



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

(FSME-09-049, July, Other, Phase 3 Waiver Terminations)

July 6, 2009

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

NOTIFICATION OF IMPENDING PHASE 3 WAIVER TERMINATIONS AND REMINDER TO
FILE LICENSE APPLICATIONS (FSME-09-049)

Purpose: To provide a notification that on August 7, 2009, the U.S. Nuclear Regulatory Commission (NRC) will be terminating the time-limited waivers (70 FR 51581), as required by the Energy Policy Act of 2005 (EPAAct). This final phase will include Alaska, Connecticut, Hawaii, Michigan, New Jersey, and NRC licensees with headquarters in Canada. Also, to provide a reminder to those users of the new byproduct materials in non-Agreement States (including U.S. Territories) who were selected both in Phase 1 and in Phase 2 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 EPAAct 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 waiver was issued on August 31, 2005. The NRC has been terminating the waiver in phases. Phase 1 of terminations occurred on November 30, 2007, and Phase 2 on September 30, 2008. NRC is now preparing for Phase 3, the last phase, which will occur on August 7, 2009. On February 2, 2009, the NRC issued a notification of the time-limited waivers for Phase 3 (74 FR 5797).

Discussion: NARM users in all non-Agreement States and US territories, and NRC licensees with headquarters in Canada are required to:

- (1) apply for license amendments for the new byproduct material within 6 months from the date the waiver 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 terminated.

For existing NRC licensees, it should be noted that NRC will not be amending licenses to include authorization to produce radioactive material using an accelerator; a separate license will be required for these activities. Therefore, existing licensees should submit a new license application to obtain authorization for the production of radioactive materials using an accelerator.

Special note for NARM licenses with the State of New Jersey:

As of August 8, 2009, New Jersey's approximately 500 NARM licensees will be under NRC jurisdiction. All persons that possess byproduct material must be in compliance with NRC regulations, including reporting and recordkeeping requirements. NRC and New Jersey are working towards an effective date for the Agreement of no later than September 30, 2009.

During the seven week period between the waiver expiration date and the effective date the Agreement with New Jersey, staff will be working closely with New Jersey regarding NARM activities. New Jersey and NRC have agreed that the NARM licensees' files will stay in New Jersey and NRC will have access as needed during the seven week interim period. The impact to New Jersey NARM licenses during this interim period will be minimum since New Jersey regulations on the effective date of the Agreement are essentially the same as NRC regulations.

NRC Point of Contact: If you have any questions on this correspondence, please contact me at 301-415-3340 or the individual named below.

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