



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

March 7, 2007

ALL AGREEMENT AND NON-AGREEMENT STATES  
STATE LIAISON OFFICERS

**UPDATE: NARM TRANSITION PLAN (FSME-07-023)**

**Purpose:**

To notify the States of the planned approach for terminating the time-limited waiver (70 FR 51581) of the Energy Policy Act of 2005 (EPAAct) requirements in Agreement and Non-Agreement States (including U.S. Territories). This letter is being provided for information only, and no response is requested.

**Background:**

As described in previous communications, the U.S. Nuclear Regulatory Commission (NRC) is implementing its new regulatory authority under the expanded definition of byproduct material contained in the EPAAct. The expanded definition of byproduct material includes certain Naturally Occurring and Accelerator Produced Radioactive Material (NARM) previously regulated by the States.

The EPAAct requires the Commission to publish a plan to facilitate an orderly transition of regulatory authority with respect to the newly added byproduct material. On December 11, 2006 (FSME-06-109), we informed you that there were no comments received directly from the States on the draft "Plan for the Transition of Regulatory Authority Resulting from the Expanded Definition of Byproduct Material" (transition plan) that was provided to the States on October 25, 2006, (FSME-06-097) for review and comment. Therefore, we indicated that the only updates anticipated to be contained within the final transition plan will be the dates that were listed within the draft document as dates that had not been determined (i.e., Page 7, Line 26, Page 10, Lines 27-28, Page 13, Lines 6-7, and Page 16, Lines 19-21). As indicated at the time, these dates will be determined in the future.

**Discussion:**

The NRC is planning to terminate the waiver after the final NARM rule is issued, in stages, starting from the effective date of the rule and ending on August 7, 2009. Consistent with this approach and in response to stakeholder comments received on the proposed NARM rulemaking from the public, one additional change within section C.1 of the draft transition plan concerning "Non-Agreement States that do not request an Agreement" will be adopted on Page 13, Lines 15-18, to reflect that the NRC plans to terminate the waiver no later than August 7, 2009. Also, corresponding revisions will be incorporated into the affected sections of the proposed final rule. The proposed final rule is scheduled to be provided to the Commission in early April, 2007. Once approved by the Commission (estimated to be in the summer of 2007), the final rule will be published in the *Federal Register*, and will become effective 60 days later. The NRC plans to publish the final transition plan in between the time when the final rule is published in the *Federal Register* and when it becomes effective.

The approach for terminating the waiver in all States is provided below:

Agreement States:

The NRC has received Governors' certifications of adequacy and intent to continue to regulate the new byproduct materials from 21 Agreement States as listed below:

*Arizona, Arkansas, Georgia, Illinois, Kansas, Kentucky, Maine, Maryland, Minnesota, Nebraska, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Texas, Washington, and Wisconsin.*

Based on conversations with the remainder of the Agreement States, the NRC understands that they are planning to submit similar certifications. As a reminder, certifications may be submitted to the Commission at any time now since the Commission has approved the draft transition plan. All Governors' certifications must be submitted on or before the date of publication of the final transition plan. Please note that if a Governor's certification is not received on or before the date on which the transition plan is published, a formal amendment to the Section 274. Agreement may be required. Upon acceptance of the certification by the Commission and termination of the waiver, the State's Agreement will be considered to include AEA Section 11e.(3) and 11e.(4) byproduct material.

The NRC intends to terminate the waiver in conjunction with the effective date of the final rule (60 days after the final rule is published) for all Agreement States that provide a certification from the Governor to the Commission. The certification shall document that the State has a program for licensing byproduct material, as defined in paragraph (3) or (4) of Section 11e. of the Atomic Energy Act of 1954, as amended, which is adequate to protect public health and safety, and that the State intends to continue to implement their authority with respect to the new byproduct material.

Non-Agreement States:

As stated above, the NRC is planning to terminate the waiver, in phases, starting from the effective date of the rule and ending on August 7, 2009. In conjunction with the effective date of the final rule, the Commission intends to terminate the waiver for Delaware, District of Columbia, Puerto Rico, the U.S. Virgin Islands, Indiana, Wyoming, and Montana. The approach for the selection of these States, U.S. Territories, and the District of Columbia considered: (1) the scope of the current State's regulatory program, (2) the estimated total number of licensees impacted, and (3) the State's level of interest in becoming an Agreement State. At this time, the timing and schedule for the remainder of the Non-Agreement States has not been established, but the NRC intends to use the same selection approach.

As provided in the transition plan, users of the new byproduct materials in these States and U.S. Territories will be required to (1) apply for license amendments for the new byproduct material within 6 months from the date the waiver is terminated, if they hold an NRC specific byproduct materials license; or (2) submit a license application for the new byproduct material within 12 months from the date the waiver is terminated for their State.

We recognize the importance of coordinating our transition with impacted States and licensees. In this regard, a dialogue has been established with regulatory authorities that will be initially impacted. We are also planning to issue a generic communication to all NRC materials licensees in the near future. Copies will be provided to the States and we would appreciate any assistance you may be able to provide in sharing the communication with licensees and/or registration holders, as appropriate.

If you have any questions on this correspondence, please contact me at 301-415-3340 or the individuals named below.

POINT OF CONTACT: Andrew Mauer  
TELEPHONE: (301) 415-3962

INTERNET: ANM@NRC.GOV  
FAX: (301) 415-3502

POINT OF CONTACT: Duane White  
TELEPHONE: (301) 415-6272

INTERNET: DEW2@NRC.GOV  
FAX: (301) 415-5369

***/RA/***

Janet R. Schlueter, Director  
Division of Materials Safety and State Agreements  
Office of Federal and State Materials  
and Environmental Management Programs

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**/RA/**

Janet R. Schlueter, Director  
Division of Materials Safety and State Agreements  
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and Environmental Management Programs

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