

marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/oaob.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (72 FR 17362, April 9, 2007) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

#### **PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA**

■ Accordingly, the interim final rule amending 7 CFR part 989 which was published at 72 FR 17362 on April 9, 2007, is adopted as a final rule without change.

Dated: October 15, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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## **NUCLEAR REGULATORY COMMISSION**

### **10 CFR Chapter I**

**RIN 3150-AH84**

#### **Notification of the Plan for the Transition of Regulatory Authority Resulting From the Expanded Definition of Byproduct Material**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of publication of transition plan.

**SUMMARY:** In accordance with Section 651e of the Energy Policy Act of 2005, the U.S. Nuclear Regulatory Commission is publishing a "Plan for the Transition of Regulatory Authority Resulting from the Expanded Definition of Byproduct Material" (transition plan) to facilitate an orderly transition of regulatory authority with respect to the byproduct material defined in paragraphs (3) and (4) of section 11e. of the Atomic Energy Act of 1954, as amended. A copy of the final transition

plan is provided as Appendix A to this document.

**FOR FURTHER INFORMATION CONTACT:** Kim K. Lukes, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6701 or e-mail [KXK2@NRC.GOV](mailto:KXK2@NRC.GOV).

Dated at Rockville, Maryland, this 11th day of October, 2007.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

#### **Appendix A—A Plan for the Transition of Regulatory Authority Resulting From the Expanded Definition of Byproduct Material**

##### **I. Introduction**

The Energy Policy Act of 2005 (EPAct) expanded U.S. Nuclear Regulatory Commission (NRC or Commission) regulatory authority over radioactive materials to include new byproduct material, as defined in paragraphs (3) and (4) of section 11e. of the Atomic Energy Act of 1954, as amended (AEA), hereinafter referred to as the new byproduct material. The expanded NRC authority pre-empted existing State regulatory authority over the subject materials. NRC is authorized, however, to discontinue its regulatory authority over the new byproduct material under certain conditions, allowing States to exercise regulatory authority over these materials.

The EPAct requires the Commission to prepare and publish a transition plan to facilitate an orderly transition of regulatory authority with respect to the new byproduct material. The plan must address States that have, before the date on which the plan is published, entered into agreements with the Commission, under section 274b. of the AEA<sup>1</sup> (Agreement States), and States that have not entered into such agreements (non-Agreement States). The plan must also include a description of the conditions under which a State may exercise regulatory authority over the new byproduct material.

To meet the requirements of the EPAct, the transition plan must include a statement of the Commission that any Agreement between the Commission and a State<sup>2</sup> under section 274b. of the

<sup>1</sup> Section 274b. of the AEA authorizes the Commission to enter into an agreement with the Governor of a State that provides for discontinuance of the Commission's regulatory authority in the State over byproduct material as defined in section 11e., source materials, and special nuclear materials in quantities not sufficient to form a critical mass.

<sup>2</sup> Section 274n. of the AEA defines the term "State" to mean any State, Territory, or possession

AEA, covering byproduct material and entered into before the date of publication of the transition plan, must be considered to include the new byproduct material, if the Governor of the State certifies to the Commission, on the date of the publication of the transition plan that: (1) The State has a program for licensing the new byproduct material that is adequate to protect the public health and safety, as determined by the Commission; and (2) the State intends to continue to implement the regulatory responsibility of the State with respect to the new byproduct material. This transition plan is being promulgated in response to those requirements.

##### **II. Background**

On August 8, 2005, the President signed into law the Energy Policy Act of 2005. Public Law No. 109-58, 119 Stat 594 (2005). Before then, byproduct material had been defined in section 11e. of the AEA as: (1) Any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or using special nuclear material; and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

Section 651(e) of the EPAct, among other things, expanded the definition of byproduct material in section 11e. of the AEA, thereby placing additional byproduct material under NRC's jurisdiction. Section 651(e) further required the Commission to provide a regulatory framework for licensing and regulating this additional byproduct material.

In particular, section 651(e) of the EPAct expanded the definition of byproduct material by adding paragraphs (3) and (4) to the definition of byproduct material in section 11e. Section 11e.(3) defines, as byproduct material:

"(A) any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after the date of enactment of this paragraph for use for a commercial, medical, or research activity; or (B) any material that—

(i) has been made radioactive by use of a particle accelerator; and

(ii) is produced, extracted, or converted after extraction, before, on, or after the date of enactment of this paragraph for use for a commercial, medical, or research activity.

Section 11e.(4) defines, as byproduct material, any discrete source of

of the United States, the Canal Zone, Puerto Rico, and the District of Columbia.

naturally occurring radioactive material (NORM),<sup>3</sup> other than source material, that—

(A) the Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(B) before, on, or after the date of enactment of this paragraph is extracted or converted after extraction for use in a commercial, medical, or research activity.”

### III. The Agreement State Program

In 1959, the AEA was amended to adopt section 274, *Cooperation with States*. As provided in section 274b., the Governor of a State may request an Agreement with the Commission in which NRC discontinues, and the State assumes, regulatory authority over categories of materials, that may include source, byproduct, and special nuclear materials (in quantities insufficient to form a critical mass). Collectively, the materials that are authorized for regulation by States under such Agreements are known as “AEA materials” or “Agreement materials.”

The Commission may enter into an Agreement if it finds that the State program is compatible with the Commission’s program for regulation of such materials, and that it is adequate to protect the public health and safety with respect to the materials covered by the proposed Agreement. Under section 274j.(1) of the AEA, the Commission must periodically review Agreement State programs and the actions the States take under the Agreements, to ensure compliance with the provisions of that section.

#### A. Concept of Compatibility

In 1997, the Commission adopted a Policy Statement declaring that an Agreement State radiation control program is compatible with the Commission’s regulatory program when the State program does not create conflicts, duplications, gaps, or other conditions that jeopardize an orderly pattern in the regulation of agreement material Nationwide [see *Statement of Principle and Policy for the Agreement State Program; Policy Statement on Adequacy and Compatibility of Agreement State Programs*, (62 FR 46517; September 3, 1997)]. Thus, compatibility focuses primarily on the

potential effects of a State action or inaction either on a Nationwide basis or on interstate commerce crossing into other jurisdictions.

Generally, a State program is compatible if the elements of the program are similar to the corresponding elements of the NRC program. Some elements, such as basic radiation protection standards and program elements with transboundary implications, should be essentially identical, whereas other elements may need only to meet the same essential objectives. The detailed criteria for Agreement State compatibility are set out in NRC Management Directive 5.9, *Adequacy and Compatibility of Agreement State Programs*.

#### B. Concept of Adequacy

The 1997 Commission Policy Statement declares that an Agreement State radiation control program is adequate to protect public health and safety if administration of the program provides reasonable assurance that the level of protection afforded by the State program is at least as protective as NRC’s materials regulatory program.

The continuing adequacy and compatibility of an Agreement State radiation control program is determined through the Integrated Materials Performance Evaluation Program (IMPEP). NRC periodically reviews the adequacy and compatibility of each Agreement State’s radiation protection program using the same set of performance criteria used to evaluate the equivalent NRC licensing and inspection programs. For further information on this program, please see NRC Management Directive 5.6, *Integrated Materials Performance Evaluation Program (IMPEP)*, on the NRC Web site (<http://www.nrc.gov>).

### IV. Regulation of Radioactive Materials Before the EPAct

For the purposes of this discussion, before the EPAct, radioactive materials could be divided into three groups: those regulated only by NRC (e.g., formula quantities of special nuclear material); those regulated only by State or local agencies [e.g., Naturally Occurring and Accelerator-Produced Radioactive Material (NARM)]; and those radioactive materials that may be regulated by NRC, or by a State under an Agreement pursuant to section 274b. of the AEA.

Since 1954, NRC (and its predecessor agency, the U.S. Atomic Energy Commission) has regulated the non-military use of a limited set of radioactive materials. Collectively, the set of regulated materials is known as

AEA material. The basis for assertion of Federal authority over the AEA materials was the belief that they posed (at that time) a new hazard beyond the ability of the States to control. NORM (mostly radium-226) and accelerator-produced radioactive materials (ARM) were relatively rare and did not pose an overwhelming problem for the States to control.

AEA material originally consisted of source and special nuclear materials, and byproduct materials as now defined in section 11e.(1). In 1978, the AEA definition of “byproduct material” was amended to add section 11e.(2), that included the tailings from uranium or thorium ore processed primarily for their source material content. Other NORM and ARM were not included in the definition of byproduct material before enactment of the EPAct, and thus were not AEA materials and were not subject to NRC regulation. These radioactive materials were under individual State regulatory authority.

### V. Regulatory Changes Required by Section 651(e) of the EPAct

By amending the definition of “byproduct material” to include certain ARM and NORM, including radium-226, the EPAct has made these radioactive materials AEA materials subject to NRC regulation. Note that only certain ARM and NORM that meet the criteria set out in the EPAct are byproduct material. The criteria for ARM that is defined as byproduct material are that the material: (1) Is made radioactive by use of a particle accelerator; (2) is produced, extracted, or converted after extraction, before, on, or after the enactment date of the EPAct; and (3) is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity. For radium-226 and other NORM to be byproduct material, it must meet the last two criteria, plus be a “discrete source.” ARM and NORM that do not meet these criteria are not AEA byproduct material.

Independent State regulation of the new byproduct material is pre-empted by the EPAct. States now may only regulate the materials through an agreement with the Commission, under section 274b. of the AEA. Other ARM and NORM that do not meet the definition of byproduct material could continue to be regulated under individual State authority.

This transition plan addresses only transitions of authority related to the newly defined byproduct material described in Section 651(e) and not to issues raised in other sections of the EPAct.

<sup>3</sup>Note: At this time, NRC has not identified any NORM currently in use that would meet the definition of section 11e.(4).

## VI. Transition of Authority

### A. Preliminary Activities

At the time the EAct was signed into law, NRC did not have regulations in place that would specifically apply to the new byproduct material. Time was needed for the development of a revised regulatory program, to allow for the orderly transition of regulatory authority over this material.

Section 651(e)(5) of the EAct authorizes the Commission to issue waivers of the requirements of section 651(e) for up to 4 years, if the Commission determines that the waiver is in accordance with the protection of the public health and safety and promotion of the common defense and security. The Commission determined that such a waiver should be granted to entities engaging in activities involving the new byproduct material, and it would be in the best interests of the public to allow the continued use of the new byproduct material, and to allow the States to continue to regulate the new byproduct material until the Commission could codify new regulations for these materials. The Commission issued such a waiver on August 31, 2005 (70 FR 51581). As required by section 651(e) of the EAct, the Commission must terminate any waiver issued under section 651(e), regarding a State, on determining that: (1) The State has entered into an agreement with the Commission under section 274b. of the AEA; (2) the Agreement covers section 11e.(3) or 11e.(4) byproduct material; and (3) the State's program for licensing such byproduct material is adequate to protect the public health and safety. In addition, any waiver issued under section 651(e) may be effective only through August 7, 2009, unless the Commission terminates it earlier.

NRC conducted a rulemaking to cover the new byproduct materials. The final rule was published on October 1, 2007 (72 FR 55864), in accordance with the EAct requirements. The rule is to become effective 60 days after publication for some licensees, and later for others, as described in this transition plan and the **Federal Register** Notice for the final rule. Revisions to NRC Policy and Guidance documents were undertaken in parallel with the rulemaking.

### B. Conditions Under Which a State May Exercise Authority Over 11e.(3) and 11e.(4) Byproduct Material

A State may exercise regulatory authority over the new byproduct material in one of two ways: (1) Under the Commission-issued waiver; or (2)

under an AEA section 274b. Agreement. Starting on August 8, 2009, or earlier if the waiver is terminated for the State under EAct section 651(e)(5)(B)(ii), the State may exercise its own authority over the new byproduct material only under an AEA section 274b. Agreement.

If the State does not already have such an Agreement, the Governor of the State may request an Agreement with the Commission. The Commission may enter into an Agreement if the documentation supporting the Governor's request demonstrates that: (1) The State has a program to regulate the materials covered by the proposed Agreement; and (2) the State program is adequate to protect the public health and safety and is compatible with the Commission's program for byproduct material.

NRC staff will evaluate the Governor's request using NRC/Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-700, *Processing an Agreement*. This procedure is posted on the NRC Web site (<http://www.nrc.gov>). Printed hard copies may also be obtained from the NRC Public Document Room.

The Commission may enter into an Agreement covering one or more of the following categories of materials: source material; special nuclear material in quantities not sufficient to form a critical mass; byproduct material as defined in section 11e.(1), 11e.(2), 11e.(3), or 11e.(4); the regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons; and the safety evaluation of sealed sources or devices containing sealed sources.

### 1. Transition of Authority in States That Have Entered Into Agreements With the Commission Under AEA Section 274b., Before Publication of This Plan

There are two ways an existing Agreement State may include the new byproduct material in its AEA section 274b. Agreement: (1) The Governor of the State provides the certification described in section 651(e)(4)(C)(iii)(II) of the EAct on the date of publication of the transition plan; or (2) using the standard process, whereby the Governor requests an amendment to the State's Agreement, as provided in section 274 of the AEA.

The Governor's certification avoids the need to amend the State's Agreement in accordance with the formal requirements of section 274 of the AEA. If a Governor chooses not to provide the certification described in the EAct, NRC will assert its authority to regulate the new byproduct material.

### 2. Basis for Finding Adequacy in Reviewing Governor Certifications

For Agreement States whose Governors provide a certification, the Commission will find the States' programs adequate to protect health and safety if the criteria of NRC Management Directive 5.6, *Integrated Materials Performance Evaluation Program (IMPEP)*, are satisfied. For an Agreement State whose program for licensing 11e.(1) byproduct material has been previously evaluated under IMPEP, the Commission will base its determination of adequacy on the State's prior IMPEP findings if: (1) The State's program for licensing 11e.(3) and 11e.(4) byproduct material is not separate and distinct<sup>4</sup> from its program for licensing 11e.(1) byproduct material; (2) the State intends to continue to license the new byproduct material under its existing program; and (3) no changes have been made to the State's licensing program that would impact the previous IMPEP finding of adequacy. If the State provides confirmation that these criteria are met, the Commission will consider a finding of adequate performance from the State's last IMPEP review as an indicator that the State's program for licensing section 11e.(3) and 11e.(4) byproduct material is adequate to protect health and safety.

For a new Agreement State that has not yet had a program review under IMPEP, the Commission will base its determination of adequacy on the following: (1) The State's program for licensing 11e.(3) and 11e.(4) byproduct material is not separate and distinct from its program for licensing 11e.(1) byproduct material; (2) the State intends to continue to license the new byproduct material under its existing program; and (3) no changes have been made to the State's licensing program that would impact the Commission's decision to enter into the AEA section 274b. Agreement.

The Governor's certification should be addressed to the Chairman of the Commission. On receipt, the Chairman or his designee will review the certification. If the Governor's certification contains the statements required by the EAct, and the Commission determines that the State's program to license the new byproduct material is adequate to protect health and safety, the Chairman will accept the Governor's certification on behalf of the Commission, and the Governor will be notified of the acceptance. As of the

<sup>4</sup> The Commission understands that the Agreement States license NARM and section 11e.(1) byproduct material without distinguishing between the materials.

date that the certification is accepted by the Commission, the State's Agreement will be considered to include AEA section 11e.(3) and 11e.(4) byproduct material, and the waiver will be terminated for the State. The certification will become a part of the Agreement, but the Agreement document will not be otherwise amended.

The NRC will verify the adequacy of the State's program to license the new byproduct material during subsequent IMPEP reviews.

### 3. Agreement States That Elect Not To Include AEA Section 11e.(3) and 11e.(4) Byproduct Material in Their Agreements

If an Agreement State elects not to continue to regulate the new byproduct material under an existing section 274b. Agreement, the State should notify the Commission that it intends to discontinue its regulatory authority for the new byproduct material. NRC is requesting that such an Agreement State also provide NRC with a list of affected users/licensees, in its notification.

To facilitate an orderly transition of regulatory authority for an Agreement State that does not intend to continue to regulate the new byproduct material, NRC intends to terminate the waiver for the State, and all individuals in the State, before August 8, 2009. The timing of the waiver termination for the State will be determined in consultation with representatives of the State's regulatory program.

NRC plans to use the phased approach for earlier waiver terminations described in Section VI.C.1., "Non-Agreement States That Do Not Request an Agreement," for Agreement States that do not intend to continue to regulate the new byproduct material. This approach will prevent an abrupt transition of authority on the date the waiver expires. Likewise, NRC plans to notice waiver terminations in the **Federal Register**, for Agreement States that do not intend to continue to regulate the new byproduct material, in the same manner as described in Section VI.C.1., for non-Agreement States that do not request Agreements. Also, the actions with which users of the new byproduct material in such Agreement States will be required to comply will be the same as those described in Section VI.C.1., for users in non-Agreement States that do not request Agreements.

### 4. Agreement States That Do Not, on the Date of Publication of the Transition Plan, Certify Adequacy for 11e.(3) and 11e.(4) Byproduct Material

Section 651(e) of the EPA Act provides that any Agreement covering byproduct material, as defined in paragraph (1) or (2) of section 11e. of the AEA, entered into between the Commission and a State under section 274b. of that Act before the date of publication of this transition plan shall be considered to include byproduct material, as defined in paragraph (3) or (4) of section 11e. of the AEA, if the Governor of the State certifies to the Commission on the date of publication of this transition plan that: (a) The State has a program for licensing byproduct material, as defined in paragraph (3) or (4) of section 11e. of the AEA, that is adequate to protect the public health and safety, as determined by the Commission; and (b) the State intends to continue to implement the regulatory responsibility of the State with respect to the byproduct material.

If the Governor of a State has not made such a certification to the Commission, and the State intends to continue to implement its regulatory authority over these materials, the State may be required to amend its AEA section 274b. Agreement to include the new byproduct material.

### C. Transition of Authority in States That Have Not Entered Into an Agreement With the Commission Under AEA Section 274b. (Non-Agreement States) Before Publication of This Plan

#### 1. Non-Agreement States That Do Not Request an Agreement

Any State that, on August 8, 2009, does not have an Agreement with the Commission under section 274b. of the AEA, which covers 11e.(3) or 11e.(4) new byproduct material, must discontinue its regulatory authority over the byproduct material.

To facilitate an orderly transition of regulatory authority for States that do not intend to establish AEA section 274b. Agreements with the Commission before August 8, 2009, NRC intends to terminate the waiver for such States, and all individuals in such States, before August 8, 2009. NRC plans to use a phased approach for the earlier waiver terminations, to prevent an abrupt transition of authority on the date the waiver expires. The timing of waiver terminations for the States will be determined in consultation with representatives of the States' regulatory programs. Waiver terminations will be executed for groups of States, at periodic intervals occurring between the effective date of the rule and August 7,

2009. Starting at Midnight, local time, on the effective date of the waiver termination, NRC will assume regulatory authority over section 11e.(3) and 11e.(4) byproduct material within the States.

Each waiver termination for a group of States will be noticed in the **Federal Register** as a "Notification of Waiver Termination and Implementation Dates of Rule." To the extent possible, each waiver termination will be noticed approximately 6 months before the effective date of the waiver termination. The notifications will provide the effective date of the waiver terminations, and will identify the States to which the waiver terminations will apply. The notifications also will provide specific actions with which users of the newly added byproduct material in the affected States will need to comply to continue to use the material. The actions with which the users will be required to comply are expected to be similar to those provided for Government agencies and federally recognized Indian Tribes in NRC's amended rules applicable to the new byproduct material October 1, 2007 (72 FR 55864), which become effective on November 30, 2007. In a manner similar to the process outlined in Section VI.F., if non-Federal entities in these States wish to continue using the new byproduct material, they will either: (1) Be required to apply for license amendments for the new byproduct material, within 6 months from the date the waiver is terminated for their State, 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.

NRC plans to terminate the waiver no later than August 7, 2009, for all individuals in States that do not plan to establish AEA section 274b. Agreements with NRC. This should allow all users in States sufficient time to submit license applications within the periods described above.

NRC will cooperate with States for which the waiver will be terminated to identify users of the byproduct material within the States, and provide notifications to the users of the impending transition of authority. In addition to the notifications described above, NRC may issue press releases, and initiate interactions with industry groups and other stakeholders in an effort to ensure that all users in the affected States are aware of the transition of authority and requirements for continued use of the new byproduct material.

## 2. Non-Agreement States That Request AEA Section 274b. Agreements Covering Section 11e.(3) or 11e.(4) Byproduct Materials

The Governor of any State that does not have an Agreement with the Commission under section 274b. may request an Agreement that covers section 11e.(3) or 11e.(4) byproduct material, and also may request an Agreement that covers any or all of the other materials and activities as described in the discussion in Section VI.B., "Conditions Under Which a State May Exercise Authority over 11e.(3) and 11e.(4) Byproduct Material." The request should follow the NRC/FSME Procedure SA-700, *Processing an Agreement*, starting with a request for an Agreement as soon as practical. A copy of the procedure is available on the NRC Web site (<http://www.nrc.gov>).

The NRC staff will recommend that the Commission approve an Agreement if the State's Program for regulating the requested byproduct materials meets the criteria in NRC/FSME Procedure SA-700, *Processing an Agreement*. If the Commission approves, the Agreement will become effective on a date selected by the State, and specified in the Agreement. If the effective date is before August 8, 2009, the Commission will terminate the waiver for all persons in that State on the effective date of the Agreement.

Requests from States to enter into 274b. Agreements before the time-limited waiver expires on August 7, 2009, will be reviewed in accordance with the NRC/FSME Procedure SA-700, *Processing an Agreement*. Every effort will be made to complete an Agreement as soon as practical, without compromising quality and completeness. The Commission understands that situations may arise that may delay the completion and effective date of Agreements. If any Agreements cannot be completed before the waiver expires on August 7, 2009, the Commission may consider, on a case-by-case basis, options to limit the impact on affected users of 11e.(3) and 11e.(4) byproduct material in the States.

### D. Transition of Exempt Distribution Licenses for NARM From State Jurisdiction to NRC Jurisdiction

The Commission, pursuant to 10 CFR 150.15, retains the authority to license the distribution of byproduct material to persons who are exempt from regulatory requirements. Since the Commission did not have jurisdiction over section 11e.(3) and 11e.(4) byproduct material previously, the States had the authority to issue licenses for the distribution of

NARM to persons who were exempt from licensing and regulatory requirements. With the expansion of the definition of byproduct material, NRC authority pre-empts the States' authority to issue such licenses.

NRC understands that there are a limited number of State issued exempt distribution licenses for the new byproduct material, which will transfer to NRC on termination of the waiver for the State. The specifics of the transfer will be addressed directly with the involved States and distributors, on a case-by-case basis. On expiration or earlier termination of the waiver, NRC will issue licenses for the distribution of products containing AEA section 11e.(3) and 11e.(4) byproduct material to persons who are exempt from licensing and regulatory requirements.

### E. Transition of Sealed Source or Device Registration Certificates for NARM From State Jurisdiction to NRC Jurisdiction

Since, previously, the States had jurisdiction over NARM (including the new byproduct material), the States also had authority for the evaluation of radiation safety information on sealed sources or devices (SSDs) containing NARM, and the registration of such SSDs for distribution. Most Agreement States' section 274b. Agreements provide for the Commission to discontinue its authority for the evaluation of radiation safety information on SSDs containing byproduct materials, and for the registration of the SSDs for distribution. An Agreement State whose section 274b. Agreement provides for the Commission to discontinue its SSD authority shall retain this authority and responsibility for SSDs containing the new byproduct material, after the waiver expires on August 7, 2009, or on earlier waiver termination by the Commission, if the State's 274b. Agreement includes the new byproduct material.

After the waiver expires on August 7, 2009, or on earlier waiver termination by the Commission, NRC will assume regulatory authority over radiation safety evaluations and registration of SSDs containing the new byproduct material in non-Agreement States, and in Agreement States whose section 274b. Agreements do not provide for the Commission to discontinue its authority for radiation safety evaluations and registration of SSDs containing byproduct material. In addition, NRC will also assume regulatory authority over all radiation safety evaluations and registrations of exempt distribution devices containing the new byproduct

material that previously may have been licensed by the States.

NRC will cooperate with States for which the regulatory authority over radiation safety evaluations and registrations of SSDs containing the new byproduct material will transfer from the State to the NRC, to provide a notification to affected holders of active SSD registrations in the States, of the impending transition of authority. NRC is also requesting that such States provide NRC with copies of affected SSD registrations.

### F. Federal Entity Licensees of the Commission and Unlicensed Federal Users

Under the AEA byproduct, source, and special nuclear material, licenses for Government agencies and federally recognized Indian Tribes are issued by the Commission, and are not subject to State regulation. Since NRC was not previously authorized to license NARM, these entities may not have an NRC license authorizing the new byproduct material. NRC plans to terminate the waiver for Government agencies and federally recognized Indian Tribes on the effective date of the final rule, which is November 30, 2007, and these users will be subject to the new requirements on that date. Such entities who wish to continue to use the new byproduct material must either: (1) Apply for license amendments for the new byproduct material, within 6 months from the effective date of the rule, if they hold NRC specific byproduct materials licenses; or (2) submit license applications for the new byproduct material, within 12 months from the effective date of the rule, if new NRC specific byproduct materials licenses are needed.

### G. Notification of Transition Actions

Section 651(e)(5)(c) of the EPA Act requires NRC to publish a notice of any waiver granted under section 651(e)(5) in the **Federal Register**. As described above, NRC published such a waiver on August 31, 2005. NRC is required by section 274e.(1) of the AEA to notice in the **Federal Register** any new or amended AEA section 274b. Agreements. Any new or amended Agreements will be published as required by section 274e.(1) of the AEA.

Although the EPA Act does not specifically require NRC to notice a waiver termination, NRC will publish in the **Federal Register** any "Notification of Waiver Termination and Implementation Dates of Rule." NRC will also make publicly available the acceptance of a Governor's certification.

NRC normally provides notifications of any new AEA section 274b. Agreements to Congress, Federal Agencies, and States. NRC plans to also notify these entities of any waiver termination.

#### References

1. Atomic Energy Act of 1954, as amended.
2. Conference of Radiation Control Program Directors, Inc. (CRCPD), "Suggested State Regulations for Control of Radiation," available at the CRCPD Web site [http://www.crcpd.org/free\\_docs.asp](http://www.crcpd.org/free_docs.asp).
3. Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 594 (2005).
4. U.S. Nuclear Regulatory Commission, Management Directive 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)," available in the Electronic Reading Room on the NRC Web site <http://www.nrc.gov>.
5. U.S. Nuclear Regulatory Commission, Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs," available in the Electronic Reading Room on the NRC Web site <http://www.nrc.gov>.
6. U.S. Nuclear Regulatory Commission, Office of Federal and State Materials and Environmental Management Programs, Procedure SA-700, "Processing an Agreement," available at the NRC, Office of Federal and State Materials and Environmental Management Programs Web site <http://nrc-stp.ornl.gov/>.
7. U.S. Nuclear Regulatory Commission, "Statement of Principle and Policy for the Agreement State Program; Policy Statement on Adequacy and Compatibility of Agreement State Programs," 62 FR 46517, September 3, 1997.
8. U.S. Nuclear Regulatory Commission, Guidance on New Agreements, NRC Handbook 5.8, "Proposed Section 274b. Agreements With States," available in the Electronic Reading Room on the NRC Web site <http://www.nrc.gov>.

[FR Doc. 07-5120 Filed 10-18-07; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 20

RIN 3150-A122

### National Source Tracking of Sealed Sources; Revised Compliance Dates

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations to revise the compliance dates for licensees to begin reporting source transactions and initial source inventory information to the National Source Tracking System for nationally tracked sources. No other requirements

related to the National Source Tracking System are being revised by this rule.

**DATES:** *Effective Date:* This final rule is effective October 19, 2007. *Compliance Dates:* Compliance with the reporting provisions in 10 CFR 20.2207 is required by January 31, 2009 for both Category 1 sources and Category 2 sources.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

##### I. Discussion and Need for the Rule

The President signed the Energy Policy Act of 2005 (Pub. L. 109-58, 119 Stat. 594) into law on August 8, 2005. It contains a provision on national source tracking that requires the NRC to issue regulations establishing a mandatory tracking system for radiation sources in the United States. The NRC issued the final rule for the National Source Tracking System on November 8, 2006 (71 FR 65686).

The National Source Tracking System rule requires licensees to report information on the manufacture, transfer, receipt, disassembly, and disposal of nationally tracked sources. This information will be entered into a computerized data base. The National Source Tracking System will capture information on the origin of each nationally tracked source (manufacture or import), all transfers to other licensees, all receipts of nationally tracked sources, and endpoints of each nationally tracked source (disassembly, disposal, decay, or export). Ultimately, the National Source Tracking System will be able to provide a domestic life history account of all nationally tracked sources.

The compliance dates for licensees to report initial source inventories was November 15, 2007, for Category 1 sources and November 30, 2007, for Category 2 sources. These were also the dates to start reporting source transactions for entry into the system. The NRC anticipated that system development and all testing would be complete and the National Source Tracking System would be operational by November 2007. However, system development has taken longer than anticipated and the system will not be ready to accept data by November 2007. Therefore, the NRC is revising the compliance dates for which reporting is to start.

The requirements for Category 1 nationally tracked sources will now be implemented by January 31, 2009. This means that by this date any licensee that possesses a Category 1 level source must have reported its initial inventory and must begin reporting all transactions involving Category 1 sources to the National Source Tracking System. The requirements for Category 2 nationally tracked sources will also be implemented by January 31, 2009. By this date, all licensees must have reported their initial inventories of Category 2 nationally tracked sources and begin reporting all transactions to the National Source Tracking System.

##### II. Section by Section Analysis of Substantive Changes

Section 20.2207—Reports of Transactions Involving Nationally Tracked Sources

Paragraph (h) is revised to require a licensee to report its initial inventory of Category 1 nationally tracked sources by January 31, 2009, and the inventory of Category 2 nationally tracked sources by January 31, 2009.

##### III. Bases and Findings for Dispensing With Notice and Comment and for Making Rule Immediately Effective

Generally, NRC rulemaking involves issuing rules using the public notice and comment procedures set forth in the Administrative Procedure Act (APA). Typically, a proposed rule is issued for comment and any comments submitted are evaluated in the agency's development of the final rule. But under 5 U.S.C 553(b)(3)(B), a Federal agency such as the NRC may dispense with those procedures where it finds for "good cause" that notice and public procedures thereon are "impracticable, unnecessary, or contrary to the public interest." In this case, notice-and-comment procedures are not required because the usual public rulemaking procedures are impracticable. The National Source Tracking System will not be ready to accept data received from licensees by the original compliance dates in the final rule. Compliance with the rule by those dates is not feasible, and no purpose would be served by seeking public comment on whether to extend the compliance dates. Therefore, under 5 U.S.C. 553(b)(3)(B), good cause exists to dispense with notice and comment procedures.

In addition, this rule is immediately effective upon publication in accordance with 5 U.S.C. 553(d)(1) because it is a substantive rule granting or recognizing an exemption or relieving a restriction. Specifically, the rule