

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Hazardous Materials and Waste Management Division

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

6 CCR 1007-1 Part 22

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

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

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

PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE
MATERIAL

22.1 Authority.

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

Section A – General provisions

22.2 Scope, Purpose and Applicability.

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

* * *

22.2.2 Applicability.

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

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

- (1) Transports or delivers to a carrier for transport in a single shipment, a category 1 or category 2 quantity of radioactive material; or
- (2) Imports or exports a category 1 or category 2 quantity of radioactive material; the provisions only apply to the domestic portion of the transport.

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

Commented [JSJ1]:

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.

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 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 schedules.

Commented [JSJ3]: 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 [JSJ4]: Section 22.2 is formatted for alignment.

Commented [JSJ5]: This provision is replaced by the new/revised provisions in 22.2.3.

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

22.2.3.2 The materials incorporated by reference in this Part include only those versions that were in effect at the time of the most recent adoption of this Part, and not later amendments to the incorporated material, unless a prior version of the incorporated material is otherwise specifically noted, and in such case that prior version shall apply.

Commented [JSJ6]: For consistency with other recent rule revisions, the following standard language is added.

Commented [JSJ7]: This provision is added for consistency with the Colorado Administrative Procedure Act (24-4-103(12.5)(a)(2), CRS).

[NON-RATS ITEM]

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.

Commented [JSJ8]:

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

22.5 Reserved.

22.6 Specific Exemptions.

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

Commented [JSJ9]: Language revised as Colorado may not have the authority specified in the original language.

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

- 76 A. Use continuous physical barriers that allow access to the radioactive waste only through
77 established access control points;
- 78 B. Use a locked door or gate with monitored alarm at the access control point;
- 79 C. Assess and respond to each actual or attempted unauthorized access to determine
80 whether an actual or attempted theft, sabotage, or diversion occurred; and
- 81 D. Immediately notify the LLEA and request an armed response from the LLEA upon
82 determination that there was an actual or attempted theft, sabotage, or diversion of the
83 radioactive waste that contains category 1 or category 2 quantities of radioactive
84 material.

85 **22.7 Reserved**

86 ~~Background Investigations and Access Authorization Program~~ **Section B – Background investigations**
87 **and access authorization program**

88 **22.8 Personnel Access Authorization Requirements for Category 1 or Category 2 Quantities of**
89 **Radioactive Material.**

90 22.8.1 General.

- 91 A. Each licensee that possesses an aggregated quantity of radioactive material at or above
92 the category 2 threshold shall establish, implement, and maintain its access authorization
93 program in accordance with the requirements of **section B** of this Part.
- 94 B. An applicant for a new license and each licensee that would become newly subject to the
95 requirements of this ~~Part~~ **section B** upon application for modification of its license shall
96 implement the requirements of this ~~section B~~ **Part**, as appropriate, before taking
97 possession of an aggregated category 1 or category 2 quantity of radioactive material.
- 98 C. Any licensee that has not previously implemented the NRC Security Orders or been
99 subject to the provisions of ~~22.8 through 22.14~~ **this section B** shall implement the
100 provisions of ~~22.8 through 22.14~~ **this section B** before aggregating radioactive material to
101 a quantity that equals or exceeds the category 2 threshold.

102 * * *

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

106 **22.9 Access Authorization Program Requirements.**

107 22.9.1 Granting unescorted access authorization.

- 108 A. Licensees shall implement the requirements of **section B** of this Part for granting initial
109 or reinstated unescorted access authorization.
- 110 B. Individuals who have been determined to be trustworthy and reliable shall also complete
111 the security training required by 22.16.3 before being allowed unescorted access to
112 category 1 or category 2 quantities of radioactive material.

113 22.9.2 Reviewing officials.

A. Reviewing officials are the only individuals who may make trustworthiness and reliability determinations that allow individuals to have unescorted access to category 1 or category 2 quantities of radioactive materials possessed by the licensee.

B. Each licensee shall name one or more individuals to be reviewing officials. After completing the background investigation on the reviewing official, the licensee shall provide under oath or affirmation, a certification that the reviewing official is deemed trustworthy and reliable by the licensee. **Provide oath or affirmation certifications to the Department.** The fingerprints of the named reviewing official must be taken by a law enforcement agency, Federal or State agencies that provide fingerprinting services to the public, or commercial fingerprinting services authorized by a State to take fingerprints. The licensee shall re-certify that the reviewing official is deemed trustworthy and reliable every 10 years in accordance with 22.10.3.

1. **The oath or affirmation certifications required by 22.9.2.B shall be provided to the Department within 30 days of naming a new or additional individual as a reviewing official.**

2. **The licensee shall notify the Department in writing within 30 days of revoking a reviewing official certification.**

C. Reviewing officials must be permitted to have unescorted access to category 1 or category 2 quantities of radioactive materials or access to safeguards information or safeguards information-modified handling, if the licensee possesses safeguards information or safeguards information modified handling.

D. Reviewing officials cannot approve other individuals to act as reviewing officials.

E. A reviewing official does not need to undergo a new background investigation before being named by the licensee as the reviewing official if:

1. The individual has undergone a background investigation that included fingerprinting and an FBI criminal history records check and has been determined to be trustworthy and reliable by the licensee; or

2. The individual is subject to a category listed in 22.12.1.

22.9.3 Informed consent.

A. Licensees may not initiate a background investigation without the informed and signed consent of the subject individual. This consent must include authorization to share personal information with other individuals or organizations as necessary to complete the background investigation. Before a final adverse determination, the licensee shall provide the individual with an opportunity to correct any inaccurate or incomplete information that is developed during the background investigation. Licensees do not need to obtain signed consent from those individuals that meet the requirements of 22.10.2. A signed consent must be obtained prior to any reinvestigation.

B. The subject individual may withdraw his or her consent at any time. Licensees shall inform the individual that:

1. If an individual withdraws his or her consent, the licensee may not initiate any elements of the background investigation that were not in progress at the time the individual withdrew his or her consent; and

Commented [JSJ10]:

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

2. The withdrawal of consent for the background investigation is sufficient cause for denial or termination of unescorted access authorization.

22.9.4 Personal history disclosure.

- A. Any individual who is applying for unescorted access authorization shall disclose the personal history information that is required by the licensee's access authorization program for the reviewing official to make a determination of the individual's trustworthiness and reliability. Refusal to provide, or the falsification of, any personal history information required by **section B of this Part** is sufficient cause for denial or termination of unescorted access.

22.9.5 Determination basis.

- A. The reviewing official shall determine whether to permit, deny, unfavorably terminate, maintain, or administratively withdraw an individual's unescorted access authorization based on an evaluation of all of the information collected to meet the requirements of **section B of this Part**.
- B. The reviewing official may not permit any individual to have unescorted access until the reviewing official has evaluated all of the information collected to meet the requirements of **section B of this Part** and determined that the individual is trustworthy and reliable. The reviewing official may deny unescorted access to any individual based on information obtained at any time during the background investigation.

* * *

22.9.6 Procedures.

- A. Licensees shall develop, implement, and maintain written procedures for implementing the access authorization program. The procedures must include provisions for the notification of individuals who are denied unescorted access. The procedures must include provisions for the review, at the request of the affected individual, of a denial or termination of unescorted access authorization. The procedures must contain a provision to ensure that the individual is informed of the grounds for the denial or termination of unescorted access authorization and allow the individual an opportunity to provide additional relevant information.

22.9.7 Right to correct and complete information.

- A. Prior to any final adverse determination, licensees shall provide each individual subject to **section B of this Part** ~~22.8 through 22.14~~ with the right to complete, correct, and explain information obtained as a result of the licensee's background investigation. Confirmation of receipt by the individual of this notification must be maintained by the licensee for a period of 1 year from the date of the notification.
- B. If, after reviewing his or her criminal history record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, update, or explain anything in the record, the individual may initiate challenge procedures. These procedures include direct application by the individual challenging the record to the law enforcement agency that contributed the questioned information or a direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306 as set forth in 28 CFR **Part** 16.30 through 16.34. In the latter case, the Federal Bureau of Investigation (FBI) will

forward the challenge to the agency that submitted the data, and will request that the agency verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. Licensees must provide at least 10 days for an individual to initiate action to challenge the results of an FBI criminal history records check after the record being made available for his or her review. The licensee may make a final adverse determination based upon the criminal history records only after receipt of the FBI's confirmation or correction of the record.

* * *

22.10 Background Investigations.

22.10.1 Initial investigation.

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

1. Fingerprinting and an FBI identification and criminal history records check in accordance with 22.11;
2. Verification of true identity. Licensees shall verify the true identity of the individual who is applying for unescorted access authorization to ensure that the applicant is who he or she claims to be. A licensee shall review official identification documents (e.g., driver's license; passport; government identification; certificate of birth issued by the state, province, or country of birth) and compare the documents to personal information data provided by the individual to identify any discrepancy in the information. Licensees shall document the type, expiration, and identification number of the identification document, or maintain a photocopy of identifying documents on file in accordance with 22.13. Licensees shall certify in writing that the identification was properly reviewed, and shall maintain the certification and all related documents for review upon inspection;
3. Employment history verification. Licensees shall complete an employment history verification, including military history. Licensees shall verify the individual's employment with each previous employer for the most recent 7 years before the date of application;
4. Verification of education. Licensees shall verify that the individual participated in the education process during the claimed period;
5. Character and reputation determination. Licensees shall complete reference checks to determine the character and reputation of the individual who has applied for unescorted access authorization. Unless other references are not available, reference checks may not be conducted with any person who is known to be a close member of the individual's family, including but not limited to the individual's spouse, parents, siblings, or children, or any individual who resides in the individual's permanent household. Reference checks under **section B** of this Part must be limited to whether the individual has been and continues to be trustworthy and reliable;

Commented [JSJ11]:

Section 22.10.1 is modified for formatting to remove unneeded spaces.

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

246 6. The licensee shall also, to the extent possible, obtain independent information to
247 corroborate that provided by the individual (e.g., seek references not supplied by
248 the individual); and

249 7. If a previous employer, educational institution, or any other entity with which the
250 individual claims to have been engaged fails to provide information or indicates
251 an inability or unwillingness to provide information within a time frame deemed
252 appropriate by the licensee but at least after 10 business days of the request or if
253 the licensee is unable to reach the entity, the licensee shall document the refusal,
254 unwillingness, or inability in the record of investigation; and attempt to obtain the
255 information from an alternate source.

256 **22.10.2** Grandfathering.

257 A. Individuals who have been determined to be trustworthy and reliable for unescorted
258 access to category 1 or category 2 quantities of radioactive material under the fingerprint
259 Orders or equivalent Agreement State requirements may continue to have unescorted
260 access to category 1 and category 2 quantities of radioactive material without further
261 investigation. These individuals shall be subject to the reinvestigation requirement.

262 B. Individuals who have been determined to be trustworthy and reliable under the provisions
263 of 10 CFR Part 73 or the security orders for access to safeguards information,
264 safeguards information-modified handling, or risk-significant material may have
265 unescorted access to category 1 and category 2 quantities of radioactive material without
266 further investigation. The licensee shall document that the individual was determined to
267 be trustworthy and reliable under the provisions of 10 CFR Part 73 or a security order.
268 Security order, in this context, refers to any order that was issued by the NRC that
269 required fingerprints and an FBI criminal history records check for access to safeguards
270 information, safeguards information-modified handling, or risk significant material such as
271 special nuclear material or large quantities of uranium hexafluoride. These individuals
272 shall be subject to the reinvestigation requirement.

273 **22.10.3** Reinvestigations.

274 A. Licensees shall conduct a reinvestigation every 10 years for any individual with
275 unescorted access to category 1 or category 2 quantities of radioactive material. The
276 reinvestigation shall consist of fingerprinting and an FBI identification and criminal history
277 records check in accordance with 22.11. The reinvestigations must be completed within
278 10 years of the date on which these elements were last completed.

279 **22.11 Requirements for Criminal History Records Checks of Individuals Granted Unescorted**
280 **Access to Category 1 or Category 2 Quantities of Radioactive Material.**

281 **22.11.1** General performance objective and requirements.

282 A. Except for those individuals listed in 22.12 and those individuals grandfathered under
283 22.10.2., each licensee subject to the provisions of **section B** of this Part shall fingerprint
284 each individual who is to be permitted unescorted access to category 1 or category 2
285 quantities of radioactive material. Licensees shall transmit all collected fingerprints to the
286 U.S. Nuclear Regulatory Commission for transmission to the FBI. The licensee shall use
287 the information received from the FBI as part of the required background investigation to
288 determine whether to grant or deny further unescorted access to category 1 or category 2
289 quantities of radioactive materials for that individual.

290 * * *

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This section (22.10.2) modified for formatting to remove
unnneeded spaces.

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

* * *

22.11.2 Prohibitions.

* * *

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

22.11.3 Procedures for processing of fingerprint checks.

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

- ~~B. Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." (For guidance on making electronic payments, contact the Security Branch, Division of Facilities and Security at 301-492-3531.) (For guidance on making electronic payments, contact the Division of Physical and Cyber Security Policy by e-mailing Crimhist.Resource@nrc.gov.) Combined payment for multiple applications is acceptable. The U.S. Nuclear Regulatory Commission publishes the amount of the fingerprint check application fee on the NRC's public Web site. (To find the current fee amount, go to the Electronic Submittals page at <http://www.nrc.gov/site-help/e-submittals.html> and see the link for the Criminal History Program under Electronic Submission Systems.) (To find the current fee amount, go to the Licensee Criminal History Records Checks & Firearms Background Check information page at~~

Commented [JSJ13]:

This provision is amended for consistency with the November 18, 2019 technical corrections to 10 CFR 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](#)

Commented [JSJ14]:

This provision is amended for consistency with the November 18, 2019 technical corrections to 10 CFR 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](#)

340 <https://www.nrc.gov/security/chp.html> and see the link for How do I determine how
341 much to pay for the request?).

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

345 **22.12 Relief from Fingerprinting, Identification, and Criminal History Records Checks and Other**
346 **Elements of Background Investigations for Designated Categories of Individuals Permitted**
347 **Unescorted Access to Certain Radioactive Materials.**

348 22.12.1 Fingerprinting, and the identification and criminal history records checks required by
349 section 149 of the Atomic Energy Act of 1954, as amended, and other elements of the
350 background investigation are not required for the following individuals prior to granting
351 unescorted access to category 1 or category 2 quantities of radioactive materials:

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

354 B. A Member of Congress;

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

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

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

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

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

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

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

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

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

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

376 M. Any individual employed by a service provider licensee for which the service provider
377 licensee has conducted the background investigation for the individual and approved the
378 individual for unescorted access to category 1 or category 2 quantities of radioactive

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The following sections are formatted for alignment of
text and to remove unneeded spaces:

22.12.1

22.12.2

- 379 material. Written verification from the service provider must be provided to the licensee.
380 The licensee shall retain the documentation for a period of 3 years from the date the
381 individual no longer requires unescorted access to category 1 or category 2 quantities of
382 radioactive material.
- 383 22.12.2 Fingerprinting, and the identification and criminal history records checks required by
384 section 149 of the Atomic Energy Act of 1954, as amended, are not required for an
385 individual who has had a favorably adjudicated U.S. Government criminal history records
386 check within the last 5 years, under a comparable U.S. Government program involving
387 fingerprinting and an FBI identification and criminal history records check provided that
388 he or she makes available the appropriate documentation. Written confirmation from the
389 agency/employer that reviewed the criminal history records check must be provided to
390 the licensee. The licensee shall retain this documentation for a period of 3 years from the
391 date the individual no longer requires unescorted access to category 1 or category 2
392 quantities of radioactive material. These programs include, but are not limited to:
- 393 A. National Agency Check;
- 394 B. Transportation Worker Identification Credentials (TWIC) under 49 CFR part 1572;
- 395 C. Bureau of Alcohol, Tobacco, Firearms, and Explosives background check and clearances
396 under 27 CFR part 555;
- 397 D. Health and Human Services security risk assessments for possession and use of select
398 agents and toxins under 42 CFR part 73;
- 399 E. Hazardous Material security threat assessment for hazardous material endorsement to
400 commercial driver's license under 49 CFR part 1572; and
- 401 F. Customs and Border Protection's Free and Secure Trade (FAST) Program.
- 402 **22.13 Protection of Information.**
- 403 22.13.1 Each licensee who obtains background information on an individual under **section B of**
404 this Part shall establish and maintain a system of files and written procedures for
405 protection of the record and the personal information from unauthorized disclosure.
- 406 22.13.2 The licensee may not disclose the record or personal information collected and
407 maintained to persons other than the subject individual, his or her representative, or to
408 those who have a need to have access to the information in performing assigned duties
409 in the process of granting or denying unescorted access to category 1 or category 2
410 quantities of radioactive material, safeguards information, or safeguards information-
411 modified handling. No individual authorized to have access to the information may
412 disseminate the information to any other individual who does not have a need to know.
- 413 22.13.3 The personal information obtained on an individual from a background investigation may
414 be provided to another licensee:
- 415 A. Upon the individual's written request to the licensee holding the data to disseminate the
416 information contained in his or her file; and
- 417 B. The recipient licensee verifies information such as name, date of birth, social security
418 number, gender, and other applicable physical characteristics.

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The following sections are formatted for alignment of text and to remove unneeded spaces:

22.13.1
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22.13.5

419 22.13.4 The licensee shall make background investigation records obtained under **section B of**
420 this Part available for examination by an authorized representative of the Department to
421 determine compliance with the regulations and laws.

422 22.13.5 The licensee shall retain all fingerprint and criminal history records (including data
423 indicating no record) received from the FBI, or a copy of these records if the individual's
424 file has been transferred, on an individual for 3 years from the date the individual no
425 longer requires unescorted access to category 1 or category 2 quantities of radioactive
426 material.

427 **22.14 Access Authorization Program Review.**

428 22.14.1 Each licensee shall be responsible for the continuing effectiveness of the access
429 authorization program. Each licensee shall ensure that access authorization programs
430 are reviewed to confirm compliance with the requirements of **section B of** this Part and
431 that comprehensive actions are taken to correct any noncompliance that is identified. The
432 review program shall evaluate all program performance objectives and requirements.
433 Each licensee shall periodically (at least annually) review the access program content
434 and implementation.

435 22.14.2 The results of the reviews, along with any recommendations, must be documented. Each
436 review report must identify conditions that are adverse to the proper performance of the
437 access authorization program, the cause of the condition(s), and, when appropriate,
438 recommend corrective actions, and corrective actions taken. The licensee shall review
439 the findings and take any additional corrective actions necessary to preclude repetition of
440 the condition, including reassessment of the deficient areas where indicated.

441 22.14.3 Review records must be maintained for 3 years.

442 ~~Physical Protection Requirements During Use~~**Section C – Physical protection requirements during**
443 **use**

444 **22.15 Security Program.**

445 22.15.1 Applicability.

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

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

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

* * *

Commented [JSJ17]:

The following sections are formatted for alignment of
text and to remove unneeded spaces:

22.14.1

22.14.2

22.16 General Security Program Requirements.

22.16.1 Security plan.

A. Each licensee identified in 22.15.1. shall develop a written security plan specific to its facilities and operations. The purpose of the security plan is to establish the licensee's overall security strategy to ensure the integrated and effective functioning of the security program required by **section C of** this Part. The security plan must, at a minimum:

1. Describe the measures and strategies used to implement the requirements of **section C of** this Part; and

2. Identify the security resources, equipment, and technology used to satisfy the requirements of **section C of** this Part.

B. The security plan must be reviewed and approved by the individual with overall responsibility for the security program.

C. A licensee shall revise its security plan as necessary to ensure the effective implementation of Department requirements. The licensee shall ensure that:

1. The revision has been reviewed and approved by the individual with overall responsibility for the security program; and

2. The affected individuals are instructed on the revised plan before the changes are implemented.

D. The licensee shall retain a copy of the current security plan as a record for 3 years after the security plan is no longer required. If any portion of the plan is superseded, the licensee shall retain the superseded material for 3 years after the record is superseded.

22.16.2 Implementing procedures.

A. The licensee shall develop and maintain written procedures that document how the requirements of **section C of** this Part and the security plan will be met.

* * *

22.16.4 Protection of information.

A. Licensees authorized to possess category 1 or category 2 quantities of radioactive material shall limit access to and unauthorized disclosure of their security plan, implementing procedures, and the list of individuals that have been approved for unescorted access.

B. Efforts to limit access shall include the development, implementation, and maintenance of written policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, the security plan ~~and~~ implementing procedures, **and the list of individuals that have been approved for unescorted access.**

C. Before granting an individual access to the security plan, ~~or~~ implementing procedures, **or the list of individuals that have been approved for unescorted access**, licensees shall:

Commented [JSJ18]:

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.

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

Commented [JSJ19]:

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

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

Commented [JSJ20]:

This section is formatted for alignment of text and elimination of blank lines/space.

Commented [JSJ21]:

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

A. A description of the facilities and the category 1 and category 2 quantities of radioactive materials along with a description of the licensee's security measures that have been implemented to comply with **section C of this Part**; and

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

* * *

22.19 Monitoring, Detection, and Assessment.

22.19.1 Monitoring and detection.

* * *

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

* * *

22.20 Maintenance and Testing.

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

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

* * *

22.22 Security Program Review.

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

* * *

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

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

* * *

579 **22.25 Applicability of Physical Protection of Category 1 and Category 2 Quantities of Radioactive**
580 **Material During Transit.**

581 22.25.1 For shipments of category 1 quantities of radioactive material, each shipping licensee
582 shall comply with the requirements for physical protection contained in 22.26.1. and 22.26.5.;
583 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
584 22.29.8.

585 22.25.2 For shipments of category 2 quantities of radioactive material, each shipping licensee
586 shall comply with the requirements for physical protection contained in 22.26.2. through 22.26.5.;
587 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
588 22.29.8. For those shipments of category 2 quantities of radioactive material that meet the criteria
589 of Part 17, Section 17.11, the shipping licensee shall also comply with the advance notification
590 provisions of Part 17, Section 17.11.

591 22.25.3 The shipping licensee shall be responsible for meeting the requirements of **section D of**
592 **this part 22.24 through 22.29** unless the receiving licensee has agreed in writing to arrange for
593 the in-transit physical protection required under **section D of this part 22.24 through 22.29.**

594 * * *

595 **22.27 Advance Notification of Shipment of Category 1 Quantities of Radioactive Material.**

596 22.27.1 As specified in 22.27.1.A. and 22.27.1.B., each licensee shall provide advance
597 notification to the **NRC**, Department and the governor of a State, or the governor's designee, of
598 the shipment of licensed material in a category 1 quantity, through or across the boundary of the
599 State, before the transport, or delivery to a carrier for transport of the licensed material outside
600 the confines of the licensee's facility or other place of use or storage.

601 A. Procedures for submitting advance notification.

602 1. The notification **must be made to the Department, the NRC and to the office of**
603 **each appropriate governor or governor's designee. The contact information,**
604 **including telephone and mailing addresses, of governors and governors'**
605 **designees, is available on the NRC's Web site at**
606 ***https://scp.nrc.gov/special/designee.pdf*. A list of the contact information is also**
607 **available upon request from the Director, Division of ~~Material Safety, State,~~**
608 **~~Tribal, and Rulemaking~~ **Materials Safety, Security, State, and Tribal** Programs,**
609 **Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory**
610 **Commission, Washington, DC 20555-0001. The notification to the Department**
611 **must be made by email to the address specified in 22.4. **Notifications to the****
612 ****NRC must be to the NRC's Director, Office of Nuclear Security and Incident****
613 ****Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-****
614 ****0001. The notification to the NRC may be made by email to****
615 ****RAMQC_SHIPMENTS@nrc.gov or by fax to 301-816-5151.****

616 2. A notification delivered by mail must be postmarked at least 7 days before
617 transport of the shipment commences at the shipping facility.

618 3. A notification delivered by any means other than mail must reach **NRC and the**
619 **Department** at least 4 days before the transport of the shipment commences and
620 must reach the office of the governor or the governor's designee at least 4 days
621 before transport of a shipment within or through the State.

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Notification to NRC is added in this section, based on comments provided to Colorado in correspondence dated March 8, 2018 to address Part 22 comments regarding NRC [RATS 2015-5](#).

NRC Compatibility B

Commented [JSJ23]:

Due to a change in reorganization at NRC, the Division title is modified in 22.27.1.A, consistent with the 2018 changes to [10 CFR 37.77\(a\)\(1\)](#) in NRC [RATS 2018-3](#) and to address comments in NRC correspondence dated March 8, 2018 regarding NRC [RATS 2015-5](#).

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

NRC Compatibility B.

- 622 B. Information to be furnished in advance notification of shipment. Each advance notification
623 of shipment of category 1 quantities of radioactive material must contain the following
624 information, if available at the time of notification:
- 625 1. The name, address, and telephone number of the shipper, carrier, and receiver
626 of the category 1 radioactive material;
- 627 2. The license numbers of the shipper and receiver;
- 628 3. A description of the radioactive material contained in the shipment, including the
629 radionuclides and quantity;
- 630 4. The point of origin of the shipment and the estimated time and date that shipment
631 will commence;
- 632 5. The estimated time and date that the shipment is expected to enter each State
633 along the route;
- 634 6. The estimated time and date of arrival of the shipment at the destination; and
- 635 7. A point of contact, with a telephone number, for current shipment information.
- 636 C. Revision notice.
- 637 1. The licensee shall provide any information not previously available at the time of
638 the initial notification, as soon as the information becomes available but not later
639 than commencement of the shipment, to the governor of the State or the
640 governor's designee, **the NRC**, and to the Department.
- 641 2. A licensee shall promptly notify **the NRC and** the governor of the State or the
642 governor's designee of any changes to the information provided in accordance
643 with 22.27.1.B and 22.27.1.C.1 of this section. The licensee shall also
644 immediately notify the Department of any such changes.
- 645 D. Cancellation notice. Each licensee who cancels a shipment for which advance notification
646 has been sent shall send a cancellation notice to the **NRC, the** governor of each State or
647 to the governor's designee previously notified and to the Department. The licensee shall
648 send the cancellation notice before the shipment would have commenced or as soon
649 thereafter as possible. The licensee shall state in the notice that it is a cancellation and
650 identify the advance notification that is being cancelled.
- 651 E. Records. The licensee shall retain a copy of the advance notification and any revision
652 and cancellation notices as a record for 3 years.
- 653 F. Protection of information. State officials, State employees, and other individuals, whether
654 or not licensees of NRC or an Agreement State, who receive schedule information of the
655 kind specified in 22.27.1.B shall protect that information against unauthorized disclosure
656 as specified in 22.16.4.

* * *

RecordsSection E - Records

22.30 Form of Records.

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

22.31 Record Retention.

22.31.1 Licensees shall maintain the records that are required by the regulations in this Part for the period specified by the appropriate regulation. If a retention period is not otherwise specified, these records must be retained until the Department terminates the facility's license. All records related to this Part may be destroyed upon Department termination of the facility license.

Section F - Enforcement

22.32 Inspections.

* * *

[NO FURTHER CHANGES TO RULE AFTER THIS POINT]