physical and Cyber Security Policy, 11545 Rockville Pike, ATTN: Criminal History~~
334 ~~Program/Mail Stop T-8B20, Rockville, MD 20852, one completed, legible standard~~
335 ~~fingerprint card (Form FD-258, ORIMDNRCOOOZ), electronic fingerprint scan or,~~
336 ~~where practicable, other fingerprint record for each individual requiring unescorted~~
337 ~~access to category 1 or category 2 quantities of radioactive material. Copies of~~
338 ~~these forms may be obtained by emailing MAILSVS.Resource@nrc.gov. Guidance~~
339 ~~on submitting fingerprints can be found at https://www.nrc.gov/security/chp.html.~~

340 B. Fees for the processing of fingerprint checks are due upon application. Licensees shall
341 submit payment with the application for the processing of fingerprints through corporate
342 check, certified check, cashier's check, money order, or electronic payment, made
343 payable to "U.S. NRC." (For guidance on making electronic payments, contact the
344 Security Branch, Division of Facilities and Security at 301-492-3531.) (For guidance on
345 making electronic payments, contact the Division of Physical and Cyber Security
346 Policy by e-mailing Crimhist.Resource@nrc.gov.) Combined payment for multiple

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This provision is amended for consistency with the November 18, 2019 technical corrections to [10 CFR Part 37.27\(c\)\(1\)](#), due to changes in NRC organizational structure and contact information.

Licensees will use this updated information in order to submit fingerprinting information to NRC.

NRC Compatibility B
[NRC RATS 2019-1](#)

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This provision is amended for consistency with the November 18, 2019 technical corrections to 10 CFR Part 37.27(c)(2), due to changes in NRC organizational structure and contact information.

Licensees will require this updated information in order to submit payment for fingerprinting processing.

NRC Compatibility B
[NRC RATS 2019-1](#)

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347 applications is acceptable. The U.S. Nuclear Regulatory Commission publishes the
 348 amount of the fingerprint check application fee on the NRC's public Web site. ~~(To find the~~
 349 ~~current fee amount, go to the Electronic Submittals page at [http://www.nrc.gov/site-](http://www.nrc.gov/site-help/e-submittals.html)~~
 350 ~~help/e-submittals.html and see the link for the Criminal History Program under Electronic~~
 351 ~~Submission Systems.)(To find the current fee amount, go to the Licensee Criminal~~
 352 ~~History Records Checks & Firearms Background Check information page at~~
 353 ~~<https://www.nrc.gov/security/chp.html> and see the link for How do I determine how~~
 354 ~~much to pay for the request?).~~

355 C. The U.S. Nuclear Regulatory Commission will forward to the submitting licensee all data
 356 received from the FBI as a result of the licensee's application(s) for criminal history
 357 records checks.

358 **22.12 Relief from Fingerprinting, Identification, and Criminal History Records Checks and Other**
 359 **Elements of Background Investigations for Designated Categories of Individuals Permitted**
 360 **Unescorted Access to Certain Radioactive Materials.**

361 22.12.1 Fingerprinting, and the identification and criminal history records checks required by
 362 section 149 of the Atomic Energy Act of 1954, as amended, and other elements of the
 363 background investigation are not required for the following individuals prior to granting
 364 unescorted access to category 1 or category 2 quantities of radioactive materials:

365 A. An employee of the Commission or of the Executive Branch of the U.S. Government who
 366 has undergone fingerprinting for a prior U.S. Government criminal history records check;

367 B. A Member of Congress;

368 C. An employee of a member of Congress or Congressional committee who has undergone
 369 fingerprinting for a prior U.S. Government criminal history records check;

370 D. The Governor of a State or his or her designated State employee representative;

371 E. Federal, State, or local law enforcement personnel;

372 F. State Radiation Control Program Directors and State Homeland Security Advisors or their
 373 designated State employee representatives;

374 G. Agreement State employees conducting security inspections on behalf of the NRC under
 375 an agreement executed under section 274.i. of the Atomic Energy Act;

376 H. Representatives of the International Atomic Energy Agency (IAEA) engaged in activities
 377 associated with the U.S./IAEA Safeguards Agreement who have been certified by the
 378 NRC;

379 I. Emergency response personnel who are responding to an emergency;

380 J. Commercial vehicle drivers for road shipments of category 1 and category 2 quantities of
 381 radioactive material;

382 K. Package handlers at transportation facilities such as freight terminals and railroad yards;

383 L. Any individual who has an active Federal security clearance, provided that he or she
 384 makes available the appropriate documentation. Written confirmation from the
 385 agency/employer that granted the Federal security clearance or reviewed the criminal
 386 history records check must be provided to the licensee. The licensee shall retain this
 387 documentation for a period of 3 years from the date the individual no longer requires
 388 unescorted access to category 1 or category 2 quantities of radioactive material; and

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22.12.1
 22.12.2

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- 389 M. Any individual employed by a service provider licensee for which the service provider
 390 licensee has conducted the background investigation for the individual and approved the
 391 individual for unescorted access to category 1 or category 2 quantities of radioactive
 392 material. Written verification from the service provider must be provided to the licensee.
 393 The licensee shall retain the documentation for a period of 3 years from the date the
 394 individual no longer requires unescorted access to category 1 or category 2 quantities of
 395 radioactive material.
- 396 22.12.2 Fingerprinting, and the identification and criminal history records checks required by
 397 section 149 of the Atomic Energy Act of 1954, as amended, are not required for an
 398 individual who has had a favorably adjudicated U.S. Government criminal history records
 399 check within the last 5 years, under a comparable U.S. Government program involving
 400 fingerprinting and an FBI identification and criminal history records check provided that
 401 he or she makes available the appropriate documentation. Written confirmation from the
 402 agency/employer that reviewed the criminal history records check must be provided to
 403 the licensee. The licensee shall retain this documentation for a period of 3 years from the
 404 date the individual no longer requires unescorted access to category 1 or category 2
 405 quantities of radioactive material. These programs include, but are not limited to:
- 406 A. National Agency Check;
- 407 B. Transportation Worker Identification Credentials (TWIC) under 49 CFR ~~part~~**Part** 1572;
- 408 C. Bureau of Alcohol, Tobacco, Firearms, and Explosives background check and clearances
 409 under 27 CFR ~~part~~**Part** 555;
- 410 D. Health and Human Services security risk assessments for possession and use of select
 411 agents and toxins under 42 CFR ~~part~~**Part** 73;
- 412 E. Hazardous Material security threat assessment for hazardous material endorsement to
 413 commercial driver's license under 49 CFR ~~part~~**Part** 1572; and
- 414 F. Customs and Border Protection's Free and Secure Trade (FAST) Program.
- 415 **22.13 Protection of Information.**
- 416 22.13.1 Each licensee who obtains background information on an individual under **section B of**
 417 this Part shall establish and maintain a system of files and written procedures for
 418 protection of the record and the personal information from unauthorized disclosure.
- 419 22.13.2 The licensee may not disclose the record or personal information collected and
 420 maintained to persons other than the subject individual, his or her representative, or to
 421 those who have a need to have access to the information in performing assigned duties
 422 in the process of granting or denying unescorted access to category 1 or category 2
 423 quantities of radioactive material, safeguards information, or safeguards information-
 424 modified handling. No individual authorized to have access to the information may
 425 disseminate the information to any other individual who does not have a need to know.
- 426 22.13.3 The personal information obtained on an individual from a background investigation may
 427 be provided to another licensee:
- 428 A. Upon the individual's written request to the licensee holding the data to disseminate the
 429 information contained in his or her file; and
- 430 B. The recipient licensee verifies information such as name, date of birth, social security
 431 number, gender, and other applicable physical characteristics.

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432 22.13.4 The licensee shall make background investigation records obtained under **section B of**
 433 this Part available for examination by an authorized representative of the Department to
 434 determine compliance with the regulations and laws.

435 22.13.5 The licensee shall retain all fingerprint and criminal history records (including data
 436 indicating no record) received from the FBI, or a copy of these records if the individual's
 437 file has been transferred, on an individual for 3 years from the date the individual no
 438 longer requires unescorted access to category 1 or category 2 quantities of radioactive
 439 material.

440 **22.14 Access Authorization Program Review.**

441 22.14.1 Each licensee shall be responsible for the continuing effectiveness of the access
 442 authorization program. Each licensee shall ensure that access authorization programs
 443 are reviewed to confirm compliance with the requirements of **section B of** this Part and
 444 that comprehensive actions are taken to correct any noncompliance that is identified. The
 445 review program shall evaluate all program performance objectives and requirements.
 446 Each licensee shall periodically (at least annually) review the access program content
 447 and implementation.

448 22.14.2 The results of the reviews, along with any recommendations, must be documented. Each
 449 review report must identify conditions that are adverse to the proper performance of the
 450 access authorization program, the cause of the condition(s), and, when appropriate,
 451 recommend corrective actions, and corrective actions taken. The licensee shall review
 452 the findings and take any additional corrective actions necessary to preclude repetition of
 453 the condition, including reassessment of the deficient areas where indicated.

454 22.14.3 Review records must be maintained for 3 years.

455 ~~Physical Protection Requirements During Use~~ **Section C – Physical protection requirements during**
 456 **use**

457 **22.15 Security Program.**

458 22.15.1 Applicability.

459 A. Each licensee that possesses an aggregated category 1 or category 2 quantity of
 460 radioactive material shall establish, implement, and maintain a security program in
 461 accordance with the requirements of **section C of** this Part.

462 B. An applicant for a new license and each licensee that would become newly subject to the
 463 requirements of **section C of** this Part upon application for modification of its license
 464 shall implement the requirements of **section C of** this Part, as appropriate, before taking
 465 possession of an aggregated category 1 or category 2 quantity of radioactive material.

466 C. Any licensee that has not previously implemented the Security Orders or **been subject**
 467 **to** equivalent Agreement State requirements or been subject to **section C of this**
 468 **Part 22.15 through 22.23** shall provide written notification to the Department to the
 469 address specified in 22.4 at least 90 days before aggregating radioactive material to a
 470 quantity that equals or exceeds the category 2 threshold.

471

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472 **22.16 General Security Program Requirements.**

473 22.16.1 Security plan.

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- 474 A. Each licensee identified in 22.15.1. shall develop a written security plan specific to its
475 facilities and operations. The purpose of the security plan is to establish the licensee's
476 overall security strategy to ensure the integrated and effective functioning of the security
477 program required by **section C** of this Part. The security plan must, at a minimum:
- 478 1. Describe the measures and strategies used to implement the requirements of
479 **section C** of this Part; and
- 480 2. Identify the security resources, equipment, and technology used to satisfy the
481 requirements of **section C** of this Part.
- 482 B. The security plan must be reviewed and approved by the individual with overall
483 responsibility for the security program.
- 484 C. A licensee shall revise its security plan as necessary to ensure the effective
485 implementation of Department requirements. The licensee shall ensure that:
- 486 1. The revision has been reviewed and approved by the individual with overall
487 responsibility for the security program; and
- 488 2. The affected individuals are instructed on the revised plan before the changes
489 are implemented.
- 490 D. The licensee shall retain a copy of the current security plan as a record for 3 years after
491 the security plan is no longer required. If any portion of the plan is superseded, the
492 licensee shall retain the superseded material for 3 years after the record is superseded.
- 493 22.16.2 Implementing procedures.
- 494 A. The licensee shall develop and maintain written procedures that document how the
495 requirements of **section C** of this Part and the security plan will be met.
496
- 497 * * *
- 498 22.16.4 Protection of information.
- 499 A. Licensees authorized to possess category 1 or category 2 quantities of radioactive
500 material shall limit access to and unauthorized disclosure of their security plan,
501 implementing procedures, and the list of individuals that have been approved for
502 unescorted access.
- 503 B. Efforts to limit access shall include the development, implementation, and maintenance of
504 written policies and procedures for controlling access to, and for proper handling and
505 protection against unauthorized disclosure of, the security plan ~~and~~ implementing
506 procedures, **and the list of individuals that have been approved for unescorted**
507 **access.**
- 508 C. Before granting an individual access to the security plan, ~~or~~ implementing procedures, **or**
509 **the list of individuals that have been approved for unescorted access**, licensees
510 shall:
- 511 1. Evaluate an individual's need to know the security plan, ~~or~~ implementing
512 procedures, **or the list of individuals that have been approved for**
513 **unescorted access**; and

Commented [JSJ35]:

New (repeated) language is added to several provisions in 22.16.4 for consistency with the 2018 amendments to [10 CFR Part 37.43](#).

The amended language provides clarification that the list of approved individuals must be maintained in a secure manner similar to other security related documents and information.

Licensees will be required to make minor changes to their security plan and/or procedures as a result of this change.

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- 514 2. If the individual has not been authorized for unescorted access to category 1 or
 515 category 2 quantities of radioactive material, safeguards information, or
 516 safeguards information-modified handling, the licensee must complete a
 517 background investigation to determine the individual's trustworthiness and
 518 reliability. A trustworthiness and reliability determination shall be conducted by
 519 the reviewing official and shall include the background investigation elements
 520 contained in 22.10.1.A.2. through 22.10.1.A.7.
- 521 D. Licensees need not subject the following individuals to the background investigation
 522 elements for protection of information:
- 523 1. The categories of individuals listed in 22.12.1.A. through 22.12.1.M; or
- 524 2. Security service provider employees, provided written verification that the
 525 employee has been determined to be trustworthy and reliable, by the required
 526 background investigation in 22.10.1.A.2 through 22.10.1.A.7, has been provided
 527 by the security service provider.
- 528 E. The licensee shall document the basis for concluding that an individual is trustworthy and
 529 reliable and should be granted access to the security plan, ~~or implementing procedures,~~
 530 **or the list of individuals that have been approved for unescorted access.**
- 531 F. Licensees shall maintain a list of persons currently approved for access to the security
 532 plan ~~or implementing procedures,~~ **or the list of individuals that have been approved**
 533 **for unescorted access.** When a licensee determines that a person no longer needs
 534 access to the security plan, ~~or implementing procedures,~~ **or the list of individuals that**
 535 **have been approved for unescorted access,** or no longer meets the access
 536 authorization requirements for access to the information, the licensee shall remove the
 537 person from the approved list as soon as possible, but no later than 7 working days, and
 538 take prompt measures to ensure that the individual is unable to obtain the security plan,
 539 ~~or implementing procedures,~~ **or the list of individuals that have been approved for**
 540 **unescorted access.**
- 541 G. When not in use, the licensee shall store its security plan, ~~and implementing procedures,~~
 542 **and the list of individuals that have been approved for unescorted access** in a
 543 manner to prevent unauthorized access. Information stored in nonremovable electronic
 544 form must be password protected.
- 545 H. The licensee shall retain as a record for 3 years after the document is no longer needed:
- 546 1. A copy of the information protection procedures; and
- 547 2. The list of individuals approved for access to the security plan, ~~or implementing~~
 548 ~~procedures,~~ **or the list of individuals that have been approved for**
 549 **unescorted access.**
- 550 **22.17 LLEA Coordination.**
- 551 **22.17.1** A licensee subject to **section C of** this Part shall coordinate, to the extent practicable,
 552 with an LLEA for responding to threats to the licensee's facility, including any necessary
 553 armed response. The information provided to the LLEA must include:
- 554 A. A description of the facilities and the category 1 and category 2 quantities of radioactive
 555 materials along with a description of the licensee's security measures that have been
 556 implemented to comply with **section C of** this Part; and

Commented [JSJ36]:
 New language added for consistency with the 2018
 amendments to [10 CFR Part 37.43\(d\)\(5\)](#).

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 NRC [RATS 2018-3](#)

Commented [JSJ37]:
 This section is formatted for alignment of text and elimination
 of blank lines/space.

Commented [JSJ38]:
 Clarifying language added to parallel the subpart reference
 found in [10 CFR Part 37.45](#).

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557 B. A notification that the licensee will request a timely armed response by the LLEA to any
558 actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of
559 material.

560 * * *

561 **22.19 Monitoring, Detection, and Assessment.**

562 22.19.1 Monitoring and detection.

563 * * *

564 C. A licensee subject to **section C of** this Part shall also have a means to detect
565 unauthorized removal of the radioactive material from the security zone. This detection
566 capability must provide:

567 * * *

568 **22.20 Maintenance and Testing.**

569 22.20.1 Each licensee subject to **section C of** this Part shall implement a maintenance and
570 testing program to ensure that intrusion alarms, associated communication systems, and other
571 physical components of the systems used to secure or detect unauthorized access to radioactive
572 material are maintained in operable condition and are capable of performing their intended
573 function when needed. The equipment relied on to meet the security requirements of this Part
574 must be inspected and tested for operability and performance at the manufacturer's suggested
575 frequency. If there is no suggested manufacturer's suggested frequency, the testing must be
576 performed at least annually, not to exceed 12 months.

577 22.20.2 The licensee shall maintain records on the maintenance and testing activities for 3 years.

578 * * *

579 **22.22 Security Program Review.**

580 22.22.1 Each licensee shall be responsible for the continuing effectiveness of the security
581 program. Each licensee shall ensure that the security program is reviewed to confirm compliance
582 with the requirements of **section C of** this Part and that comprehensive actions are taken to
583 correct any noncompliance that is identified. The review must include the radioactive material
584 security program content and implementation. Each licensee shall periodically (at least annually)
585 review the security program content and implementation.

586 * * *

587 ~~Physical Protection in Transit~~ **Section D – Physical protection in transit**

588 **22.24 Additional Requirements for Transfer of Category 1 and Category 2 Quantities of**
589 **Radioactive Material.**

590 * * *

591 **22.25 Applicability of Physical Protection of Category 1 and Category 2 Quantities of Radioactive**
592 **Material During Transit.**

593 22.25.1 For shipments of category 1 quantities of radioactive material, each shipping licensee
594 shall comply with the requirements for physical protection contained in 22.26.1. and 22.26.5.;

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- 595 22.27; 22.28.1.A., 22.28.2.A. and 22.28.3.; and 22.29.1., 22.29.3., 22.29.5., 22.29.7., and
 596 22.29.8.
- 597 22.25.2 For shipments of category 2 quantities of radioactive material, each shipping licensee
 598 shall comply with the requirements for physical protection contained in 22.26.2. through 22.26.5.;
 599 22.28.1.B., 22.28.1.C., 22.28.2.B., and 22.28.3.; and 22.29.2., 22.29.4., 22.29.6., 22.29.7., and
 600 22.29.8. For those shipments of category 2 quantities of radioactive material that meet the criteria
 601 of Part 17, Section 17.11, the shipping licensee shall also comply with the advance notification
 602 provisions of Part 17, Section 17.11.
- 603 22.25.3 The shipping licensee shall be responsible for meeting the requirements of **section D of**
 604 **this part 22.24 through 22.29** unless the receiving licensee has agreed in writing to arrange for
 605 the in-transit physical protection required under **section D of this part 22.24 through 22.29**.
- 606 * * *
- 607 **22.27 Advance Notification of Shipment of Category 1 Quantities of Radioactive Material.**
- 608 22.27.1 As specified in 22.27.1.A. and 22.27.1.B., each licensee shall provide advance
 609 notification to the Department and the governor of a State, or the governor's designee, of
 610 the shipment of licensed material in a category 1 quantity, through or across the
 611 boundary of the State, before the transport, or delivery to a carrier for transport of the
 612 licensed material outside the confines of the licensee's facility or other place of use or
 613 storage.
- 614 A. Procedures for submitting advance notification.
- 615 1. The notification **must be made to the Department and** to the office of each
 616 appropriate governor or governor's designee. **The contact information,**
 617 **including telephone and mailing addresses, of governors and governors'**
 618 **designees,** is available on the NRC's Web site at
 619 <https://scp.nrc.gov/special/designee.pdf>. A list of the contact information is also
 620 available upon request from the Director, Division of ~~Material Safety, State,~~
 621 ~~Tribal, and Rulemaking~~ **Materials Safety, Security, State, and Tribal** Programs,
 622 Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory
 623 Commission, Washington, DC 20555-0001. The notification to the Department
 624 must be made **by email** to the address specified in 22.4.
- 625 2. A notification delivered by mail must be postmarked at least 7 days before
 626 transport of the shipment commences at the shipping facility.
- 627 3. A notification delivered by any means other than mail must reach **the** Department
 628 at least 4 days before the transport of the shipment commences and must reach
 629 the office of the governor or the governor's designee at least 4 days before
 630 transport of a shipment within or through the State.
- 631 B. Information to be furnished in advance notification of shipment. Each advance notification
 632 of shipment of category 1 quantities of radioactive material must contain the following
 633 information, if available at the time of notification:
- 634 1. The name, address, and telephone number of the shipper, carrier, and receiver
 635 of the category 1 radioactive material;
- 636 2. The license numbers of the shipper and receiver;
- 637 3. A description of the radioactive material contained in the shipment, including the
 638 radionuclides and quantity;

Commented [JSJ39]:

Consistent with the Agreement State note regarding NRC [RATS 2018-3](#), licensees must provide the notification to the Department and not NRC.

The updated RATS 2018-3 note negates direction in NRC correspondence to CO dated [March 8, 2018](#) regarding NRC [RATS 2015-5](#).

The amended language also incorporates clarifying information for electronic and paper submissions to the department.

NRC Compatibility B.

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- 639 4. The point of origin of the shipment and the estimated time and date that shipment
640 will commence;
- 641 5. The estimated time and date that the shipment is expected to enter each State
642 along the route;
- 643 6. The estimated time and date of arrival of the shipment at the destination; and
- 644 7. A point of contact, with a telephone number, for current shipment information.
- 645 C. Revision notice.
- 646 1. The licensee shall provide any information not previously available at the time of
647 the initial notification, as soon as the information becomes available but not later
648 than commencement of the shipment, to the governor of the State or the
649 governor's designee, and to the Department.
- 650 2. A licensee shall promptly notify the governor of the State or the governor's
651 designee of any changes to the information provided in accordance with
652 22.27.1.B and 22.27.1.C.1 of this section. The licensee shall also immediately
653 notify the Department of any such changes.
- 654 D. Cancellation notice. Each licensee who cancels a shipment for which advance notification
655 has been sent shall send a cancellation notice to the governor of each State or to the
656 governor's designee previously notified and to the Department. The licensee shall send
657 the cancellation notice before the shipment would have commenced or as soon thereafter
658 as possible. The licensee shall state in the notice that it is a cancellation and identify the
659 advance notification that is being cancelled.
- 660 E. Records. The licensee shall retain a copy of the advance notification and any revision
661 and cancellation notices as a record for 3 years.
- 662 F. Protection of information. State officials, State employees, and other individuals, whether
663 or not licensees of NRC or an Agreement State, who receive schedule information of the
664 kind specified in 22.27.1.B shall protect that information against unauthorized disclosure
665 as specified in 22.16.4.

* * *

666
667 **RecordsSection E - Records**

668 **22.30 Form of Records.**

- 669 22.30.1 Each record required by this Part must be legible throughout the retention period
670 specified by each Department regulation. The record may be the original or a reproduced copy or
671 a microform, provided that the copy or microform is authenticated by authorized personnel and
672 that the microform is capable of producing a clear copy throughout the required retention period.
673 The record may also be stored in electronic media with the capability for producing legible,
674 accurate, and complete records during the required retention period. Records such as letters,
675 drawings, and specifications, must include all pertinent information such as stamps, initials, and
676 signatures. The licensee shall maintain adequate safeguards against tampering with and loss of
677 records.

678 **22.31 Record Retention.**

- 679 22.31.1 Licensees shall maintain the records that are required by the regulations in this Part for
680 the period specified by the appropriate regulation. If a retention period is not otherwise specified,

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681 these records must be retained until the Department terminates the facility's license. All records
682 related to this Part may be destroyed upon Department termination of the facility license.

683 ~~Enforcement~~ **Section F - Enforcement**

684 **22.32 Inspections.**

685 * * *

686 [NO FURTHER CHANGES TO RULE AFTER THIS POINT]
687