

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
OFFICE OF WASTE, AIR, RADIATION AND REMEDIATION  
BUREAU OF RADIATION PROTECTION  
HARRISBURG, PA 17101

January 19, 2016

BRP INFORMATION NOTICE 2016-01

PART 37, PHYSICAL PROTECTION OF  
RADIOACTIVE MATERIAL, IMPLEMENTATION  
UPDATE

## ADDRESSEES

All Pennsylvania Department of Environmental Protection (DEP) Licensees of Category 1 and Category 2 Radiation Sources subject to Increased Controls (IC).

## PURPOSE

The DEP is issuing this Information Notice (IN) to bring to the attention of PA licensees the impending implementation of the new regulations in 10 CFR Part 37. For Pennsylvania licensees DEP has incorporated Part 37 by reference in 25 Pa. Code § 215.1(e). This IN is intended to provide a brief overview of the major differences between the current IC Orders and Part 37, and to note some of the new requirements contained therein. The current IC Orders in place with each PA IC license will be rescinded upon the implementation of Part 37 on March 18, 2016. Each PA license will be amended as such.

## DISCUSSION

The Nuclear Regulatory Commission (NRC) added a new Part 37 to its regulations which became effective for NRC licensees on May 20, 2013, and on March 19, 2014, for any Agreement State Licensee that operates under reciprocity in areas of exclusive federal jurisdiction. Pennsylvania has incorporated Part 37 by reference in 25 Pa. Code § 215.1(e) and will begin to implement this regulation on March 18, 2016. This regulation establishes physical security requirements for the possession and use of Category 1 and Category 2 quantities of radioactive material. Table 1 of Appendix A in 10 CFR Part 37 provides these thresholds. It is highly recommended that all Pennsylvania IC licensees review the regulations and guidance documents to become familiar with the added requirements and any of the existing requirements that are modified. Many guidance documents are available for licensees to prepare for the upcoming implementation including NUREG-2166 "Physical Security Best Practices for the Protection of Risk-Significant Radioactive Material" and SECY-11-0170 "10 CFR Part 37 Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material Implementation Plan." The DEP also reviewed these changes in a series of workshops held for our PA IC licenses in the fall of 2014.

Some major differences between Part 37 and the current IC Orders are as follows:

- 10 CFR 37.21 and 10 CFR 37.23 requires the reviewing trustworthy and reliable (T&R) official to be subject to the full background investigation, including fingerprinting. The T&R official was

not required to be fingerprinted under the IC Orders. The rule now allows the licensee to approve the reviewing official and submit the name under oath and affirmation. The Orders did not contain a requirement for recertification of the reviewing official. Additionally, the rule requires the fingerprints for the reviewing official to be taken by a law enforcement agency or Federal or State agency that provides finger printing services to the public. The rule now requires a signed consent from the individual before beginning any aspect of the background investigation, while also addressing the situation where an individual withdraws their consent.

- 10 CFR 37.25 (c) states that licensees shall conduct a reinvestigation every 10 years for any individual with unescorted access to category 1 or category 2 quantities of radioactive material. The reinvestigation shall consist of fingerprinting and FBI identification and criminal history records check in accordance with § 37.27. The reinvestigations must be completed within 10 years of the date on which these elements were last completed.
- 10 CFR 37.43 requires a written security plan while the IC Orders required a documented program. The new rule requires the plan to be approved by the individual with responsibility for the security program while the orders did not specify any approval. The rule also requires instruction on the plan before implementation.

A full comparison to the IC Order and the new Part 37 regulation can be found at: <http://pbadupws.nrc.gov/docs/ML1132/ML113290229.pdf> while the guidance in NUREG 2166 can be found at: <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr2166/>.

***The Department strongly recommends all IC licenses review these documents prior to the implementation date of March 18, 2016.***

## CONTACT

This Information Notice requires no written response. If you have any questions about the information in this notice, please contact the Radiation Control Division at 717-787-3720.

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