

Final-Omitted Rulemaking: U.S. Nuclear Regulatory Commission Consistency Rule – Incorporation by Reference

Environmental Quality Board
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Pennsylvania
Department of
Environmental Protection

Background

- U.S. Nuclear Regulatory Commission's (NRC) regulations are incorporated by reference in DEP's regulations to implement the responsibilities delegated to Pennsylvania under the NRC Agreement State program
- Certain NRC duties are not delegated to Pennsylvania

Purpose

This final-omitted rulemaking will amend DEP's radioactive materials regulations in Chapters 215, 217, 219, 220, and 230 to exclude references to specific provisions of the NRC's regulations that are incorporated by reference, but the NRC retains authority to implement.

Examples of Excluded Provisions

- Definitions of “foreign obligation” in 10 CFR 150.3, which is an exclusive NRC designation
- Sections that reference nuclear power reactors, which are exclusive to NRC
- Provisions on high concentrations of radioactive source material or special nuclear material, such as uranium or plutonium

Additional Amendment

- One exception is being amended to incorporate by reference 10 CFR 40.31, because it is part of the Commonwealth's Agreement State program and was missed in the previous rulemaking
- This section references the Category H&S (Health & Safety), which is required under the Agreement State program

Final-Omitted Rulemaking Process

- The final-omitted rulemaking process is appropriate because public notice and comment is unnecessary and contrary to the public interest
 - Corrects references to NRC regulations that DEP has no authority to implement and has never enforced
 - Ensures DEP's regulations are consistent with legal authority as required to be an Agreement State



Advisory Committee Review

The Radiation Protection Advisory Committee reviewed and recommended moving forward with the final-omitted rulemaking on April 30, 2025.



Recommendation

DEP recommends the adoption of this final-omitted rulemaking.



Questions?

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The Department of Environmental Protection's mission is to protect Pennsylvania's air, land and water resources and to provide for the health and safety of its residents and visitors, consistent with the rights and duties established under the Environmental Rights Amendment (Article 1, Section 27 of the Pennsylvania Constitution).