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

(FSME-08-010, January, Program, Phase 2 Waiver Terminations)

January 18, 2008

ALL AGREEMENT STATES, NON-AGREEMENT STATES, ALL STATE LIAISON OFFICERS

UPDATE: NOTIFICATION OF PHASE 2 WAIVER TERMINATIONS AND REMINDER TO FILE LICENSE APPLICATIONS (FSME-08-010)

Purpose: To provide notification that the U.S. Nuclear Regulatory Commission (NRC) will be terminating in Phase 2 the time-limited waivers (70 FR 51581), as required by the Energy Policy Act of 2005 (EPAct), for certain non-Agreement States and remaining U.S. Territories. Also, to provide a reminder to those users of the new byproduct materials in non-Agreement States (including U.S. Territories) who were selected in Phase 1 to file timely license applications. This letter is being provided for information only, and no response is requested.

Background: As described in previous communications, Section 651(e) of the EPAct authorized the Commission to issue a waiver on August 31, 2005, to allow continued use and possession of naturally-occurring and accelerator-produced radioactive materials (NARM) while the Commission developed a regulatory framework for regulation of the new byproduct material.

The Commission has begun terminating the waiver in phases. The first phase of waiver terminations occurred on November 30, 2007. On November 30, the Commission terminated the waiver for Federal Government agencies, Federally Recognized Indian Tribes, Delaware, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Indiana, Wyoming, and Montana. Upon termination of the waiver, all persons who possess NARM in these States, U.S. Territories, or areas of exclusive Federal jurisdiction are to be in compliance with NRC regulations. Being in compliance with NRC regulations means that such persons are responsible for the proper handling, transfer, and disposal of NARM as set forth in NRC's regulations. In addition, such persons are required to file timely license applications to include the NARM.

Discussion: The Commission is preparing for the Phase 2 waiver terminations. The Commission has determined that Vermont, West Virginia, Missouri, Idaho, South Dakota, Guam, and all territories and possessions of the United States that were not identified as part of the Phase 1 waiver terminations will be included in Phase 2. It is anticipated that the remaining non-Agreement States, which include Connecticut, Virginia, New Jersey, Michigan, Alaska, and Hawaii, will have their waivers terminated in Phase 3 of the transition. Presently, the timing for both waiver terminations of the non-Agreement States has not been established, but NRC plans to publish *Federal Register* notices approximately 6 months before the effective dates of the waiver terminations to notify users of the exact dates of waiver terminations. Additionally, the Commission plans to terminate the waiver for non-Agreement States that enter into an Agreement with the NRC under Section 274b of the Atomic Energy Act of 1954, as amended, coincident with the effective date of such an agreement. At this time, Pennsylvania is the only State that is anticipated to become an Agreement State prior to the Phase 2 waiver terminations.

As provided in the transition plan (72 FR 59157), which was published in the *Federal Register* on October 19, 2007, users of NARM in non-Agreement 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. NRC wants to remind users in the States impacted in Phase 1 to submit their license amendments by May 30, 2008, or their new license applications by December 1, 2008, if not already done so, to be in accordance with the time frame allotted in the transition plan.

NRC Point of Contact: If you have any questions on this correspondence, please contact me at 301-415-8722 or the individual named below.

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