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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. AMS–FV–07–0027; FV07–989–1 FIR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 2006–07 Crop Natural (sun-dried) Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that established final volume regulation percentages for 2006–07 crop Natural (sun-dried) Seedless (NS) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (Committee). The volume regulation percentages are 90 percent free and 10 percent reserve. The percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

DATES: *Effective Date:* November 19, 2007. The volume regulation percentages apply to acquisitions of NS raisins from the 2006–07 crop until the reserve raisins from that crop are disposed of under the marketing order.

FOR FURTHER INFORMATION CONTACT: Rose M. Aguayo, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901; Fax: (559) 487–5906; or E-mail: *Rose.Aguayo@usda.gov* or *Kurt.Kimmel@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938; or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989, both as amended (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule continues in effect the action that established final free and reserve percentages for NS raisins for the 2006–07 crop year, which began August 1, 2006, and ended July 31, 2007. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that established final volume regulation percentages for 2006–07 crop NS raisins covered under the order. The volume regulation percentages are 90 percent free and 10 percent reserve and were established through an interim final rule published on April 9, 2007 (72 FR 17362). Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed.

The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions. The Committee unanimously recommended final percentages for NS raisins on November 21, 2006.

Computation of Trade Demands

Section 989.54 of the order prescribes procedures and time frames to be followed in establishing volume regulation. This includes methodology used to calculate percentages. Pursuant to § 989.54(a) of the order, the Committee met on August 15, 2006, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. Trade demand is computed using a formula specified in the order and, for each varietal type, is equal to 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carryin on August 1 of the current crop year, and adding the desirable carryout at the end of that crop year. As specified in § 989.154(a), the desirable carryout for NS raisins shall equal the total shipments of free tonnage during August and September for each of the past 5 crop years, converted to a natural condition basis, dropping the high and

low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. For all other varietal types, the desirable carryout shall equal the total shipments of free tonnage during August, September and one-half of October for each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three. In accordance with these provisions, the Committee computed and announced the 2006–07 trade demand for NS raisins at 219,870 tons as shown below.

COMPUTED TRADE DEMAND

[Natural condition tons]

	NS Raisins
Prior year's shipments	301,460
Multiplied by 90 percent	0.90
Equals adjusted base	271,314
Minus carryin inventory	111,444
Plus desirable carryout	60,000
Equals computed NS trade demand	219,870

Computation of Preliminary Volume Regulation Percentages

Section 989.54(b) of the order requires that the Committee announce, on or before October 5, preliminary crop estimates and determine whether volume regulation is warranted for the varietal types for which it computed a trade demand. That section allows the Committee to extend the October 5 date up to 5 business days if warranted by a late crop.

The Committee met on September 6, 2006, and announced preliminary percentages for Zante Currant raisins. It met again on October 4, 2006, and announced preliminary percentages and a preliminary crop estimate for NS raisins of 259,557 tons, which is about 21 percent lower than the 10-year average of 327,410 tons. NS raisins are the major varietal type of California raisin. Adding the carryin inventory of 111,444 tons to the 259,557-ton crop estimate, plus an additional 31,975 tons of reserve raisins released to handlers for free use in August 2006, resulted in a total available supply of 402,976 tons, which was significantly higher (183 percent) than the 219,870-ton trade demand. Thus, the Committee determined that volume regulation for NS raisins was warranted. The Committee announced preliminary free and reserve percentages for NS raisins, which released 85 percent of the computed trade demand since a minimum field price (price paid by handlers to producers for their free tonnage raisins) had been established. The preliminary percentages were 72 percent free and 28 percent reserve.

In addition, preliminary percentages were announced for Dipped Seedless, Golden Seedless, and Other Seedless raisins. It was ultimately determined at Committee meetings held on November 21, 2006, and January 23, 2007, that volume regulation was only warranted for NS raisins. As in past seasons, the Committee submitted its marketing policy to USDA for review.

Computation of Final Volume Regulation Percentages

Pursuant to § 989.54(c), at its November 21, 2006, meeting, the Committee announced interim percentages for NS raisins to release slightly less than the full trade demand. Based on a revised NS crop estimate of 244,300 tons (down from the October estimate of 259,557 tons), interim percentages for NS raisins were announced at 89.75 percent free and 10.25 percent reserve.

Pursuant to § 989.54(d), the Committee also recommended final percentages at its November 21, 2006, meeting to release the full trade demand for NS raisins. Final percentages were recommended at 90 percent free and 10 percent reserve. The Committee's calculations and determinations to arrive at final percentages for NS raisins are shown in the table below:

FINAL VOLUME REGULATION PERCENTAGES

[Natural condition tons]

	NS Raisins
Trade demand	219,870
Divided by crop estimate	244,300
Equals the free percentage	90.00
100 minus free percentage equals the reserve percentage	10.00

By the end of the crop year, final deliveries of NS raisins totaled 282,999 tons. Thus, handlers were provided with an additional 63,129 tons over the computed trade demand, but the additional tonnage did not appear to impact marketing conditions.

In addition, USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) specify that 110 percent of recent years' sales should be made available to primary markets each season for marketing orders utilizing reserve pool authority. This goal was met for NS raisins by the establishment of final percentages, which released 100 percent of the trade demand and the offer of additional reserve raisins for sale to handlers under the ''10 plus 10 offers.'' As specified in § 989.54(g), the 10 plus 10 offers are two offers of reserve pool raisins which are made available to handlers during each season. For each such offer, a quantity of reserve raisins equal to 10 percent of the prior year's shipments is made available for free use. Handlers may sell their 10 plus 10 raisins to any market.

Based on 2005–06 NS shipments of 301,460 natural condition tons, 30,146 tons should have been made available in each of the 10 plus 10 offers, or a total of 60,292 tons. However, this amount was not available in the reserve. Thus, all available reserve pool raisins were offered to handlers for free use through the 10 plus 10 offers.

The first 10 plus 10 offer was made in February 2007. A total of 30,146 tons was made available to raisin handlers; all the raisins were purchased and released to handlers during the 2006–07 crop year. The second offer was made in July 2007. A total of 20,923 tons (the balance of the reserve pool) was made available to handlers; 14,793 tons were purchased and released to handlers in 2007–08. Adding the 30,146 tons of 10 plus 10 reserve raisins to the 219,870 ton trade demand figure, plus the 111,444 tons of 2005–06 carryin NS inventory, plus the 31,975 tons of 10 plus 10 raisins released to handlers in August 2006, equates to 393,435 tons of natural condition raisins, or 370,686 tons of packed raisins, that were available to handlers for free use or primary markets. This is about 130 percent of the quantity of NS raisins shipped during the 2005–06 crop year (301,460 natural condition tons or 284,030 packed tons).

In addition to the 10 plus 10 offers, § 989.67(j) of the order provides authority for sales of reserve raisins to handlers under certain conditions such as a national emergency, crop failure, change in economic or marketing conditions, or if free tonnage shipments in the current crop year exceed shipments during a comparable period of the prior crop year. Such reserve raisins may be sold by handlers to any market. When implemented, the additional offers of reserve raisins make even more raisins available to primary markets, which is consistent with USDA's Guidelines.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 23 handlers of California raisins who are subject to regulation under the order and approximately 4,000 raisin producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. No more than 10 handlers, and a majority of producers, of California raisins may be classified as small entities. Thirteen of the 23 handlers subject to regulation have annual sales estimated to be at least $6,500,000, and the remaining 10 handlers have sales less than $6,500,000.

Since 1949, the California raisin industry has operated under a Federal marketing order. The order contains authority to, among other things, limit the portion of a given year's crop that can be marketed freely in any outlet by raisin handlers. This volume control mechanism is used to stabilize supplies and prices and strengthen market conditions. If the primary market (the normal domestic market) is over-supplied with raisins, grower prices decline substantially.

Pursuant to § 989.54(d) of the order, this rule continues in effect the action that established final volume regulation percentages for 2006–07 crop NS raisins. The volume regulation percentages are 90 percent free and 10 percent reserve. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through certain programs authorized under the order.

Volume regulation was warranted this season because acquisitions of 282,999 tons through July 31, 2007, combined with the carryin inventory of 111,444 tons, plus 31,975 tons of 10 plus 10 reserve raisins that were released to handlers in August 2006, resulted in a total available supply of 426,418 tons, which is about 194 percent higher than the 219,870 ton trade demand.

The volume regulation procedures have helped the industry address its marketing problems by keeping supplies in balance with domestic and export market needs, and strengthening market conditions. The volume regulation procedures fully supply the domestic and export markets, provide for market expansion, and help reduce the burden of oversupplies in the domestic market.

Raisin grapes are a perennial crop, so production in any year is dependent upon plantings made in earlier years. The sun-drying method of producing raisins involves considerable risk because of variable weather patterns.

Even though the product and the industry are viewed as mature, the industry has experienced considerable change over the last several decades. Before the 1975–76 crop year, more than 50 percent of the raisins were packed and sold directly to consumers. Now, about 64 percent of raisins are sold in bulk. This means that raisins are now sold to consumers mostly as an ingredient in another product such as cereal and baked goods. In addition, for a few years in the early 1970s, over 50 percent of the raisin grapes were sold to the wine market for crushing. Since then, the percent of raisin-variety grapes sold to the wine industry has decreased.

California's grapes are classified into three groups—table grapes, wine grapes, and raisin-variety grapes. Raisin-variety grapes are the most versatile of the three types. They can be marketed as fresh grapes, crushed for juice in the production of wine or juice concentrate, or dried into raisins. Annual fluctuations in the fresh grape, wine, and concentrate markets, as well as weather-related factors, cause fluctuations in raisin supply. This type of situation introduces a certain amount of variability into the raisin market. Although the size of the crop for raisin-variety grapes may be known, the amount dried for raisins depends on the demand for crushing. This makes the marketing of raisins a more difficult task. These supply fluctuations can result in producer price instability and disorderly market conditions.

Volume regulation is helpful to the raisin industry because it lessens the impact of such fluctuations and contributes to orderly marketing. For example, producer prices for NS raisins remained fairly steady between the 1993–94 through the 1997–98 seasons, although production varied. As shown in the table below, during those years, production varied from a low of 272,063 tons in 1996–97 to a high of 387,007 tons in 1993–94.

According to Committee data, the total producer return per ton during those years, which includes proceeds from both free tonnage plus reserve pool raisins, has varied from a low of $904.60 in 1993–94 to a high of $1,049.20 in 1996–97. Total producer prices for the 1998–99 and 1999–2000 seasons increased significantly due to back-to-back short crops during those years. Record large crops followed and producer prices dropped dramatically for the 2000–01 through 2003–04 crop years, as inventories grew while demand stagnated. However, producer prices were higher for the 2004–05 and the 2005–06 crop years, as noted below:

NATURAL SEEDLESS PRODUCER PRICES

Crop year	Deliveries (natural condition tons)	Producer prices (per ton)
2005–06	319,126	[1] $998.25
2004–05	265,262	[2] 1210.00
2003–04	296,864	567.00
2002–03	388,010	491.20
2001–02	377,328	650.94
2000–01	432,616	603.36
1999–2000	299,910	1,211.25
1998–99	240,469	[2] 1,290.00
1997–98	382,448	946.52
1996–97	272,063	1,049.20
1995–96	325,911	1,007.19
1994–95	378,427	928.27
1993–94	387,007	904.60

[1] Return-to-date, reserve pool still open.
[2] No volume regulation.

There are essentially two broad markets for raisins—domestic and export. Domestic shipments have been generally increasing in recent years. Although domestic shipments decreased from a high of 204,805 packed tons during the 1990–91 crop year to a low of 156,325 packed tons in 1999–2000, they increased from 174,117 packed tons during the 2000–01 crop year to 186,358 tons during the 2005–06 crop year. Export shipments ranged from a high of 107,931 packed tons in 1991–92 to a low of 91,599 packed tons in the 1999–2000 crop year. Since that time, export shipments increased to 106,755 tons of raisins during the 2004–05 crop year, but fell to 97,672 tons in 2005–06.

The per capita consumption of raisins has declined from 2.07 pounds in 1988 to 1.44 pounds in 2005. This decrease is consistent with the decrease in the per capita consumption of dried fruits in general, which is due to the increasing availability of most types of fresh fruit throughout the year.

While the overall demand for raisins has increased in two out of the last three years (as reflected in increased commercial shipments), production has been decreasing. Deliveries of NS dried raisins from producers to handlers reached an all-time high of 432,616 tons in the 2000–01 crop year. This large

crop was preceded by two short crop years; deliveries were 240,469 tons in 1998–99 and 299,910 tons in 1999–2000. Deliveries for the 2000–01 crop year soared to a record level because of increased bearing acreage and yields. Deliveries for the 2001–02 crop year were at 377,328 tons, 388,010 tons for the 2002–03 crop year, 296,864 for the 2003–04 crop year, and 265,262 tons for the 2004–05 crop year. After three crop years of high production and a large 2001–02 carryin inventory, the industry diverted raisin production to other uses or removed bearing vines. Diversions/removals totaled 41,000 acres in 2001; 27,000 acres in 2002; and 15,000 acres of vines in 2003. These actions resulted in declining deliveries of 296,864 tons for the 2003–04 crop year and 265,262 tons for the 2004–05 crop year. Although deliveries increased in 2005–06 to 319,126 tons, this may have been because fewer growers opted to contract with wineries, as raisin variety grapes crushed in 2005–06 decreased by 161,000 green tons, the equivalent of over 40,000 tons of raisins.

The order permits the industry to exercise supply control provisions, which allow for the establishment of free and reserve percentages, and establishment of a reserve pool. One of the primary purposes of establishing free and reserve percentages is to equilibrate supply and demand. If raisin markets are over-supplied with product, producer prices will decline.

Raisins are generally marketed at relatively lower price levels in the more elastic export market than in the more inelastic domestic market. This results in a larger volume of raisins being marketed and enhances producer returns. In addition, this system allows the U.S. raisin industry to be more competitive in export markets.

The reserve percentage limits what handlers can market as free tonnage. Data available as of July 31, 2007, showed that deliveries of NS raisins were at 282,999 tons. The 10 percent reserve limited the total free tonnage to 254,699 natural condition tons (.90 × the 282,999 ton crop). Adding the 254,699 ton figure with the carryin of 111,444 tons, plus the 62,121 tons of 10 plus 10 reserve raisins that were released to handlers during the 2006–07 crop year (31,975 tons in August 2006 and 30,146 tons in March 2007) made the total free supply equal to 428,264 natural condition tons.

To assess the impact that volume regulation has on the prices producers receive for their product, a price dependent econometric model was estimated. This model is used to estimate producer prices both with and without the use of volume regulation. The volume regulation used by the raisin industry would result in decreased shipments to primary markets. Without volume regulation the primary market (domestic) could be over-supplied resulting in lower producer prices and the build-up of unwanted inventories.

With volume regulation, producer prices are estimated to be approximately $65 per ton higher than without volume regulation. This price increase is beneficial to all producers regardless of size and enhances producers' total revenues in comparison to no volume regulation. Establishing a reserve allows the industry to help stabilize supplies in both domestic and export markets, while improving returns to producers.

Free and reserve percentages are established by varietal type, and usually in years when the supply exceeds the trade demand by a large enough margin that the Committee believes volume regulation is necessary to maintain market stability. Accordingly, in assessing whether to apply volume regulation or, as an alternative, not to apply such regulation, it was determined that volume regulation was warranted during the 2006–07 season for only one of the nine raisin varietal types defined under the order.

The free and reserve percentages continue in effect the release of the full trade demand and apply uniformly to all handlers in the industry, regardless of size. For NS raisins, with the exception of the 1998–99 and 2004–05 crop years, small and large raisin producers and handlers have been operating under volume regulation percentages every year since 1983–84. There are no known additional costs incurred by small handlers that are not incurred by large handlers. While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of the volume regulations impact small and large handlers positively by helping them maintain and expand markets even though raisin supplies fluctuate widely from season to season. Likewise, price stability positively impacts small and large producers by allowing them to better anticipate the revenues their raisins will generate.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The requirements are the same as those applied in past seasons. Thus, this action imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information collection and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meetings were widely publicized throughout the raisin industry and all interested persons were invited to attend the meetings and participate in the Committee's deliberations. Like all Committee meetings, the August 15, September 6, October 4, November 21, 2006, and the January 23, 2007, meetings were public meetings and all entities, both large and small, were able to express their views on this issue.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee's Reserve Sales and Marketing Subcommittee met on August 15, September 6, October 4, November 21, 2006, and January 23, 2007, and discussed these issues in detail. Those meetings were also public meetings and both large and small entities were able to participate and express their views.

An interim final rule concerning this action was published in the **Federal Register** on April 9, 2007. Copies of the rule were mailed by the Committee's staff to all Committee members and alternates and raisin handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended June 8, 2007. One comment was received during the comment period; it was not relevant to the rulemaking action. Accordingly, no changes were made to the rule, based on comment received.

A small business guide on complying with fruit, vegetable, and specialty crop

marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.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.

[FR Doc. E7–20621 Filed 10–18–07; 8:45 am]

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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.*

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 [1] (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 [2] under section 274b. of the 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

[1] 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.

[2] Section 274n. of the AEA defines the term ''State'' to mean any State, Territory, or possession of the United States, the Canal Zone, Puerto Rico, and the District of Columbia.