

## Subchapter XV — Physical Protections of Category 1 and Category 2 Quantities of Radioactive Material

**DHS 157.9700 Personnel access authorization. (1) GENERAL REQUIREMENTS.** (a) A licensee that possesses a quantity of radioactive material at or above the category 2 quantity of radioactive material threshold shall establish, implement, and maintain an access authorization program that meets the requirements of this subchapter.

(b) An applicant for a new license and a licensee that would become newly subject to the requirements of this subchapter upon application to amend its license shall implement the requirements of this subchapter as appropriate and be inspected by the department before taking possession of a category 1 or category 2 quantity of radioactive material.

(c) A licensee that has not previously implemented the physical protection license condition requirements or been subject to the provisions of this section and ss. DHS 157.9701 to 157.9706 shall implement the provisions of this section and ss. DHS 157.9701 to 157.9706 before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

**(2) GENERAL PERFORMANCE OBJECTIVE.** The licensee's access authorization program shall ensure that the individuals specified in sub. (3) (a) are trustworthy and reliable.

**(3) APPLICABILITY.** (a) A licensee shall subject all of the following individuals to the access authorization program specified under s. DHS 157.9701:

1. An individual whose assigned duties require unescorted access to category 1 or category 2 quantities of radioactive material or to any device that contains the radioactive material.

2. An individual named as a reviewing official for the licensee.

(b) A licensee need not subject the categories of individuals listed in s. DHS 157.9704 (1) (a) to (m) to the investigation elements of the access authorization program.

(c) Except as provided in par. (d), a licensee shall approve for unescorted access to category 1 or category 2 quantities of radioactive material only those individuals with job duties that require unescorted access to category 1 or category 2 quantities of radioactive material.

(d) A licensee may include individuals needing access to safeguards information-modified handling under 10 CFR 73 in the access authorization program under this section and ss. DHS 157.9701 to 157.9706.

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**DHS 157.9701 Access authorization program. (1) GRANTING UNESCORTED ACCESS AUTHORIZATION.** (a) A licensee shall implement the requirements of this subchapter for granting initial or reinstated unescorted access authorization.

(b) An individual who has been determined to be trustworthy and reliable shall complete the security training required under s. DHS 157.9708 (3) before being allowed unescorted access to category 1 or category 2 quantities of radioactive material.

**(2) REVIEWING OFFICIALS.** (a) Only a reviewing official 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 a licensee.

(b) Each licensee shall name one or more individuals to be a reviewing official. After completing a background investigation on the reviewing official, the licensee shall provide to the department, under oath or affirmation, a written certification that the reviewing official is deemed trustworthy and reliable by the licensee. The fingerprints of the named reviewing official shall be taken by a law enforcement agency, a federal or state agency that provides fingerprinting services to the public, or a commercial fingerprinting service authorized by a state to take fingerprints. Every 10 years, the licensee shall recertify that the reviewing official is deemed trustworthy and reliable under s. DHS 157.9702 (3).

(c) The licensee shall permit its reviewing official 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) A reviewing official may not approve other individuals to act as a reviewing official.

(e) A reviewing official does not need to undergo a new background investigation before being named by a licensee as the reviewing official if any of the following apply:

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

2. The individual is subject to a category listed in s. DHS 157.9704 (1).

**(3) INFORMED CONSENT.** (a) A licensee may not initiate a background investigation without the informed and signed consent of the individual. This consent shall include authorization to share personal information with other individuals or organizations as necessary to complete the background investigation. Before making a final adverse determination, the licensee shall provide the individual with an opportunity to correct any inaccurate or incomplete information that is obtained during the background investigation. A licensee does not need to obtain a signed consent from those individuals that meet the requirements of s. DHS 157.9702 (2). A signed consent shall be obtained before any reinvestigation.

(b) The subject individual may withdraw consent to a background investigation at any time. If an individual withdraws consent for a background investigation, the licensee shall inform the individual of all of the following:

1. The licensee may not initiate any elements of the background investigation that were not in progress at the time the individual withdrew consent.

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

**(4) PERSONAL HISTORY DISCLOSURE.** An individual who applies 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 under this subchapter is sufficient cause for denial or termination of unescorted access.

**(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 the information collected to meet the requirements of this subchapter.

(b) The reviewing official may not permit any individual to have unescorted access until the reviewing official has evaluated all the information collected to meet the requirements of this section and has 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.

(c) The reviewing official may terminate or administratively withdraw an individual's unescorted access authorization based on information obtained after the background investigation has been completed and the individual has been granted unescorted access authorization.

(d) A licensee shall document the basis for concluding whether or not there is reasonable assurance that an individual is trustworthy and reliable.

(e) A licensee shall maintain a list of individuals who are approved for unescorted access authorization. When a licensee determines that an individual no longer requires unescorted access or no longer meets the access authorization requirements, the licensee shall remove the individual from the approved list as soon as possible, but no later than 7 working days of that determination, and take prompt measures to ensure that the individual does not have unescorted access to category 1 or category 2 quantities of radioactive material.

**(6) PROCEDURES.** (a) A licensee shall develop, implement, and maintain written procedures for implementing the access authorization program. The procedures shall include provisions for providing notification to individuals who are denied unescorted access authorization, or whose unescorted access authorization is terminated; provisions for the review of the decision at the request of the affected individual; and provisions allowing the individual an opportunity to provide additional relevant information.

(b) The notification required under par. (a) shall include the grounds for denial or termination and the licensee's procedures on how the individual may request a review of the decision to deny or terminate the individual's unescorted access authorization.

**(7) RIGHT TO CORRECT AND COMPLETE INFORMATION.** (a) Before any final adverse determination is made, a licensee shall provide to each individual who is subject to a background investigation under this subchapter, written notice that the individual may complete, correct, and explain information obtained as a result of the background investigation. A copy of the notice and confirmation of receipt of the notice shall be maintained by the licensee for one year from the date of the notice.

(b) Challenge procedures may be initiated by an individual who believes that criminal history records obtained by the licensee are incorrect or incomplete in any respect, and who wishes to change, correct, update, or explain anything in the record. A licensee shall provide at least 10 days for an individual to challenge the results of an FBI criminal history records check after the record is made available for the individual's review. A 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.

**Note:** These procedures include direct application to the law enforcement agency that contributed the questioned information by the individual challenging the record, or a direct challenge to the Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division regarding the accuracy or completeness of any entry on the individual's criminal history record. 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. An individual may challenge the accuracy or completeness of any entry on the criminal history record by applying directly 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 16.30 through 16.34.

**(8) RECORDS.** (a) A licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

(b) A licensee shall retain as a record for 3 years, a copy of any superseded portion of the access authorization program procedures, and a copy of current access authorization program procedures after they are no longer needed.

(c) A licensee shall retain the list of persons approved for unescorted access authorization for 3 years after the list is superseded or replaced.

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**DHS 157.9702 Background investigations. (1) INITIAL INVESTIGATION.** (a) *Background investigation elements.* Before allowing an individual unescorted access to category 1 or category 2 quantities of radioactive material or to the devices that contain the material, a licensee shall complete a background investigation of the individual seeking unescorted access authorization. The scope of the investigation shall encompass at least the 7 years preceding the date of the background investigation or the length of time since the individual's eighteenth birthday, whichever is shorter. The background investigation shall include at a minimum all of the following:

1. 'Criminal history check.' The licensee shall conduct fingerprinting and a FBI identification and criminal history records check under s. DHS 157.9703.

2. 'Verification of true identity.' The licensee shall verify the true identity of the applicant. The 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 provided by the individual to identify any discrepancy in the information. The licensee shall document the type, expiration, and identification number of the identification document, or maintain

a photocopy of identifying documents on file under s. DHS 157.9705. The licensee 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.' The licensee shall verify the applicant's employment history, including military history, with each employer for the 7 years immediately preceding the date of application.

4. 'Verification of education.' The licensee shall verify any educational credentials or experience claimed by the applicant.

5. 'Character and reputation determination.' The licensee shall complete reference checks to determine the character and reputation of the applicant. Unless other references are not available, references may not be obtained from any person who is known to be a close member of the applicant's family, including but not limited to the applicant's spouse, parents, siblings, or children, or any individual who resides in the applicant's permanent household. Reference checks under this subchapter shall be obtained for the limited purpose of determining whether the applicant has been and continues to be trustworthy and reliable.

6. 'Additional information.' The licensee shall, to the extent possible, obtain independent information to corroborate information provided by the applicant, including but not limited to, seeking references not supplied by the applicant.

(b) *Unresponsive background investigation.* If a current or previous employer, educational institution, or any other entity with which the applicant claims to have been engaged, fails to provide information, or indicates an inability or unwillingness to provide information, or if a licensee cannot reach the entity, within a time frame considered appropriate by the licensee but no more than 10 business days after the request, the licensee shall document the refusal, unwillingness, or inability in the background investigation record and attempt to obtain the information from an alternate source.

**(2) GRANDFATHERING.** (a) 1. Except as provided in subd. 2. an individual who has been determined to be trustworthy and reliable for unescorted access to category 1 or category 2 quantities of radioactive material under the fingerprint orders may continue to have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation.

2. An individual grandfathered under subd. 1. shall be subject to the reinvestigation requirement under sub. (3).

(b) 1. Except as provided under subd. 2. an individual who has been determined to be trustworthy and reliable under 10 CFR 73 or the security orders for access to safeguards information, safeguards information-modified handling, or risk-significant material, may have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. A licensee shall document that the individual was determined to be trustworthy and reliable under 10 CFR 73 or a security order.

2. An individual grandfathered under subd. 1. shall be subject to the reinvestigation requirement under sub. 3.

**(3) REINVESTIGATIONS.** A licensee 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 a FBI identification and criminal history records check under s. DHS 157.9703. The reinvestigations shall be completed within 10 years of the date on which fingerprinting and an FBI identification and criminal history records check under s. DHS 157.9703 were last completed.

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**DHS 157.9703 Criminal history records checks of individuals granted unescorted access. (1) GENERAL PERFORMANCE OBJECTIVE AND REQUIREMENTS.** (a) Except for those individuals listed in s. DHS 157.9704 and those individuals grandfathered under s. DHS 157.9702 (2), a licensee subject to the provisions of this subchapter shall fingerprint each individual seeking unescorted access to category 1 or category 2 quantities of radioactive material. The licensee shall transmit all collected fingerprints to the NRC for transmission to the FBI. The licensee shall use the information received from the FBI as part of the required background investigation to determine whether the individual will be granted or denied unescorted access to category 1 or category 2 quantities of radioactive materials.

(b) The licensee shall notify each affected individual that the individual's fingerprints will be used to secure a review of the individual's criminal history record, and shall also provide notice to the individual of the procedures for revising the record or adding explanations to the record.

(c) Fingerprinting is not required if a licensee is reinstating an individual's unescorted access authorization to category 1 or category 2 quantities of radioactive materials and all the following apply:

1. The individual returns to the same facility that granted unescorted access authorization within 365 days of the termination of his or her unescorted access authorization.

2. The individual's previous unescorted access authorization was terminated under favorable conditions.

(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 this subchapter, fingerprint orders, or 10 CFR 73. An existing criminal history records check file may be transferred to a licensee asked to grant unescorted access under s. DHS 157.9705 (3).

(e) A licensee shall use the information obtained as part of a criminal history records check solely to determine an individual's suitability for unescorted access authorization to category 1 or category 2 quantities of radioactive materials; access to safeguards information; or safeguards information-modified handling.

**(2) PROHIBITIONS.** (a) A licensee may not base a final determination to deny an individual unescorted access authorization to category 1 or category 2 quantities of radioactive material solely on the basis of information received from the FBI's criminal history records indicating any of the following:

1. An arrest more than one year old for which there is no information of the disposition of the case.

2. An arrest that resulted in dismissal of the charge or an acquittal.

(b) A licensee may not use information received from a criminal history records check obtained under this subchapter 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.

**(3) PROCEDURES FOR PROCESSING OF FINGERPRINT CHECKS.** (a) To comply with this subchapter, a licensee shall submit to the U.S. Nuclear Regulatory Commission, Director, Division of ~~Facilities and Security~~Physical and Cyber Security Policy, 11545 Rockville Pike, ~~ATTN: Criminal History Program/Mail Stop T-07D04MT-8B20~~, Rockville, Maryland 20852-2738, ~~ATTN: Criminal History Program, Mail Stop TWB-05-B32M~~, one completed, legible standard fingerprint card (Form FD-258, ORIMDNR000Z), an electronic fingerprint scan ~~or, if~~ 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 1-301-492-3531, or by email to FORMS.Resource@nrc.gov emailing MAILSVS.Resource@nrc.gov.~~ Guidance on submitting electronic fingerprints can be found at ~~http://www.nrc.gov/site-help/esubmittals.html~~https://www.nrc.gov/security/chp.html.

(b) Fees for the processing of fingerprint checks are due upon application. The licensee 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 301-415-7513~~ Division of Physical and Cyber Security Policy by emailing Crimhist.Resource@nrc.gov. Combined payment for multiple applications is acceptable. The nuclear regulatory commission publishes the amount of the fingerprint check application fee on the NRC's public website. 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~~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?.

(c) The nuclear regulatory commission will forward to the submitting licensee all data received from the FBI as a result of a licensee's application for criminal history records checks.

**History:** CR 16-078: cr. Register January 2018 No. 745, eff. 2-1-18; renumbered from DHS 157.103 under s. 13.92 (4) (b) 1., Stats., and correction in (1) (a), (d) made under s. 13.92 (4) (b) 7., Stats., Register January 2018 No. 745.

**DHS 157.9704 Relief from fingerprinting, identification, and criminal history records checks and other elements of background investigation.** (1) Fingerprinting, and the identification and criminal history records checks required by section 149 of the Atomic Energy Act of 1954, as amended, and other elements of the background investigation are not required for the following individuals before granting unescorted access to category 1 or category 2 quantities of radioactive materials:

(a) An employee of the commission or of the executive branch of the U.S. government who has undergone fingerprinting for a prior U.S. government criminal history records check.

(b) A member of Congress.

(c) An employee of a member of Congress or congressional committee who has undergone fingerprinting for a prior U.S. government criminal history records check.

(d) The Governor of a state or his or her designated state employee representative.

(e) Federal, state, or local law enforcement personnel.

(f) State radiation control program directors and state homeland security advisors or their designated state employee representatives.

(g) Agreement state employees conducting security inspections on behalf of the NRC under an agreement executed under section 274.i. of the Atomic Energy Act.

(h) Representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S. IAEA Safeguards Agreement who have been certified by the NRC.

(i) Emergency response personnel who are responding to an emergency.

(j) Commercial vehicle drivers for road shipments of category 1 and category 2 quantities of radioactive material.

(k) Package handlers at transportation facilities such as freight terminals and railroad yards.

(L) Any individual who has an active federal security clearance, provided that he or she makes available to the licensee the appropriate documentation. Written confirmation from the agency or employer or both that granted the federal security clearance or reviewed the criminal history records check shall be provided to a licensee. The licensee shall retain documentation of an individual's federal security clearance and written confirmation from the agency, employer, or both that granted the federal security clearance or reviewed the criminal history records check for 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

(m) Any individual employed by a service provider licensee for which the service provider licensee has conducted the background investigation for the individual and approved the individual for unescorted access to category 1 or category 2 quantities of radioactive material. The service provider license shall provide written verification to the licensee. The licensee shall retain the documentation of the written verification for 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

**(2)** Fingerprinting, and the identification and criminal history records checks required by section 149 of the Atomic Energy Act of 1954, as amended, are not required for an individual who has had a favorably adjudicated U.S. Government criminal history records check within the last 5 years, under a comparable U.S. Government program involving fingerprinting and a FBI identification and criminal history records check provided that he or she makes available the appropriate documentation. Written confirmation from

the agency or employer or both that reviewed the criminal history records check shall be provided to the licensee. A licensee shall retain the provided documentation for 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material. These programs include, but are not limited to the following:

- (a) National Agency Check.
- (b) Transportation Worker Identification Credentials (TWIC) under 49 CFR 1572.
- (c) Bureau of Alcohol, Tobacco, Firearms, and Explosives background check and clearances under 27 CFR 555.
- (d) Health and Human Services security risk assessments for possession and use of select agents and toxins under 42 CFR 73.
- (e) Hazardous Material security threat assessment for hazardous material endorsement to commercial driver's license under 49 CFR 1572.
- (f) Customs and Border Protection's Free and Secure Trade (FAST) Program.

**History:** CR 16-078: cr. Register January 2018 No. 745, eff. 2-1-18; renumbered from DHS 157.104 under s. 13.92 (4) (b) 1., Stats., Register January 2018 No. 745.

**DHS 157.9705 Protection of information. (1)** Any licensee who obtains background investigation information on an individual under this subchapter shall establish and maintain a system of files and written procedures for protection of the record and the personal information from unauthorized disclosure.

**(2)** A licensee may not disclose the background investigation record or personal history information collected and maintained to persons other than the subject individual, the individual's representative, or to persons who need access to the information in order to perform assigned duties in the process of granting or denying unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling. No individual authorized to have access to the information may disseminate the information to any other individual who does not have a need to know.

**(3)** The personal information obtained on an individual from a background investigation may be provided to another licensee under the following conditions:

(a) Upon the individual's written request to a licensee holding the data to disseminate the information contained in the individual's file.

(b) The recipient licensee verifies information such as name, date of birth, social security number, gender, and other applicable physical characteristics.

**(4)** The licensee shall make background investigation records obtained under this subchapter available for examination by the department.

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

**History:** CR 16-078: cr. Register January 2018 No. 745, eff. 2-1-18; renumbered from DHS 157.105 under s. 13.92 (4) (b) 1., Stats., Register January 2018 No. 745.

**DHS 157.9706 Access authorization program review. (1)** Each licensee shall be responsible for the continuing effectiveness of its access authorization program. Each licensee shall ensure that its access authorization program is reviewed for compliance with the requirements of this subchapter and that comprehensive actions are taken to correct any noncompliance that is identified. The licensee shall evaluate all program performance objectives and requirements. Each licensee shall periodically, and at least annually, at intervals not to exceed 13 months, review its access authorization program content and implementation.

**(2)** The licensee shall document the results of its access authorization program review and any recommendations. Documentation of the review shall identify conditions that are adverse to the proper performance of the access authorization program, the cause of the conditions, and, when appropriate, recommended corrective actions, and corrective actions taken. A licensee shall review the results of its access authorization program review and take any additional corrective actions necessary to preclude repetition of the condition, including additional review.

**(3)** The licensee shall maintain its access authorization program review records for 3 years.

**History:** CR 16-078: cr. Register January 2018 No. 745, eff. 2-1-18; renumbered from DHS 157.106 under s. 13.92 (4) (b) 1., Stats., Register January 2018 No. 745.

**DHS 157.9707 Security program. (1) APPLICABILITY.** (a) Any licensee that possesses a category 1 or category 2 quantity of radioactive material shall establish, implement, and maintain a security program under the requirements of this subchapter.

(b) An applicant for a new license and any licensee that would become newly subject to the requirements of this subchapter upon application for amendment of its license shall implement the applicable requirements of this subchapter and be inspected by the department, before taking possession of a category 1 or category 2 quantity of radioactive material.

(c) Any licensee that has not previously implemented the physical protection license condition requirements or been subject to ss. DHS 157.9707 to 157.9715 shall provide written notification to the department at least 90 days before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

**(2) GENERAL PERFORMANCE OBJECTIVE.** Each licensee shall establish, implement, and maintain a security program that is designed to monitor and immediately detect, assess, and respond to an actual or attempted unauthorized access to category 1 or category 2 quantities of radioactive material.

**(3) PROGRAM FEATURES.** Each licensee's security program shall comply with ss. DHS 157.9708 to 157.9714, as applicable.

**History:** CR 16-078: cr. Register January 2018 No. 745, eff. 2-1-18; renumbered from DHS 157.107 under s. 13.92 (4) (b) 1., Stats., and correction in (1) (c), (3) made under s. 13.92 (4) (b) 7., Stats., Register January 2018 No. 745.

DHS 157.9708 **General security program requirements. (1) SECURITY PLAN.** (a) Any licensee identified in s. DHS 157.9707 (1) shall develop a written security plan specific to its facilities and operations specifying the overall security strategy that ensures the integrated and effective functioning of the security program required by this subchapter. At a minimum, the security plan shall:

1. Describe the measures and strategies used to implement the requirements of this subchapter.
2. Identify the security resources, equipment, and technology used to satisfy the requirements of this subchapter.

(b) The security plan shall 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 department's requirements are effectively implemented. A licensee shall ensure all of the following:

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

2. Individuals affected by the revised security plan are notified and given instruction about changes to the plan before they are implemented.

(d) A licensee shall retain a copy of the current security plan as a record for 3 years after the security plan is no longer required. A licensee shall retain a record of any superseded portion of the security plan for 3 years after it is superseded.

**(2) IMPLEMENTING PROCEDURES.** (a) A licensee shall develop and maintain written procedures that document how the requirements of this subchapter and the security plan will be implemented.

(b) The implementing procedures and revisions to these procedures shall be approved in writing by the individual with overall responsibility for the security program.

(c) A licensee shall retain a copy of the current implementing procedures as a record for 3 years after they are no longer required. A licensee shall retain a record of any superseded portion of the implementing procedures for 3 years after they are superseded.

**(3) TRAINING.** (a) A licensee shall conduct training to ensure that individuals implementing the security program possess and maintain the knowledge, skills, and abilities required to carry out their assigned duties and responsibilities effectively. The training shall include instruction in all of the following:

1. The licensee's security program, implementing procedures, and the purposes and functions of the security measures employed to secure category 1 or category 2 quantities of radioactive material.

2. The responsibility to report promptly to the licensee any condition that causes or may cause a violation of the department's requirements.

3. The responsibility of the licensee to report promptly to the LLEA and licensee any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material.

4. The appropriate response to security alarms.

(b) In determining those individuals who will be trained on the security program, a licensee shall consider each individual's assigned activities during authorized use and response to potential situations involving actual or attempted theft, diversion, or sabotage of category 1 or category 2 quantities of radioactive material. The extent of the training provided to an individual shall be commensurate with the individual's potential involvement in the security of category 1 or category 2 quantities of radioactive material.

(c) Refresher training shall be provided at a frequency not to exceed 12 months and when significant changes have been made to the security program. Refresher training shall include all of the following:

1. Review of the training requirements under sub. (3) and any changes made to the security program since the last training.

2. Reports on any relevant security issues, problems, and lessons learned.

3. Relevant results of the department's inspections.

4. Relevant results of the licensee's program review and testing and maintenance.

(d) A licensee shall maintain records of the initial and refresher training for 3 years from the date of the training. The training records shall include dates of the training, topics covered, a list of licensee personnel in attendance, and related information.

**(4) PROTECTION OF INFORMATION.** (a) A licensee 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, a licensee shall do all of the following:

1. Evaluate an individual's need to know the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access.

2. If the individual has not been authorized for unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling, the licensee shall complete a background investigation to determine the individual's trustworthiness and reliability. A trustworthiness and reliability determination shall be conducted by the reviewing official and shall include the background investigation elements contained in s. DHS 157.9702 (1) (a) 2. to 6. and (b).

(d) A licensee need not subject any of the following individuals to the background investigation elements for protection of information:

1. The categories of individuals listed in s. DHS 157.9704 (1) (a) to (m).

2. Employees of security service providers for whom written verification has been provided to the licensee by the security service provider that indicates the employee has been determined to be trustworthy and reliable based upon the background investigation elements contained in s. DHS 157.9702 (1) (a) 2. to 6. and (2).

(e) A licensee shall document the basis for concluding that an individual is trustworthy and reliable and should be granted access to the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access.

(f) A licensee shall maintain a list of persons currently approved for access to the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access. When a licensee determines that a person no longer needs access to the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access. or no longer meets the access authorization requirements for access to the information, the licensee shall remove the person from the approved list as soon as possible, but no later than 7 working days, and take prompt measures to ensure that the individual cannot obtain the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access.

(g) When not in use, a licensee shall store its security plan, ~~and~~ implementing procedures, and the list of individuals that have been approved for unescorted access in a manner to prevent unauthorized access. Information stored in non-removable electronic form shall be password protected.

(h) A licensee shall retain all of the following as a record for 3 years after the document is no longer needed:

1. A copy of the information protection procedures.

2. The list of individuals approved for access to the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access.

**History:** CR 16-078: cr. Register January 2018 No. 745, eff. 2-1-18; renumbered from DHS 157.108 under s. 13.92 (4) (b) 1., Stats., correction in (1) (a), (4) (c) 2., (d) 1., 2. made under s. 13.92 (4) (b) 7., Stats., and correction in (4) (d) 2. made under s. 35.17, Stats., Register January 2018 No. 745.

**DHS 157.9709 LLEA coordination. (1)** A licensee subject to this subchapter shall coordinate, to the extent practicable, with an LLEA for responding to threats to a licensee's facility, including any necessary armed response. The information provided to the LLEA shall include all the following:

(a) A description of the facilities and the category 1 and category 2 quantities of radioactive materials along with a description of the security measures that have been implemented by the licensee to comply with this subchapter.

(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.

**(2)** A licensee shall notify the department within 3 business days if any of the following occur:

(a) The LLEA has not responded to the request for coordination within 60 days of the coordination request.

(b) The LLEA notifies the licensee that the LLEA does not plan to participate in coordination activities.

**(3)** A licensee shall document its efforts to coordinate with the LLEA. The documentation shall be kept for 3 years.

**(4)** A licensee shall coordinate with the LLEA at least every 12 months, or when changes to the facility design or operation adversely affect the licensee's potential vulnerability to theft, sabotage, or diversion of its material.

**History:** CR 16-078: cr. Register January 2018 No. 745, eff. 2-1-18; renumbered from DHS 157.109 under s. 13.92 (4) (b) 1., Stats., Register January 2018 No. 745.

**DHS 157.9710 Security zones. (1)** A licensee shall ensure that all category 1 and category 2 quantities of radioactive material are used or stored within licensee established security zones. Security zones may be permanent or temporary.

**(2)** Temporary security zones shall be established as necessary to meet a licensee's transitory or intermittent business activities, such as periods of maintenance, source delivery, and source replacement.

**(3)** Unescorted access to security zones shall only be permitted to approved individuals through the following conditions, or combinations of conditions:

(a) Category 1 and category 2 quantities of radioactive materials are isolated by the use of continuous physical barriers that allow access to the security zone only through established access control points. A physical barrier is a natural or man-made structure or formation sufficient for the isolation of the category 1 or category 2 quantities of radioactive material within a security zone.

(b) The security zone is directly controlled by approved individuals at all times.

**(4)** For category 1 quantities of radioactive material during periods of maintenance, source receipt, preparation for shipment, installation, or source removal or exchange, a licensee shall, at a minimum, provide sufficient numbers of individuals approved for unescorted access to maintain continuous surveillance of sources in temporary security zones and in any security zone in which physical barriers or intrusion detection systems have been disabled to allow such activities.

**(5)** Individuals not approved for unescorted access to category 1 or category 2 quantities of radioactive material shall be escorted by an approved individual when in a security zone.

**History:** CR 16-078: cr. Register January 2018 No. 745, eff. 2-1-18; renumbered from DHS 157.110 under s. 13.92 (4) (b) 1., Stats., Register January 2018 No. 745.

**DHS 157.9711 Monitoring, detection, assessment, communication, and response. (1) MONITORING AND DETECTION.** (a) A licensee shall establish and maintain the capability to continuously monitor and immediately detect all unauthorized entries into its security zones. A licensee shall provide the means to maintain continuous monitoring and detection capability if the primary power source is lost, or provide for an alarm and response if this capability to continuously monitor and immediately detect unauthorized entries is lost.

(b) Monitoring and detection shall be performed by at least one of the following:

1. A monitored intrusion detection system that is linked to an onsite or offsite central monitoring facility.

2. Electronic devices for intrusion detection alarms that will alert nearby facility personnel.
3. A monitored video surveillance system.
4. Direct visual surveillance by approved individuals located within the security zone.
5. Direct visual surveillance by a licensee designated individual located outside the security zone.

(c) A licensee subject to this subchapter shall detect unauthorized removal of the radioactive material from the security zone by establishing and maintaining the following capabilities:

1. For category 1 quantities of radioactive material, immediate detection of any attempted unauthorized removal of the radioactive material from the security zone. Immediate detection capability shall be provided by any of the following:
  - a. Electronic sensors linked to an alarm.
  - b. Continuous monitored video surveillance.
  - c. Direct visual surveillance.
2. For category 2 quantities of radioactive material, weekly verification through physical checks, tamper indicating devices, use, or other means to ensure that the radioactive material is present.

(2) **ASSESSMENT OF ACTUAL OR ATTEMPTED UNAUTHORIZED ENTRY.** A licensee shall immediately assess each actual or attempted unauthorized entry into the security zone to determine whether the unauthorized access was an actual or attempted theft, sabotage, or diversion.

(3) **PERSONNEL COMMUNICATIONS AND DATA TRANSMISSION.** For personnel and automated or electronic systems supporting a licensee's monitoring, detection, and assessment systems, a licensee shall comply with all of the following:

(a) Maintain continuous communication capability for personnel and electronic data transmission and processing capability among site security systems.

(b) Provide an alternative communication capability for personnel, and an alternative data transmission and processing capability if the primary means of communication or data transmission and processing is lost. Alternative communications and data transmission systems shall not be subject to the same failure modes as the primary systems.

(4) **RESPONSE TO ACTUAL OR ATTEMPTED UNAUTHORIZED ACCESS, THEFT, SABOTAGE, OR DIVERSION.** A licensee shall immediately respond to any actual or attempted unauthorized access to the security zones, or actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material at licensee facilities or temporary job sites. For any unauthorized access involving an actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material, a licensee's response shall include immediately requesting an armed response from the LLEA.

**History:** CR 16-078: cr. Register January 2018 No. 745, eff. 2-1-18; renumbered from DHS 157.111 under s. 13.92 (4) (b) 1., Stats., Register January 2018 No. 745.

**DHS 157.9712 Maintenance and testing.** (1) Any licensee subject to this subchapter 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 subchapter shall be inspected and tested for operability and performance at the frequency suggested by the manufacturer. If there is no suggested frequency by the manufacturer, testing shall be performed, at a minimum, every 12 months.

(2) A licensee shall maintain records documenting maintenance and testing activities for 3 years.

**History:** CR 16-078: cr. Register January 2018 No. 745, eff. 2-1-18; renumbered from DHS 157.112 under s. 13.92 (4) (b) 1., Stats., Register January 2018 No. 745.

**DHS 157.9713 Requirements for mobile devices.** Any licensee that possesses mobile devices containing category 1 or category 2 quantities of radioactive material shall comply with all the following:

(1) Have 2 independent physical controls, forming tangible barriers that secure the material from unauthorized removal when the mobile device is not under direct control and constant surveillance by the licensee.

(2) For a mobile device in or on a vehicle or trailer, unless the health and safety requirements for a site prohibit the disabling of the vehicle, a licensee shall use a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee. A licensee shall not rely on the removal of an ignition key to meet this requirement.

**History:** CR 16-078: cr. Register January 2018 No. 745, eff. 2-1-18; renumbered from DHS 157.113 and DHS 157.9713 (intro.), (1), (2) renumbered from DHS 157.113 (1) (intro.), (a), (b) under s. 13.92 (4) (b) 1., Stats., Register January 2018 No. 745.

**DHS 157.9714 Security program review.** (1) Each licensee shall be responsible for the continuing effectiveness of the security program. Each licensee shall review the security program to confirm compliance with the requirements of this subchapter and to ensure that comprehensive actions are taken to correct any noncompliance. The licensee shall review the radioactive material security program content and implementation periodically, and at least annually, at intervals not to exceed 13 months.

(2) The licensee shall document the results of the review, along with any recommendations, identify conditions that are adverse to the proper performance of the security program, the cause of the condition, and, when appropriate, recommend corrective actions, and corrective actions taken. A licensee shall review the results of the review and take any additional corrective actions necessary to preclude repetition of adverse conditions, including further review.

(3) A licensee shall maintain the review documentation for 3 years.

**History:** CR 16-078: cr. Register January 2018 No. 745, eff. 2-1-18; renumbered from DHS 157.114 under s. 13.92 (4) (b) 1., Stats., Register January 2018 No. 745.

**DHS 157.9715 Reporting events. (1)** A licensee shall immediately notify the LLEA after determining that an unauthorized entry resulted in an actual or attempted theft, sabotage, or diversion of a category 1 or category 2 quantity of radioactive material. A licensee shall notify the department by telephone as soon as possible after initiating a response, but not at the expense of causing delay or interfering with the LLEA response to the event. In no case shall the notification to the department be later than 4 hours after the discovery of any attempted or actual theft, sabotage, or diversion.

**(2)** A licensee shall assess any suspicious activity related to possible theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material and notify the LLEA as appropriate. A licensee shall notify the department by telephone as soon as possible but not later than 4 hours after notifying the LLEA.

**(3)** Within 30 days of the initial notification by phone required in subs. (1) and (2), the licensee shall also submit a written report to the department. The written report shall include sufficient information for department analysis and evaluation, including identification of any necessary corrective actions to prevent future instances.

**Note:** The department may be contacted at: Department of Health Services, Radiation Protection Section, P.O. Box 2659, Madison, WI, 53701-2659. Telephone contact is: 608-267-4797 during normal business hours or 608-258-0099 after hours.

**History:** CR 16-078: cr. Register January 2018 No. 745, eff. 2-1-18; renumbered from DHS 157.115 under s. 13.92 (4) (b) 1., Stats., Register January 2018 No. 745.

**DHS 157.9716 Additional requirements for transfer of category 1 and category 2 quantities of radioactive material.** A licensee transferring a category 1 or category 2 quantity of radioactive material to a licensee of the department, the NRC, or another agreement state shall meet all of the following license verification provisions instead of those listed in s. DHS 157.13 (15) (d):

**(1)** Before transferring a category 1 quantity of radioactive material, the licensee making the transfer shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred and that the transferee is authorized to receive radioactive material at the location requested for delivery. If the verification is conducted by contacting the license issuing authority, the licensee making the transfer shall document the verification. Verification is not needed for transfers within the same organization.

**(2)** Before transferring a category 2 quantity of radioactive material, the licensee making the transfer shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. Verification is not needed for transfers within the same organization.

**(3)** In an emergency where a licensee making the transfer cannot reach the license issuing authority and the license verification system is nonfunctional, a licensee may accept a written certification by the transferee that it is authorized by license to receive the type, form, and quantity of radioactive material to be transferred. The certification shall include the transferee's license number, current revision number, issuing agency, expiration date, and for a category 1 shipment, the authorized address. The licensee making the transfer shall keep a copy of the certification and shall confirm the certification through the NRC's license verification system or by contacting the license issuing authority by the end of the next business day.

**(4)** The licensee transferring the radioactive material shall keep a copy of the verification documentation as a record for 3 years.

**History:** CR 16-078: cr. Register January 2018 No. 745, eff. 2-1-18; renumbered from DHS 157.116 under s. 13.92 (4) (b) 1., Stats., Register January 2018 No. 745.

**DHS 157.9717 Transit. (1)** For shipments of category 1 quantities of radioactive material, each shipping licensee shall comply with the requirements for physical protection contained in ss. DHS 157.9718 (1) and (5), 157.9719, 157.9720 (1) (a), (2) (a), and (3), and 157.9721 (1), (3), (5), (7), and (8).

**(2)** For shipments of category 2 quantities of radioactive material, each shipping licensee shall comply with the requirements for physical protection contained in ss. DHS 157.9718 (2) to (5), 157.9720 (1) (b) and (c), (2) (b), and (3), and 157.9721 (2), (4), and (6) to (8). For those shipments of category 2 quantities of radioactive material that meet the criteria of s. DHS 157.94 (5) (b), the shipping licensee shall also comply with the advance notification provisions of s. DHS 157.94 (5).

**(3)** The shipping licensee shall be responsible for meeting the requirements of this subchapter unless the receiving licensee has agreed in writing to implement the physical protection requirements under this subchapter for materials in transit.

**History:** CR 16-078: cr. Register January 2018 No. 745, eff. 2-1-18; renumbered from DHS 157.117 under s. 13.92 (4) (b) 1., Stats., correction in (1), (2) made under s. 13.92 (4) (b) 7., Stats., and correction in (1), (2) made under s. 35.17, Stats., Register January 2018 No. 745.

**DHS 157.9718 Preplanning and coordination of shipments. (1)** Any licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 1 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall complete all of the following:

(a) Preplan and coordinate shipment arrival and departure times with the receiving licensee.

(b) Preplan and coordinate shipment information with the governor or the governor's designee of any state through which the shipment will pass to discuss the state's intention to provide law enforcement escorts and identify safe havens.

(c) Document the preplanning and coordination activities.

**(2)** Any licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 2 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall coordinate the shipment no-later-than arrival time and the expected shipment arrival with the receiving licensee. A licensee shall document the coordination activities.

**(3)** Any licensee who receives a shipment of a category 2 quantity of radioactive material shall confirm receipt of the shipment with the originator. If the shipment has not arrived by the no-later-than arrival time, the receiving licensee shall notify the originator.

(4) Any licensee who transports or plans to transport a shipment of a category 2 quantity of radioactive material, and determines that the shipment will arrive after the no-later-than arrival time provided under sub. (2), shall promptly notify the receiving licensee of the new no-later-than arrival time.

(5) A licensee shall retain a copy of the documentation for preplanning and coordination, and any revision thereof, as a record for 3 years.

**History:** CR 16-078: cr. Register January 2018 No. 745, eff. 2-1-18; renumbered from DHS 157.118 under s. 13.92 (4) (b) 1., Stats., Register January 2018 No. 745.

**DHS 157.9719 Advance notification of shipment.** A licensee shall provide advanced notification, as provided in subs. (1) and (2), of the shipment of licensed material in a category 1 quantity, to, within, or across the boundary of the state, before the shipment, or before delivery to a carrier for shipment of the licensed material outside the confines of the licensee's facility or other place of use or storage.

(1) PROCEDURES FOR SUBMITTING ADVANCE NOTIFICATION. (a) The notification shall be made to the department and to the office of each governor or governor's designee of any state to, within, or through which the material is shipped. ~~The contact information, including telephone and mailing addresses, of governors and governors' designees, is available on the U.S. Nuclear Regulatory Commission website at <http://sep.nrc.gov/special/designee.pdf>. A list of the contact information is also available upon request from the Director, Division of Materials Safety, Security, State, and Tribal Programs, and Rulemaking Programs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.~~

(b) A notification delivered by mail shall be postmarked at least 7 days before transport of the shipment commences at the shipping facility.

(c) A notification delivered by any means other than mail shall reach the department at least 4 days before the transport of the shipment commences and shall reach the office of any governor or the governor's designee at least 4 days before transport of a shipment to, within, or through the state.

~~**Note 2:** The contact information, including telephone and mailing addresses, of governors and governors' designees, is available on the U.S. Nuclear Regulatory Commission website at <http://sep.nrc.gov/special/designee.pdf>. A list of the contact information is also available upon request from the Director, Division of Materials Safety, Security, State, and Tribal Programs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.~~

**Note 1:** The department may be contacted at: Department of Health Services, Radiation Protection Section, P.O. Box 2659, Madison, WI, 53701-2659. Telephone contact is: 608-267-4797 during normal business hours or 608-258-0099 after hours.

(2) INFORMATION TO BE FURNISHED IN ADVANCE NOTIFICATION. Each advance notification of shipment of category 1 quantities of radioactive material shall contain all of the following information, if available at the time of notification:

- (a) The name, address, and telephone number of the shipper, carrier, and receiver of the category 1 radioactive material.
- (b) The license numbers of the shipper and receiver.
- (c) A description of the radioactive material contained in the shipment, including the radionuclides and quantity.
- (d) The point of origin of the shipment and the estimated time and date that shipment will commence.
- (e) The estimated time and date that the shipment is expected to enter each state along the route.
- (f) The estimated time and date of arrival of the shipment at the destination.
- (g) A point of contact, with a telephone number, for current shipment information.

(3) REVISION NOTICE. (a) A licensee shall provide any information not previously available at the time of the initial notification, as soon as the information becomes available but not later than commencement of the shipment, to the governor of the state or the governor's designee and to the department.

(b) A licensee shall promptly notify the governor of the state or the governor's designee of any changes to the information provided under subs. (1) and (3) (a). A licensee shall also immediately notify the department of any such changes.

(4) CANCELLATION NOTICE. Any licensee who cancels a shipment for which advance notification has been sent shall send a cancellation notice to the department and to the governor of each state or to the governor's designee previously notified. The licensee shall send the cancellation notice before the shipment would have commenced or as soon thereafter as possible. The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being cancelled.

(5) RECORDS. A licensee shall retain a copy of the advance notification and any revision and cancellation notices as a record for 3 years.

(6) PROTECTION OF INFORMATION. State officials, state employees, and other individuals, whether or not licensees of the Commission or an Agreement State, who receive schedule information of the kind specified in sub. (2) shall protect that information against unauthorized disclosure as specified in s. DHS 157.9708 (4).

**History:** CR 16-078: cr. Register January 2018 No. 745, eff. 2-1-18; renumbered from DHS 157.119 under s. 13.92 (4) (b) 1., Stats., and correction in (6) made under s. 13.92 (4) (b) 7., Stats., Register January 2018 No. 745.

**DHS 157.9720 Physical protection during shipment. (1) SHIPMENTS BY ROAD.** (a) Any licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material by road shall do all the following:

1. Ensure that movement control centers are established to maintain position information of the shipment from a remote location. These movement control centers shall monitor shipments at all times, and have the ability to immediately communicate with the appropriate law enforcement agencies in an emergency.

2. Ensure that redundant communications are established that allow the transporter to contact the escort vehicle and movement control center at all times. Redundant communications shall not be subject to the same interference factors as the primary communication.

3. Ensure that shipments are continuously and actively monitored by a telemetric position monitoring system or an alternative tracking system reporting to a movement control center. A movement control center shall provide positive confirmation of the

location, status, and control over the shipment. The movement control center shall be prepared to promptly implement preplanned procedures in response to deviations from the authorized route or a notification of actual, attempted, or suspicious activities related to the theft, loss, or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.

4. Provide an individual to accompany the driver for highway shipments with a driving time period greater than the maximum number of allowable hours of service in a 24-hour duty day as established by the U.S. department of transportation federal motor carrier safety administration. The accompanying individual may be another driver.

5. Develop written normal and contingency procedures to address all the following:

a. Notifications to the communication center and law enforcement agencies.

b. Communication protocols. Communication protocols shall include a strategy for the use of authentication codes and duress codes and provisions for refueling or other stops, detours, and locations where communication is expected to be temporarily lost.

c. Loss of communications.

d. Responses to an actual or attempted theft or diversion of a shipment.

6. Ensure that drivers, accompanying personnel, and movement control center personnel have access to the normal and contingency procedures.

(b) Any licensee that transports category 2 quantities of radioactive material shall maintain constant control or surveillance or both during transit and have the capability for immediate communication to summon appropriate response or assistance.

(c) Any licensee who delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall do all of the following:

1. Use carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control or surveillance or both, the package tracking system shall allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control.

2. Use carriers that maintain constant control or surveillance or both during transit and have the capability for immediate communication to summon appropriate response or assistance; and

3. Use carriers that have established tracking systems that require an authorized signature before releasing the package for delivery or return.

**(2) SHIPMENTS BY RAIL.** (a) Any licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material by rail shall do all the following:

1. Ensure that rail shipments are monitored by a telemetric position monitoring system or an alternative tracking system that reports to the licensee, third party, or railroad communications center. The communications center shall provide positive confirmation of the location of the shipment and its status. The communications center shall implement preplanned procedures in response to deviations from the authorized route or to a notification of actual, attempted, or suspicious activities related to the theft or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.

2. Ensure that periodic reports to the communications center are made at preset intervals.

(b) Any licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material by rail shall do all the following:

1. Use carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control or surveillance or both, the package tracking system shall allow the shipper or transporter to identify when and where the package was last reported and when it should arrive at the next point of control.

2. Use carriers that maintain constant control or surveillance or both during transit and have the capability for immediate communication to summon appropriate response or assistance.

3. Use carriers that have established tracking systems that require an authorized signature before releasing the package for delivery or return.

**(3) INVESTIGATIONS.** Any licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall immediately conduct an investigation upon the discovery that a category 1 shipment is lost or missing. Any licensee who makes arrangements for the shipment of category 2 quantities of radioactive material shall immediately conduct an investigation, in coordination with the receiving licensee, of any shipment that has not arrived by the designated no-later-than arrival time.

**History:** CR 16-078: cr. Register January 2018 No. 745, eff. 2-1-18; renumbered from DHS 157.120 under s. 13.92 (4) (b) 1., Stats., Register January 2018 No. 745.

**DHS 157.9721 Reporting of events during shipping. (1)** The shipping licensee shall notify the LLEA in the area of the shipment's last confirmed location and the department by telephone within one hour of its determination that a shipment of category 1 quantities of radioactive material is lost or missing. During the investigation required by s. DHS 157.9720 (3), the shipping licensee shall provide agreed upon updates to the department on the status of the investigation.

**(2)** The shipping licensee shall initially notify the department by telephone within 4 hours of the shipping licensee's determination that a shipment of category 2 quantities of radioactive material is lost or missing. The licensee shall further notify the department, if the radioactive material has not been located and secured after 24 hours of the initial determination that the shipment is lost or missing.

**(3)** The shipping licensee shall notify the designated LLEA along the shipment route as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment or suspicious activities related to the theft or diversion of a shipment of a category

1 quantity of radioactive material. As soon as possible after notifying the LLEA, the licensee shall notify the department by telephone upon discovery of any actual or attempted theft or diversion of a shipment, or any suspicious activity related to the shipment of category 1 radioactive material.

(4) The shipping licensee shall notify the department by telephone as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment, or any suspicious activity related to the shipment, of a category 2 quantity of radioactive material.

(5) The shipping licensee shall notify the department by telephone and the LLEA as soon as possible upon recovery of any lost or missing category 1 quantities of radioactive material.

(6) The shipping licensee shall notify the department by telephone as soon as possible upon recovery of any lost or missing category 2 quantities of radioactive material.

(7) The licensee shall submit a written report to the department within 30 days of providing the telephone notification to an LLEA or the department of the discovery of any actual or attempted theft or diversion of a shipment under subs. (1) to (4). A written report is not required for notifications of suspicious activities related to a shipment. The report shall set forth all the following information:

(a) A description of the licensed material involved, including kind, quantity, and chemical and physical form.

(b) A description of the circumstances under which the loss or theft occurred.

(c) A statement of disposition, or probable disposition, of the licensed material involved.

(d) Actions that have been taken, or will be taken, to recover the material.

(e) Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed material.

(8) After filing the written report under sub. (7), a licensee shall report to the department any additional substantive information on the loss or theft of the category 1 or category 2 quantity of radioactive material within 30 days after the licensee learns of such information.

**Note:** The department may be contacted at: Department of Health Services, Radiation Protection Section, P.O. Box 2659, Madison, WI, 53701-2659. Telephone contact is: 608-267-4797 during normal business hours or 608-258-0099 after hours.

**History:** CR 16-078: cr. Register January 2018 No. 745, eff. 2-1-18; renumbered from DHS 157.121 under s. 13.92 (4) (b) 1., Stats., and correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register January 2018 No. 745.

**DHS 157.9722 Record requirements for the physical protection of Category 1 and 2 quantities of radioactive material.** (1) **FORM OF RECORDS.** Each record required by this subchapter shall be legible throughout the retention period specified under sub. (2). 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 shall include all pertinent information such as stamps, initials, and signatures. A licensee shall maintain adequate safeguards against tampering with and loss of records.

(2) **RECORD RETENTION.** A licensee shall maintain the records that are required under this subchapter for the period specified by the applicable provision. If a retention period is not otherwise specified, records shall be retained until the department terminates the facility's license. All records related to this subchapter may be destroyed upon the department's termination of the facility license.

**History:** CR 16-078: cr. Register January 2018 No. 745, eff. 2-1-18; renumbered from DHS 157.122 under s. 13.92 (4) (b) 1., Stats., Register January 2018 No. 745.