

EXECUTIVE SUMMARY

Final-Omitted Rulemaking U.S. Nuclear Regulatory Commission (NRC) Consistency Rule 25 Pa. Code Chapters 215, 217, 230 and 232

Summary and Purpose of the Final-Omitted Rulemaking

This final-omitted rulemaking amends Chapters 215, 217, 230 and 232 (relating to general provisions; licensing of radioactive material; packaging and transportation of radioactive material; and licenses and radiation safety requirements for irradiators) to exclude specific provisions of Title 10, Chapter I (relating to Nuclear Regulatory Commission) of the Code of Federal Regulations (CFR) from incorporation-by-reference in these chapters. The Commonwealth and the Nuclear Regulatory Commission (NRC) entered into an agreement in 2008 in which the Commonwealth agreed to oversee and regulate most types of radioactive materials used in this Commonwealth. As part of that agreement, the Commonwealth's radioactive materials program must remain compatible with NRC's radioactive materials program, under 42 U.S.C. § 2021(d)(2) (relating to cooperation with States). The Commonwealth meets this requirement by incorporating the appropriate NRC regulations by reference in 25 Pa. Code Article V (relating to radiological health). The NRC recently identified provisions of 10 CFR that should be excluded from the Commonwealth's incorporation-by-reference. This final-omitted rulemaking is necessary for the Commonwealth's radioactive materials program to remain compatible with NRC's program, because the citations to 10 CFR that the Board is excluding can only be implemented by the NRC.

The failure to exclude these sections from the Commonwealth's incorporation-by-reference of select Federal regulations was an oversight in the 2008 rulemaking (38 Pa.B. 2243, May 17, 2008) promulgated to support the 2008 agreement with the NRC. Examples of Federal provisions excluded by these amendments are: portions of the definitions of terms such as "construction" and "commencement of construction" dealing with national defense; provisions involving the sale and distribution of radioactive material in certain industrial devices across state lines; regulations concerning high concentration of radioactive source material or special nuclear material, such as uranium and plutonium; and provisions regarding the transportation and distribution of exempt consumer materials. The Department does not have the authority under the 2008 agreement to implement these sections and has never enforced them. These amendments clarify the Department's proper authority and the NRC's legal authority under their respective regulations.

In addition, the amendments add an exception regarding notifications, reports and correspondence to be directed to the Department.

Affected Parties

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

Advisory Groups

The Department presented this final-omitted rulemaking to the Radiation Protection Advisory Committee (RPAC) at its October 19, 2017 meeting. At that meeting, the RPAC recommended that the Department move forward with this final-omitted rulemaking.

Public Comments

As this is a final-omitted rulemaking, there was no public comment period. Review and consideration of public comments on the amendments is unnecessary because public comments could not alter the need to make these amendments and there is no need to alter the formatting of the amendments. Finalizing these amendments without public notice and comment is in the public interest to ensure that the Commonwealth's regulations accurately reflect the Department'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 the Department and the NRC under the agencies' respective radioactive materials programs. No changes to any radioactive material license will result from this final-omitted rulemaking.