

**ENVIRONMENTAL PROTECTION
AGENCY**

[FRL-4830-7]

RIN 2060-AE39

**National Emissions Standards for
Radionuclide Emissions From
Facilities Licensed by the Nuclear
Regulatory Commission and Federal
Facilities Not Operated by the
Department of Energy**

AGENCY: Environmental Protection
Agency.

ACTION: Notice.

SUMMARY: This notice confirms that 40 CFR part 61, subpart I, is presently in effect for two categories: (1) Facilities licensed by the Nuclear Regulatory Commission (NRC) or NRC Agreement States except for commercial nuclear power reactors and (2) all federal facilities not operated by the Department of Energy (DOE). The effectiveness of Subpart I is presently stayed for commercial nuclear power reactors. The previous stay of Subpart I for NRC and Agreement State licensees other than nuclear power reactors expired on November 15, 1992, and has not been extended or renewed. All NRC and Agreement State licensees other than nuclear power reactors, as well as federal facilities not operated by DOE, are now subject to all applicable provisions of subpart I. Each affected facility must demonstrate compliance for calendar year 1993 with the annual emission standard set forth in 40 CFR 61.102, utilizing the procedures specified in 40 CFR 61.103. Those facilities which are not exempt from reporting requirements under 40 CFR 61.104(b) must submit the annual report concerning emissions for calendar year 1993 required by 40 CFR 61.104(a) to EPA by March 31, 1994. Facilities that are unable to gather the necessary information and report to EPA by March 31, 1994 should request an extension from the appropriate EPA regional office. EPA will consider extensions of up to 60 days.

DATES: 40 CFR part 61, subpart I became effective for NRC and Agreement State licensees other than commercial nuclear power reactors on November 16, 1992. Those facilities which are not exempt from reporting requirements under 40 CFR 61.104(b) must submit the annual report concerning emissions required by 40 CFR 61.104(a) for calendar year 1993 to EPA by March 31, 1994. Facilities that are unable to gather the necessary information and report to EPA by March 31, 1994 should request an extension from the appropriate EPA regional

office. EPA will consider extensions of up to 60 days.

FOR FURTHER INFORMATION CONTACT: David P. O'Very, Air Standards and Economic Branch, Criteria and Standards Division (6602), Office of Radiation and Indoor Air, Environmental Protection Agency, Washington, DC 20460. (202) 233-9762.

SUPPLEMENTARY INFORMATION:

I. Background

On October 31, 1989, EPA promulgated National Emission Standards for Hazardous Air Pollutants (NESHAPS) to control radionuclide emissions to the ambient air from several source categories. This rule was published in the *Federal Register* on December 15, 1989 (54 FR 51654).

Subpart I limits radionuclide emissions to the ambient air from NRC-licensed facilities to that amount which would cause any member of the public to receive in any year an effective dose equivalent (ede) of 10 millirem, of which no more than 3 millirem ede may be from radioiodines. These limits involved application to radionuclide emissions of the Agency's policy for regulating section 112 pollutants which was first announced in the benzene NESHAP (54 FR 38044 September 14, 1989), and utilized the two-step process outlined in *NRDC v. EPA*, 824 F.2d at 1146 (1987) (the *Vinyl Chloride* decision).

At the time of promulgation of the radionuclide NESHAPS rule, EPA granted reconsideration of subpart I based on information received late in the rulemaking from the NRC and the National Institutes of Health (NIH). The NRC was concerned about duplicative regulation of its licensees by NRC and EPA, while the NIH was concerned with the potential negative effects of the standard on the use of nuclear medicine in patient treatment. 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 29205, July 18, 1990; and 55 FR 38057, September 17, 1990).

In 1990, Congress enacted legislation comprehensively amending the Clean Air Act, which included a section addressing the issue of regulatory duplication between EPA and NRC. Section 112(d)(9) of the CAA provides, that 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 Section 112 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. This provision enables EPA to eliminate duplication of effort between EPA and NRC so long as public health is protected with an ample margin of safety.

On April 24, 1991, EPA issued a final rule staying until November 15, 1992 the effectiveness of subpart I for all categories of facilities licensed by the NRC or NRC Agreement States except nuclear power reactors (56 FR 18735). The purpose of this stay was to avoid the costs and disruption associated with formal implementation of subpart I while EPA was collecting additional information necessary to make the substantive determination for these facilities contemplated by CAA Section 112(d)(9). NESHAPS Rulemaking on Nuclear Regulatory Commission and Agreement State Licensees Other Than Nuclear Power Reactors, EPA 430-R-92-011 (November 1992). (On August 5, 1991, EPA proposed to rescind subpart I for commercial nuclear power reactors (56 FR 37196) and issued a final rule staying the effectiveness of subpart I for nuclear power reactors during the pendency of the substantive rulemaking on rescission (56 FR 37158)).

The Natural Resources Defense Council (NRDC) petitioned for judicial review of the rule staying subpart I for NRC and Agreement State licensees other than nuclear power reactors. On September 25, 1992, the DC Circuit Court of Appeals issued a decision holding that EPA had exceeded its authority by staying subpart I while it was collecting the information required to make a finding under CAA section 112(d)(9). *NRDC v. Reilly*, 976 F.2d 36 (DC Cir. 1992).

EPA completed its investigation of radionuclide emissions by NRC and Agreement State licensees other than nuclear power reactors while the litigation in the DC Circuit Court concerning the rule staying subpart I for these facilities was still pending. On September 18, 1992, EPA announced that it intended to propose rescission of subpart I for these facilities and proposed a rule which would further stay subpart I during the pendency of the substantive rulemaking on rescission (57 FR 43173). Although EPA did propose to rescind subpart I for NRC and Agreement State licensees other

than nuclear power reactors on December 1, 1992 (57 FR 56877), EPA did not adopt the proposed stay. EPA concluded that the Court's ruling in *NRDC v. Reilly* had left substantial doubt concerning the legality of any further stay of subpart I for these facilities and decided not to issue any further stay. As a result, the rule staying subpart I for NRC and Agreement State licensees other than nuclear power reactors expired by its own terms on November 15, 1992, and subpart I took effect for these facilities on November 16, 1992 (the official mandate implementing the DC Circuit Court's decision in *NRDC v. Reilly* was not transmitted until after the stay had already expired).

II. Implementation of Subpart I as Applied to NRC-Licensed Facilities Other Than Nuclear Power Reactors

Subpart I became effective on November 16, 1992 for all categories of facilities licensed by NRC or Agreement States except for commercial nuclear power reactors. Subpart I was already in effect prior to that time for federal facilities not operated by DOE.

At this time, EPA has not taken final administrative action concerning the rule to rescind subpart I for NRC and Agreement State licensees other than commercial nuclear power reactors which it proposed on December 1, 1992. EPA is recommending that NRC make certain changes in its regulatory program in order to fully support the substantive finding which is required by CAA Section 112(d)(9) before EPA may rescind subpart I for NRC licensees other than commercial nuclear power reactors. EPA and NRC are presently engaged in consultations concerning specific actions which would strengthen the basis for rescission of subpart I for this category, but it is unlikely that any agreement between EPA and NRC concerning additional measures could be implemented quickly. While the rulemaking concerning rescission is still pending, EPA advises all facilities not to presume that EPA will take any particular action in that rulemaking and

to proceed in the meantime with all legally required compliance activities.

Because subpart I first took effect for NRC and Agreement State licensees other than nuclear power reactors near the end of 1992, EPA has determined that affected facilities were not required to demonstrate compliance with subpart I for calendar year 1992. However, each NRC or Agreement State licensee, as well as each federal facility not operated by DOE, is now subject to all provisions of subpart I. Each affected facility must demonstrate compliance for calendar year 1993 with the annual emission standard set forth in 40 CFR 61.102, utilizing the procedures specified in 40 CFR 61.103. Those facilities which are not exempt from reporting requirements under 40 CFR 61.104(b) must submit the annual report concerning emissions for calendar year 1993 required by 40 CFR 61.104(a) to EPA by March 31, 1994. Facilities that are unable to gather the necessary information and report to EPA by March 31, 1994 should request an extension from the appropriate EPA regional office listed below. EPA will consider extensions of up to 60 days.

As required by 40 CFR 61.04, all requests, reports, applications, submittals, and other communications to EPA pursuant to the standards in subpart I should be submitted in duplicate to the appropriate Regional Office of the EPA to the attention of the Director of the Division indicated in the following list of EPA Regional Offices:

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), Director, Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, MA 02203.

Region II (New Jersey, New York, Puerto Rico, Virgin Islands), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, Federal Office Building, 26 Federal Plaza, New York, NY 10278.

Region III (Delaware, District of Columbia, Maryland, Pennsylvania, West Virginia), Director, Air, Toxics and Radiation Management Division, U.S. Environmental Protection Agency, 841 Chestnut St., Philadelphia, PA 19107.

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE, Atlanta, GA 30365.

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), Director, Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Blvd., Chicago, IL 60604-3590.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), Director, Air, Pesticides, and Toxics Division, U.S. Environmental Protection Agency, 1443 Ross Avenue, Dallas, TX 75202.

Region VII (Iowa, Kansas, Missouri, Nebraska), Director, Air and Toxics Division, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, KS 66101.

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, CO 80202-2460.

Region IX (American Samoa, Arizona, California, Guam, Hawaii, Nevada), Director, Air & Toxics Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

Region X (Alaska, Oregon, Idaho, Washington), Director, Air & Toxics Division, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101.

Facility operators and owners desiring further information should write to Eleanor Thornton, Air Standards and Economic Branch, Criteria and Standards Division (6602J), Office of Radiation and Indoor Air, Environmental Protection Agency, Washington, DC 20460 to obtain a copy of EPA's Guide for Determining Compliance with the Clean Air Act Standards for Radionuclide Emissions from NRC-Licensed and Non-DOE Federal Facilities, the COMPLY computer code, and the User's Guide for the COMPLY Computer Code.

Dated: January 20, 1994.

Carol M. Browner,
Administrator.

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