



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

March 26, 1991

Ref: SP/CM

ALL AGREEMENT AND NON-AGREEMENT STATES
STATE LIAISON OFFICERS
COMPACT DISTRIBUTION

MARCH 1991 STAY ON NESHAPS RULE (SP-91-43)

This is to inform you that on March 13, 1991, EPA issued an order temporarily staying the effective date of portions of the National Emissions Standards for Hazardous Air Pollutants (NESHAPS) rule. This stay concerns Subpart I of 40 CFR Part 61 for all categories of NRC-licensees. (Agreement State licensees are included in this category.) A copy of this order is enclosed. This order stays the effectiveness of this rule until April 15, 1991.

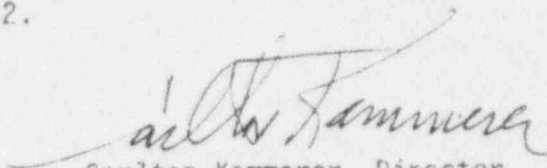
Some important points about the stay notice are as follows:

1. This rule, if put into effect, would cause duplication of NRC and EPA regulation of the use of radioactive materials.
2. The Clean Air Act of October 1990 provided a message that NRC and Agreement State licensees are not affected by the rule if the EPA determines that this category provides an ample margin of safety.
3. At the present time, the EPA is unable to make the determination of "ample margin of safety" for non-power reactor, NRC and Agreement State materials licensees.
4. The temporary stay of April 15, 1991 (previous stay expired on March 9, 1991) is used as an interim to prepare a rulemaking to delay the effectiveness of Subpart I until November 15, 1992.
5. The delay of the rule until 1992 will allow EPA to conduct a survey to collect information on environmental releases by licensees in order to make a determination of "ample margin of safety" for categories of NRC-licensed and Agreement State-licensed facilities. States will be informed by separate letter of EPA's information collecting procedures and will be encouraged to support and give this matter a high priority.

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If you have any questions, please contact Vandy L. Miller at 301-492-0326 or Cardelia Maupin at 301-492-0312.

A handwritten signature in cursive script, appearing to read "Carlton Kammerer".

Carlton Kammerer, Director
State Programs
Office of Governmental and Public Affairs

Enclosure:
As stated

ENVIRONMENTAL PROTECTION
AGENCY

40 CFR Part 61

[FRL-3913-3]

National Emissions Standards for
Hazardous Air PollutantsAGENCY: Environmental Protection
Agency (EPA).ACTION: Order temporarily staying
effective date.

SUMMARY: On February 13, 1991, EPA proposed to adopt a rule staying the effectiveness until November 15, 1992 of subpart I of 40 CFR part 61 for all categories of NRC-licensed facilities other than nuclear power reactors. The purpose of the proposed stay is to enable EPA to collect information needed to make a determination under section 112(d)(9) of the Clean Air Act for these facilities. Although the current stay of subpart I is scheduled to expire on March 9, 1991, EPA will be unable to take final action on the proposed rule in a manner conforming to the procedures specified by section 307(d) of the Clean Air Act prior to that date. In order to prevent subpart I from taking effect pending final action concerning the proposed stay, EPA is today issuing an order temporarily staying the effectiveness of subpart I for all NRC-licensed facilities other than nuclear power reactors until April 15, 1991.

DATE: This order stays the effectiveness of 40 CFR part 61, subpart I for all categories of NRC-licensed facilities other than nuclear power reactors until April 15, 1991.

FOR FURTHER INFORMATION CONTACT: Al Colli, Environmental Standards Branch, Criteria and Standards Division (ANR-460W), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460, (703) 308-8787.

SUPPLEMENTARY INFORMATION:

A. Background

On October 31, 1988, EPA promulgated standards controlling radionuclide emissions to the ambient air from several source categories, including emissions from licensees of the Nuclear Regulatory Commission (NRC) and from federal facilities not licensed by the NRC or operated by the Department of Energy (non-DOE Federal facilities) (subpart I 40 CFR part 61). This rule was published in the Federal Register on December 15, 1988 (54 FR 51654). At the same time as the rule was promulgated, EPA granted reconsideration of subpart I based on

information received late in the rulemaking on the subject of duplicative regulation by NRC and EPA and on potential negative effects of the standard on nuclear medicine. EPA established a comment period to receive further information on these subjects, and also granted a 90-day stay of subpart I as permitted by Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607 (d)(7)(B).

EPA subsequently extended the stay of the effective date of subpart I on several occasions, pursuant to the authority provided by section 10(d) of the Administrative Procedure Act (APA), 5 U.S.C. 705, and section 301(a) of the Clean Air Act, 42 U.S.C. 7601(a), (55 FR 10455, March 21, 1990; 55 FR 28205, July 18, 1990; and 55 FR 38057, September 17, 1990). The present stay of subpart I will expire on March 9, 1991.

On October 1990, Congress passed new legislation amending the Clean Air Act. Section 112(d)(9) of the amendments provides,

No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health.

After evaluating the information received during the reconsideration of subpart I, EPA concluded that for all categories of NRC-licensed facilities other than nuclear power reactors the Agency may lack sufficient information to determine whether the regulatory program established by NRC provides "an ample margin of safety to protect the public health," as that term used in section 112 of the Clean Air Act (CAA). On February 13, 1991, EPA proposed to stay the effectiveness of subpart I for all categories of NRC-licensed facilities except for nuclear power reactors until November 15, 1992, 56 FR 8336 (February 15, 1991). The proposed stay will permit EPA to use its authority under section 114 of the Clean Air Act to collect the information which is required to make a determination under section 112(d)(9).

With regard to non-DOE federal facilities, EPA concluded that the factors which led to the reconsideration of subpart I, possible duplication of effort between the EPA and the NRC and potential negative effects on nuclear medicine, are not applicable to this subcategory of facilities. Since the determination concerning adequacy of

the NRC regulatory program contemplated by the new language in section 112(d)(9) could not apply to such facilities, EPA did not include non-DOE federal facilities in its February 13, 1991 proposal to stay subpart I. Subpart I will take effect for non-DOE federal facilities on March 10, 1991.

A hearing concerning the proposed rule to stay the effectiveness of subpart I for all categories of NRC-licensed facilities other than nuclear power reactors was held in Washington, DC on February 25, 1991. Representatives of several organizations made oral presentations and submitted written statements. At the hearing, EPA announced that it would keep the record for this rulemaking open to receive additional written comments or information until March 27, 1991, thirty days after the completion of the hearing.

B. Order Temporarily Staying Effective
Date

Section 307(d) of the Clean Air Act establishes procedures which apply in various types of rulemakings conducted by EPA under the Clean Air Act, including any rulemaking to promulgate or revise a National Emission Standard for Hazardous Air Pollutants (NESHAP) under section 112. Although it is not clear whether a rule to stay NESHAP previously promulgated under Clean Air Act section 112 should be construed as a revision of that standard, EPA believes that it is prudent to assume that section 307(d) applies to the proposed rule to stay subpart I for NRC licensees other than nuclear power reactors.

In those instances where an interested person requests an oral hearing concerning a proposed rule to which section 307(d) applies, section 307(d)(5)(iv) requires EPA to "keep the record of such proceeding open for thirty days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary information." If no person had requested a hearing concerning the Agency's proposal to stay subpart I for NRC licensees other than nuclear power reactors, it would have been possible for EPA to take final action concerning the proposal prior to March 9, 1991, the date on which the currently effective stay of subpart I will expire. However, because a hearing was in fact held on February 25, 1991, and the record will remain open until March 27, 1991 in order to conform to section 307(d), EPA will be unable to evaluate all submissions to the record and take final action on the proposed stay prior to expiration of the currently effective stay.

EPA believes that it would be disruptive and serve no useful purpose to permit subpart I to become effective on NRC-licensed facilities other than nuclear power reactors prior to final action concerning the proposed rule to stay the effectiveness of subpart I for these facilities until November 15, 1992.

Accordingly, in order to provide time for completion of the rulemaking on the proposed stay of subpart I, EPA is today issuing an order temporarily staying the effectiveness of subpart I for all NRC-licensed facilities other than nuclear power reactors until April 15, 1991. EPA intends to take final action concerning the proposed rule to stay subpart I on or before April 15, 1991.

Dated: March 8, 1991.

William K. Reilly,

Administrator

[FR Doc. 91-8079 Filed 3-12-91; 8:45 am]

BILLING CODE 6640-20-01

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 434

[MB-12-CN]

RIN 0938-AD31

Medicaid Program; Modification of Certain Requirements for Health Insuring Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction notice.

SUMMARY: This notice corrects 42 CFR 434.20, Basic rules, to restore current text which was inadvertently deleted in the final rule, to make a conforming redesignation change, and to correct technical errors.

EFFECTIVE DATE: These corrections are effective December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Lindsay, (301) 966-4873.

SUPPLEMENTARY INFORMATION: On December 13, 1990, in Federal Register document 90-29182, we published a final rule that included revisions to 42 CFR part 434. In doing so, we failed to take into account changes made to part 434 by a final rule published on June 12, 1990 (55 FR 23738). As a result, we inadvertently deleted from the December 13 final rule regulatory text that was added to § 434.20(a) by the June 12 final rule. We are publishing this correction notice to restore the deleted text as § 434.20(a)(4) of the final rule and, therefore, redesignate paragraph

(a)(4) as (a)(5). We also correct the statutory citation and a typographical error in § 434.20(a)(3), and a typographical error in paragraph (e).

A. On page 51295, column 2, § 434.20(a) is correctly revised to read as follows:

§ 434.20 Basic rules.

(a) *Entities eligible for risk contracts for services specified in § 434.21.* A Medicaid agency may enter into a risk contract for the scope of services specified in § 434.21, only with an entity that—

(1) Is a Federally qualified HMO, including a provisional status Federally qualified HMO;

(2) Meets the State plan's definition of an HMO, as specified in paragraph (c) of this section;

(3) Is one of several entities identified in section 1903(m)(2)(B) (i), (ii) and (iii) of the Act, and considered as PHPs;

(4) Is one of certain Community, Migrant and Appalachian Health Centers identified in section 1903(m)(2)(G) of the Act. Unless they qualify for a total exemption under section 1903(m)(2)(B), these entities are subject to the regulations governing HMOs under this part, with the exception of the requirements of section 1903(m)(2)(A) (i) and (ii) of the Act; or

(5) Is an HIO that arranges for services and becomes operational before January 1, 1986.

B. On page 51295, column 2, § 434.20(e), line 2, "PHOs" should read "PHPs".

(Catalog of Federal Domestic Assistance Program No. 93.714, Medical Assistance)

Dated: March 5, 1991.

Nell J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 91-8820 Filed 3-13-91; 8:45 am]

BILLING CODE 4120-01-01

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 7507]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). Sixty-one Missouri communities

were subject to NFIP suspension effective on March 4, 1991. However, on March 1, 1991 the Governor of Missouri signed into law legislation which allows the 61 affected Missouri counties to fully enforce their floodplain management ordinances in accordance with 44 CFR 60.3 of the NFIP regulations. As a result the NFIP suspension action has been withdrawn, and the Missouri counties may continue to participate without interruption in the NFIP. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: Post Office Box 457, Lanham, Maryland 20706. Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street SW., room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the NFIP suspension action has been withdrawn for the communities on the attached list, flood insurance continues to be available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the flood map is indicated in the fourth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5