

DRAFT 2 07/30/2020

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 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.~~

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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_regamendments.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 [JSJ22]: 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 [JSJ23]: 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 [JSJ24]: Section 22.2 is formatted for alignment.

Commented [JSJ25]: This provision is replaced by the new/revised provisions in 22.2.3.

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.

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

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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.

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

Commented [JSJ28]: Language revised as Colorado may not have the authority specified in the original language.

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.

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:

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

22.7 Reserved

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

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

22.8.1 General.

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

* * *

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

22.9 Access Authorization Program Requirements.

22.9.1 Granting unescorted access authorization.

A. Licensees shall implement the requirements of **section B** of this Part for granting initial or reinstated unescorted access authorization.

B. Individuals who have been determined to be trustworthy and reliable shall also complete the security training required by 22.16.3 before being allowed unescorted access to category 1 or category 2 quantities of radioactive material.

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.

Commented [JSJ29]:

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](#)

- 163 B. The subject individual may withdraw his or her consent at any time. Licensees shall
164 inform the individual that:
- 165 1. If an individual withdraws his or her consent, the licensee may not initiate any
166 elements of the background investigation that were not in progress at the time
167 the individual withdrew his or her consent; and
- 168 2. The withdrawal of consent for the background investigation is sufficient cause for
169 denial or termination of unescorted access authorization.
- 170 22.9.4 Personal history disclosure.
- 171 A. Any individual who is applying for unescorted access authorization shall disclose the
172 personal history information that is required by the licensee's access authorization
173 program for the reviewing official to make a determination of the individual's
174 trustworthiness and reliability. Refusal to provide, or the falsification of, any personal
175 history information required by **section B of** this Part is sufficient cause for denial or
176 termination of unescorted access.
- 177 22.9.5 Determination basis.
- 178 A. The reviewing official shall determine whether to permit, deny, unfavorably terminate,
179 maintain, or administratively withdraw an individual's unescorted access authorization
180 based on an evaluation of all of the information collected to meet the requirements of
181 **section B of** this Part.
- 182 B. The reviewing official may not permit any individual to have unescorted access until the
183 reviewing official has evaluated all of the information collected to meet the requirements
184 of **section B of** this Part and determined that the individual is trustworthy and reliable.
185 The reviewing official may deny unescorted access to any individual based on
186 information obtained at any time during the background investigation.
- 187 * * *
- 188 22.9.6 Procedures.
- 189 A. Licensees shall develop, implement, and maintain written procedures for implementing
190 the access authorization program. The procedures must include provisions for the
191 notification of individuals who are denied unescorted access. The procedures must
192 include provisions for the review, at the request of the affected individual, of a denial or
193 termination of unescorted access authorization. The procedures must contain a provision
194 to ensure that the individual is informed of the grounds for the denial or termination of
195 unescorted access authorization and allow the individual an opportunity to provide
196 additional relevant information.
- 197 22.9.7 Right to correct and complete information.
- 198 A. Prior to any final adverse determination, licensees shall provide each individual subject to
199 **section B of this Part**~~22.8 through 22.14~~ with the right to complete, correct, and explain
200 information obtained as a result of the licensee's background investigation. Confirmation
201 of receipt by the individual of this notification must be maintained by the licensee for a
202 period of 1 year from the date of the notification.
- 203 B. If, after reviewing his or her criminal history record, an individual believes that it is
204 incorrect or incomplete in any respect and wishes to change, correct, update, or explain
205 anything in the record, the individual may initiate challenge procedures. These
206 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

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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.

- 256 Part must be limited to whether the individual has been and continues to be
257 trustworthy and reliable;
- 258 6. The licensee shall also, to the extent possible, obtain independent information to
259 corroborate that provided by the individual (e.g., seek references not supplied by
260 the individual); and
- 261 7. If a previous employer, educational institution, or any other entity with which the
262 individual claims to have been engaged fails to provide information or indicates
263 an inability or unwillingness to provide information within a time frame deemed
264 appropriate by the licensee but at least after 10 business days of the request or if
265 the licensee is unable to reach the entity, the licensee shall document the refusal,
266 unwillingness, or inability in the record of investigation; and attempt to obtain the
267 information from an alternate source.
- 268 22.10.2 Grandfathering.
- 269 A. Individuals who have been determined to be trustworthy and reliable for unescorted
270 access to category 1 or category 2 quantities of radioactive material under the fingerprint
271 Orders or equivalent Agreement State requirements may continue to have unescorted
272 access to category 1 and category 2 quantities of radioactive material without further
273 investigation. These individuals shall be subject to the reinvestigation requirement.
- 274 B. Individuals who have been determined to be trustworthy and reliable under the provisions
275 of 10 CFR Part 73 or the security orders for access to safeguards information,
276 safeguards information-modified handling, or risk-significant material may have
277 unescorted access to category 1 and category 2 quantities of radioactive material without
278 further investigation. The licensee shall document that the individual was determined to
279 be trustworthy and reliable under the provisions of 10 CFR Part 73 or a security order.
280 Security order, in this context, refers to any order that was issued by the NRC that
281 required fingerprints and an FBI criminal history records check for access to safeguards
282 information, safeguards information-modified handling, or risk significant material such as
283 special nuclear material or large quantities of uranium hexafluoride. These individuals
284 shall be subject to the reinvestigation requirement.
- 285 22.10.3 Reinvestigations.
- 286 A. Licensees shall conduct a reinvestigation every 10 years for any individual with
287 unescorted access to category 1 or category 2 quantities of radioactive material. The
288 reinvestigation shall consist of fingerprinting and an FBI identification and criminal history
289 records check in accordance with 22.11. The reinvestigations must be completed within
290 10 years of the date on which these elements were last completed.
- 291 **22.11 Requirements for Criminal History Records Checks of Individuals Granted Unescorted**
292 **Access to Category 1 or Category 2 Quantities of Radioactive Material.**
- 293 22.11.1 General performance objective and requirements.
- 294 A. Except for those individuals listed in 22.12 and those individuals grandfathered under
295 22.10.2., each licensee subject to the provisions of **section B** of this Part shall fingerprint
296 each individual who is to be permitted unescorted access to category 1 or category 2
297 quantities of radioactive material. Licensees shall transmit all collected fingerprints to the
298 U.S. Nuclear Regulatory Commission for transmission to the FBI. The licensee shall use
299 the information received from the FBI as part of the required background investigation to
300 determine whether to grant or deny further unescorted access to category 1 or category 2
301 quantities of radioactive materials for that individual.
- 302 * * *

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

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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](#)

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

357 **22.12 Relief from Fingerprinting, Identification, and Criminal History Records Checks and Other**
 358 **Elements of Background Investigations for Designated Categories of Individuals Permitted**
 359 **Unescorted Access to Certain Radioactive Materials.**

360 22.12.1 Fingerprinting, and the identification and criminal history records checks required by
 361 section 149 of the Atomic Energy Act of 1954, as amended, and other elements of the
 362 background investigation are not required for the following individuals prior to granting
 363 unescorted access to category 1 or category 2 quantities of radioactive materials:

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

366 B. A Member of Congress;

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

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

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

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

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

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

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

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

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

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

388 M. Any individual employed by a service provider licensee for which the service provider
 389 licensee has conducted the background investigation for the individual and approved the
 390 individual for unescorted access to category 1 or category 2 quantities of radioactive
 391 material. Written verification from the service provider must be provided to the licensee.
 392 The licensee shall retain the documentation for a period of 3 years from the date the
 393 individual no longer requires unescorted access to category 1 or category 2 quantities of
 394 radioactive material.

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The following sections are formatted for alignment of text and
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22.12.1
 22.12.2

- 395 22.12.2 Fingerprinting, and the identification and criminal history records checks required by
 396 section 149 of the Atomic Energy Act of 1954, as amended, are not required for an
 397 individual who has had a favorably adjudicated U.S. Government criminal history records
 398 check within the last 5 years, under a comparable U.S. Government program involving
 399 fingerprinting and an FBI identification and criminal history records check provided that
 400 he or she makes available the appropriate documentation. Written confirmation from the
 401 agency/employer that reviewed the criminal history records check must be provided to
 402 the licensee. The licensee shall retain this documentation for a period of 3 years from the
 403 date the individual no longer requires unescorted access to category 1 or category 2
 404 quantities of radioactive material. These programs include, but are not limited to:
- 405 A. National Agency Check;
- 406 B. Transportation Worker Identification Credentials (TWIC) under 49 CFR ~~part~~**Part** 1572;
- 407 C. Bureau of Alcohol, Tobacco, Firearms, and Explosives background check and clearances
 408 under 27 CFR ~~part~~**Part** 555;
- 409 D. Health and Human Services security risk assessments for possession and use of select
 410 agents and toxins under 42 CFR ~~part~~**Part** 73;
- 411 E. Hazardous Material security threat assessment for hazardous material endorsement to
 412 commercial driver's license under 49 CFR ~~part~~**Part** 1572; and
- 413 F. Customs and Border Protection's Free and Secure Trade (FAST) Program.
- 414 **22.13 Protection of Information.**
- 415 22.13.1 Each licensee who obtains background information on an individual under **section B of**
 416 this Part shall establish and maintain a system of files and written procedures for
 417 protection of the record and the personal information from unauthorized disclosure.
- 418 22.13.2 The licensee may not disclose the record or personal information collected and
 419 maintained to persons other than the subject individual, his or her representative, or to
 420 those who have a need to have access to the information in performing assigned duties
 421 in the process of granting or denying unescorted access to category 1 or category 2
 422 quantities of radioactive material, safeguards information, or safeguards information-
 423 modified handling. No individual authorized to have access to the information may
 424 disseminate the information to any other individual who does not have a need to know.
- 425 22.13.3 The personal information obtained on an individual from a background investigation may
 426 be provided to another licensee:
- 427 A. Upon the individual's written request to the licensee holding the data to disseminate the
 428 information contained in his or her file; and
- 429 B. The recipient licensee verifies information such as name, date of birth, social security
 430 number, gender, and other applicable physical characteristics.
- 431 22.13.4 The licensee shall make background investigation records obtained under **section B of**
 432 this Part available for examination by an authorized representative of the Department to
 433 determine compliance with the regulations and laws.
- 434 22.13.5 The licensee shall retain all fingerprint and criminal history records (including data
 435 indicating no record) received from the FBI, or a copy of these records if the individual's
 436 file has been transferred, on an individual for 3 years from the date the individual no

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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

longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

22.14 Access Authorization Program Review.

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

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

22.14.3 Review records must be maintained for 3 years.

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

22.15 Security Program.

22.15.1 Applicability.

- A. Each licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material shall establish, implement, and maintain a security program in accordance with the requirements of **section C of this Part**.
- B. An applicant for a new license and each licensee that would become newly subject to the requirements of **section C of this Part** upon application for modification of its license shall implement the requirements of **section C of this Part**, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.
- C. Any licensee that has not previously implemented the Security Orders or **been subject to** equivalent Agreement State requirements or been subject to **section C of this Part 22.15 through 22.23** shall provide written notification to the Department to the address specified in 22.4 at least 90 days before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

* * *

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

Commented [JSJ36]:

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

22.14.1
22.14.2

- 479 2. Identify the security resources, equipment, and technology used to satisfy the
480 requirements of **section C** of this Part.
- 481 B. The security plan must be reviewed and approved by the individual with overall
482 responsibility for the security program.
- 483 C. A licensee shall revise its security plan as necessary to ensure the effective
484 implementation of Department requirements. The licensee shall ensure that:
- 485 1. The revision has been reviewed and approved by the individual with overall
486 responsibility for the security program; and
- 487 2. The affected individuals are instructed on the revised plan before the changes
488 are implemented.
- 489 D. The licensee shall retain a copy of the current security plan as a record for 3 years after
490 the security plan is no longer required. If any portion of the plan is superseded, the
491 licensee shall retain the superseded material for 3 years after the record is superseded.
- 492 22.16.2 Implementing procedures.
- 493 A. The licensee shall develop and maintain written procedures that document how the
494 requirements of **section C** of this Part and the security plan will be met.
495
- 496 * * *
- 497 22.16.4 Protection of information.
- 498 A. Licensees authorized to possess category 1 or category 2 quantities of radioactive
499 material shall limit access to and unauthorized disclosure of their security plan,
500 implementing procedures, and the list of individuals that have been approved for
501 unescorted access.
- 502 B. Efforts to limit access shall include the development, implementation, and maintenance of
503 written policies and procedures for controlling access to, and for proper handling and
504 protection against unauthorized disclosure of, the security plan **and** implementing
505 procedures, **and the list of individuals that have been approved for unescorted**
506 **access**.
- 507 C. Before granting an individual access to the security plan, ~~or~~ implementing procedures, **or**
508 **the list of individuals that have been approved for unescorted access**, licensees
509 shall:
- 510 1. Evaluate an individual's need to know the security plan, ~~or~~ implementing
511 procedures, **or the list of individuals that have been approved for**
512 **unescorted access**; and
- 513 2. If the individual has not been authorized for unescorted access to category 1 or
514 category 2 quantities of radioactive material, safeguards information, or
515 safeguards information-modified handling, the licensee must complete a
516 background investigation to determine the individual's trustworthiness and
517 reliability. A trustworthiness and reliability determination shall be conducted by
518 the reviewing official and shall include the background investigation elements
519 contained in 22.10.1.A.2. through 22.10.1.A.7.

Commented [JSJ37]:

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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- 520 D. Licensees need not subject the following individuals to the background investigation
521 elements for protection of information:
- 522 1. The categories of individuals listed in 22.12.1.A. through 22.12.1.M; or
- 523 2. Security service provider employees, provided written verification that the
524 employee has been determined to be trustworthy and reliable, by the required
525 background investigation in 22.10.1.A.2 through 22.10.1.A.7, has been provided
526 by the security service provider.

527 **E.** The licensee shall document the basis for concluding that an individual is trustworthy and
528 reliable and should be granted access to the security plan, ~~or~~ implementing procedures,
529 **or the list of individuals that have been approved for unescorted access.**

530 F. Licensees shall maintain a list of persons currently approved for access to the security
531 plan ~~or~~ implementing procedures, **or the list of individuals that have been approved**
532 **for unescorted access.** When a licensee determines that a person no longer needs
533 access to the security plan, ~~or~~ implementing procedures, **or the list of individuals that**
534 **have been approved for unescorted access,** or no longer meets the access
535 authorization requirements for access to the information, the licensee shall remove the
536 person from the approved list as soon as possible, but no later than 7 working days, and
537 take prompt measures to ensure that the individual is unable to obtain the security plan,
538 ~~or~~ implementing procedures, **or the list of individuals that have been approved for**
539 **unescorted access.**

540 G. When not in use, the licensee shall store its security plan, ~~and~~ implementing procedures,
541 **and the list of individuals that have been approved for unescorted access** in a
542 manner to prevent unauthorized access. Information stored in nonremovable electronic
543 form must be password protected.

544 H. The licensee shall retain as a record for 3 years after the document is no longer needed:

- 545 1. A copy of the information protection procedures; and
- 546 2. The list of individuals approved for access to the security plan, ~~or~~ implementing
547 procedures, **or the list of individuals that have been approved for**
548 **unescorted access.**

549 **22.17 LLEA Coordination.**

550 **22.17.1** A licensee subject to **section C of** this Part shall coordinate, to the extent practicable,
551 with an LLEA for responding to threats to the licensee's facility, including any necessary
552 armed response. The information provided to the LLEA must include:

- 553 A. A description of the facilities and the category 1 and category 2 quantities of radioactive
554 materials along with a description of the licensee's security measures that have been
555 implemented to comply with **section C of** this Part; and
- 556 B. A notification that the licensee will request a timely armed response by the LLEA to any
557 actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of
558 material.

559 * * *

560 **22.19 Monitoring, Detection, and Assessment.**

561 22.19.1 Monitoring and detection.

Commented [JSJ38]:

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

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

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

* * *

- 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.

* * *

Section D – Physical protection in transit

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

* * *

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

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

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

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

* * *

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

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

A. Procedures for submitting advance notification.

1. The notification **must be made to the Department and** to the office of each appropriate governor or governor's designee. **The contact information, including telephone and mailing addresses, of governors and governors' designees,** is available on the NRC's Web site at <https://scp.nrc.gov/special/designee.pdf>. A list of the contact information is also available upon request from the Director, Division of **Material Safety, State, Tribal, and Rulemaking Materials Safety, Security, State, and Tribal** Programs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The notification to the Department must be made **by email** to the address specified in 22.4.

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

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

B. Information to be furnished in advance notification of shipment. Each advance notification of shipment of category 1 quantities of radioactive material must contain the following information, if available at the time of notification:

1. The name, address, and telephone number of the shipper, carrier, and receiver of the category 1 radioactive material;
2. The license numbers of the shipper and receiver;
3. A description of the radioactive material contained in the shipment, including the radionuclides and quantity;
4. The point of origin of the shipment and the estimated time and date that shipment will commence;
5. The estimated time and date that the shipment is expected to enter each State along the route;
6. The estimated time and date of arrival of the shipment at the destination; and
7. A point of contact, with a telephone number, for current shipment information.

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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.

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

665 * * *

666 **RecordsSection E - Records**

667 **22.30 Form of Records.**

- 668 22.30.1 Each record required by this Part must be legible throughout the retention period
669 specified by each Department regulation. The record may be the original or a reproduced copy or
670 a microform, provided that the copy or microform is authenticated by authorized personnel and
671 that the microform is capable of producing a clear copy throughout the required retention period.
672 The record may also be stored in electronic media with the capability for producing legible,
673 accurate, and complete records during the required retention period. Records such as letters,
674 drawings, and specifications, must include all pertinent information such as stamps, initials, and
675 signatures. The licensee shall maintain adequate safeguards against tampering with and loss of
676 records.

677 **22.31 Record Retention.**

- 678 22.31.1 Licensees shall maintain the records that are required by the regulations in this Part for
679 the period specified by the appropriate regulation. If a retention period is not otherwise specified,
680 these records must be retained until the Department terminates the facility's license. All records
681 related to this Part may be destroyed upon Department termination of the facility license.

682 **EnforcementSection F - Enforcement**

683 **22.32 Inspections.**

684 * * *

685 [NO FURTHER CHANGES TO RULE AFTER THIS POINT]