

EXECUTIVE SUMMARY

Final-Omitted Rulemaking U.S. Nuclear Regulatory Commission Consistency Rule – Incorporation by Reference (25 Pa. Code Chapters 215, 217, 219, 220 and 230)

Summary and Purpose of the Final-Omitted Rulemaking

This final-omitted rulemaking amends the Department of Environmental Protection's (DEP) radioactive materials regulations in Chapters 215, 217, 219, 220, and 230 to exclude specific provisions of the United States Nuclear Regulatory Commission's (NRC) regulations from incorporation by reference. Pennsylvania and the NRC entered into an agreement in 2008 in which the Commonwealth agreed to oversee and regulate most types of radioactive materials used in the state. As part of that agreement, Pennsylvania's radioactive materials program must remain compatible with the NRC's radioactive materials program as required by Federal law under 42 U.S.C. § 2021(d)(2). Pennsylvania meets this requirement by incorporating the appropriate NRC regulations by reference in its radiation protection regulations. The NRC recently identified provisions of the Federal regulations that only the NRC has the authority to implement and, therefore, should be excluded from being incorporated by reference in Pennsylvania's regulations. This final-omitted rulemaking is necessary for Pennsylvania's radioactive materials program to remain compatible with the NRC's program.

The failure to exclude these sections in Pennsylvania's incorporation by reference of select Federal regulations was an oversight in the 2008 rulemaking that was promulgated to support the 2008 agreement with the NRC. A few examples of these regulations that are designated "NRC-only" are: 10 CFR 19.14, which concerns the NRC's access to facilities, records and workers during inspections; 10 CFR 20.2203, which contains requirements for reports that must be submitted to the NRC regarding radioactive material exposure incidents and limit exceedances; and 10 CFR 70.82, which lists actions the NRC may take during a state of war or national emergency. Regulations under the exclusive authority of the NRC cannot be incorporated by reference by Pennsylvania. DEP does not have the authority under the 2008 agreement to implement these sections of the Federal regulations and has never enforced them. These amendments clarify DEP's proper authority and the NRC's legal authority under their respective regulations.

Affected Parties

The final-omitted rulemaking will not affect any radioactive material licensee or other person or entity.

Advisory Groups

DEP presented this final-omitted rulemaking to the Radiation Protection Advisory Committee (RPAC) at its April 30, 2025, meeting. At that meeting, the RPAC supported DEP's recommendation to move forward with this final-omitted rulemaking.

Public Comments

Notice of proposed rulemaking is omitted under the Commonwealth Documents Law (CDL). Section 204(3) of the CDL allows an agency to omit the notice of proposed rulemaking if the “agency for good cause finds... that the [public notice and comment] procedures specified in sections 201 and 202 are in the circumstances impracticable, unnecessary, or contrary to the public interest.”

Public notice and solicitation of public comments on the amendments to the radioactive materials regulations is unnecessary because public comments could not alter the need for or content of these amendments. Finalizing these amendments without public notice and comment is in the public interest to ensure that Pennsylvania’s regulations accurately reflect DEP’s authority in an expeditious manner. Likewise, finalizing these amendments without public notice and comment is in the interest of those holding radioactive material licenses in the Commonwealth because the amendments clarify the proper authority of DEP and the NRC under the agencies’ respective radioactive materials programs. No changes to any radioactive material license will result from this final-omitted rulemaking.

Recommendation

DEP recommends adoption of this final-omitted rulemaking.