



Briefing on Status of Implementation of the Energy Policy Act of 2005

May 15, 2006

Acronym Slide

- **ACMUI – Advisory Committee on the Medical Uses of Isotopes**
- **CORAR – Council on Radionuclides and Radiopharmaceuticals**
- **CRCPD – Conference of Radiation Control Program Directors**
- **DHS – U.S. Department of Homeland Security**
- **DOT – U.S. Department of Transportation**
- **EPAct – Energy Policy Act of 2005**
- **H&S – “Health and Safety” (adequacy designation)**
- **NARM – Naturally Occurring and Accelerator-produced Radioactive Material**
- **NMSS – NRC’s Office of Nuclear Material Safety and Safeguards**
- **NORM – Naturally Occurring Radioactive Material**
- **OAS – Organization of Agreement States**
- **SECY – NRC’s Office of the Secretary of the Commission**
- **SGI – Safeguards Information**
- **TSA – Transportation Security Administration**

Overall Status of Implementation Activities

- **Many Implementation Actions Completed**
- **Majority of Remaining Actions on Schedule**
- **Several of Remaining Actions will be Discussed in More Detail**
 - **Sections 651(e), 652 and 656**

Section 651(e)

Accelerator-Produced and Other Radioactive Material

**Amend definition of byproduct material
to include:**

- Accelerator-produced radioactive material**
- Discrete sources of radium-226**
- Discrete sources of other NORM that pose
a threat similar to discrete sources of
radium-226**

Section 651(e) - Waivers

- **EPA Act allows the Commission to grant waivers to allow current programs to continue regulating**
- **NRC issued waiver on August 25, 2005**
- **Waiver was published in the Federal Register on August 31, 2005
(70 FR 51581)**

Section 651(e) - Outreach

Stakeholder Input

- **To the maximum extent practicable, NRC will:**
 - **Consult and cooperate with States**
 - **Use model State standards**
- **Other stakeholders - Consultation**

Outreach (cont'd)

Public Meeting

- **Roundtable Discussion, 11/9/2005**

Interagency Meeting

- **Discussion of definition of "discrete source," 11/17/2005**

Outreach (cont'd)

State Involvement

- **FL, MI, OR, and TX on NARM Rulemaking Working Group**
- **AR (OAS) and CA (CRCPD) representatives on Steering Committee**
- **OR (CRCPD) and NC (OAS) participated on NMSS EPAct Task Force**
- **CA and IL served as resource members for NMSS EPAct Task Force**

Outreach (cont'd)

Staff Presentations

- **OAS Annual Meeting, 10/4/2005**
- **U.S. Food and Drug Administration Meeting, 11/17/2005**
- **CORAR Manufacturing, Quality, and Safety Committee Meeting, 12/7/2005**
- **Interagency Steering Committee On Radiation Standards Meeting, 1/26/2006**
- **High Country Nuclear Medicine Conference, 2/27/2006**
- **Advisory Committee on Nuclear Waste Presentation, 4/18/2006**
- **Advisory Committee on the Medical Uses of Isotopes Presentation, 4/25/2006**
- **U.S. Department of Veterans Affairs Master Materials License Meeting, 5/3/2006**
- **CRCPD Annual Conference, 5/9/2006**

Section 651(e) - Status

- **Proposed Rule developed (SECY-06-0069)**
- **Draft Proposed Rule and SECY Paper publicly available on NRC's RuleForum website (as of 4/7/2006)**
- **Final Rule due no later than 2/7/2007 (required by EPA Act)**

Section 651(e) - Rulemaking Key Issues

- **Definition of "discrete source"**
- **Exercise of authority over accelerator-produced radioactive material in accelerators**
- **Regulatory approach for certain discrete sources of radium-226**
- **Waiver termination strategy**

Section 651(e) - Compatibility

- **Staff applied the process described in Management Directive 5.9**
- **Staff recommends a designation of "H&S" for the definition of byproduct material**
- **Program elements with a designation of "H&S" are required to be addressed as part of an Agreement program, as a matter of adequacy, and therefore are reviewed by NRC staff**

Compatibility (cont'd)

- **State members of the Steering Committee, and the Agreement States in general, did not agree with the “H&S” designation**
- **OAS and CRCPD letters on this issue are attached to the Commission Paper**
- **Program elements with Compatibility "D" are not a required part of an Agreement program, and therefore are not reviewed by NRC staff**

Compatibility (cont'd)

- **"If the definition of the term byproduct material or another term (such as radioactive material) which encompasses all of the byproduct materials regulated by the State were not somewhere within the State program (i.e., in statute or in regulations) it is possible that some byproduct material could escape regulatory oversight with a result of exposure to an individual in excess of the Part 20 limits"**

Section 651(e) - Summary and Next Steps

- **Staff developed a draft proposed rule, in a very short time period, that addresses a number of EPAAct issues**
- **The proposed rulemaking under Section 651(e) is a key expansion of NRC's authority**

Summary and Next Steps (cont'd)

- **Once the proposed rule is published, staff will continue to reach out to Agreement States, non-Agreement States, the public, and affected industry stakeholders**
- **The staff will hold a public meeting during the public comment period**
- **Achieving the 2/7/2007 Final Rule date remains a challenge**

Section 656 - Secure Transfer of Nuclear Materials

For materials transferred or received in the U.S. by any party pursuant to an NRC import or export license, the Commission shall establish a system such that:

- a. Materials are accompanied by a manifest describing type and amount of materials**
- b. Each individual receiving or accompanying the transfer shall be subject to a security background check conducted by appropriate Federal entities**

Secure Transfer of Nuclear Materials (cont'd)

**Issue regulations not later than 1 year
after date of EPAct, identifying materials
and classes of individuals that are
appropriate exceptions**

Section 656 - Status

- **Staff is drafting a proposed rule**
- **Staff is coordinating with Agreement States, DOT, DHS/TSA, and US Coast Guard**
- **Draft Proposed Rule is due to the Commission on 6/1/06**
- **Manifest requirements are already covered by existing DOT and NRC regulations**
- **System for security background checks has proven to be challenging in advance of the broader Section 652 rulemaking**

Section 656 - Recent Developments

- **Agreement States and DOT have raised concerns about the proposed rule. Some States want the requirements to apply to importers and exporters only (exclusive NRC jurisdiction)**
- **Establishing exceptions now may set a precedent for the broader Sec 652 rule on fingerprinting and criminal history records check**

Recent Developments (cont'd)

- In response, staff is considering an approach that initially focuses on the most significant quantities of material**
- This approach would allow NRC to address fingerprinting through Orders until the broader Section 652 rulemaking could be completed**
- Staff would clarify these issues in the Statement of Considerations on the Section 656 rule**

Section 656 - Next Steps

- **Complete Draft Proposed Rule and send to Commission**
- **Inform Congress about timing of Final Rule**
- **Continue outreach with Agreement States, DOT, DHS/TSA, and US Coast Guard**
- **Revise/supplement Orders to require fingerprinting and criminal history records check, where appropriate**
- **Address broader fingerprinting and criminal history records check issues through the Section 652 rulemaking**

Section 652 - Fingerprinting for Criminal History Records Check

The Commission shall require to be fingerprinted any individual who:

- is permitted unescorted access to--
 - a utilization facility; or**
 - radioactive material or other property subject to regulation by the Commission that the Commission determines to be of such significance; or****
- is permitted access to safeguards information under section 147**

Fingerprinting for Criminal History Records Check (cont'd)

**All fingerprints shall be submitted to the
U.S. Attorney General for identification
and a criminal history records check**

Section 652 - Status

- **The statute requirements for fingerprinting for access to SGI are effective now, and staff is developing Orders**
- **Staff is proceeding to develop Orders to require fingerprinting for access to radioactive material**

Section 652 - Schedule

- **Section 652 requirements are being incorporated through:**
 - **Current 73.21 rule package for access to safeguards information**
 - **Future rule to address access to material**

Schedule (cont'd)

- **Schedule for Section 652 Orders and rulemakings to address fingerprinting and criminal history records check:**
 - **Order supplements/revisions:
Under development**
 - **Final 73.21 rule to Commission:
Approximately 10/06**
 - **Final Section 652 rule to
Commission: 09/08**

EPAct of 2005 - Summary

- **Beginning in August 2005, NRC immediately began activities to implement the Energy Policy Act of 2005**
- **NRC has made significant progress over the past eight months and continues to move rapidly**

EPAct of 2005 - Summary (cont'd)

- **NRC reached out to stakeholders within the short time frames given in the statute, and involved States in the "NARM rulemaking" in an unprecedented manner**
- **While NRC has clear accomplishments, the Energy Policy Act requirements still present challenges for the staff**