

September 11, 2008

MEMORANDUM TO: R. W. Borchardt
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS – SECY-08-0115 – PROPOSED RULE:
10 CFR 51.22, CRITERION FOR CATEGORICAL EXCLUSION;
IDENTIFICATION OF LICENSING AND REGULATORY
ACTIONS ELIGIBLE FOR CATEGORICAL EXCLUSION OR
OTHERWISE NOT REQUIRING ENVIRONMENTAL REVIEW
(RM# 644)

The Commission has approved publication of the proposed amendments to 10 CFR 51.22 in the *Federal Register* for a 75-day public comment period, subject to the comments and changes noted below.

(EDO)

(SECY Suspense: 10/17/08)

The staff should add to its long term planning the need to evaluate on some set periodicity the adequacy of NRC's categorical exclusion regulations.

Changes to the *Federal Register* notice

1. On page 4, last paragraph, revise lines 1 and 2 to read ' ... analysis: **an environmental impact statement (EIS)** ~~a categorical exclusion~~, an environmental assessment, or a **categorical exclusion** ~~an environmental impact statement (EIS)~~. **An EIS documents an agency's evaluation of the environmental impacts of a major Federal action significantly affecting the quality of the human environment.** An EA is ...' Revise line 4 to read ' ... impact (FONSI). **If an** the EA supports' Revise line 5 to read ' ... reveals **that** the proposed' Revise line 7 to read ' ... EIS. **A categorical exclusion, in contrast, is a category of actions that do not have a significant effect on the human environment, as defined by a Federal agency in its procedures implementing NEPA.** If the Federal agency finds that **actions in** a given category **have** ~~of action has~~ repeatedly **been** shown **to have** no' Revise line 8 to read ' ... then **the agency** it may' Revise line 9 to read ' ... action, Once **it has** established **a categorical exclusion**, the agency'
2. On page 5, revise line 3 from the top to read ' ... circumstances **that** ~~which~~ may have'
3. On page 5, paragraph B, last line, the make 'R' in 'Review' lowercase.
4. On page 5, paragraph C, insert a space between '§' and '51.22' in lines 2 and 4.
5. On page 6, paragraph D, revise line 5 to read ' ... Council **on** of Environmental' Revise line 9 to read ' ... recommend**ed** that'

6. On page 6, last paragraph, revise line 3 to read '... appropriate and how to support the a determination that it describes a category of actions that do not ...' On page 8, revise line 2 from the top to read '... effect, and thus, requiring preparation of an ...'
7. On page 8, paragraph C, delete the comma in line 3. Insert a comma in line 5 after 'and'.
8. On page 10, paragraph III.A, line 1, capitalize the 'D' in 'description'.
9. On page 10, paragraph III.B, line 2, capitalize the 'S' in 'solely'.
10. On page 11, next to last paragraph, revise line 3 to read '... property, and, unless ...'
11. On page 12, revise line 1 from the top to read '... without his or / her consent ...'
12. On page 12, last paragraph, revise line 8 to read '... reference of the NRC-approved ...' Revise the last line to read '... OM Code requirements as advances ...'
13. On page 13, revise line 5 from the top to read '... alternatives to requirements of the ...' In line 6 from the top, insert a comma after 'requirements'.
14. On page 13, 1st full paragraph, revise line 8 to read '... response to a licensee's ...'
15. On page 14, paragraph E, in line 1 of the question, capitalize the 'E' in 'exclusion'. Revise line 4 of the response to read '... current rule, such an exemption ...' Revise line 5 of the response to read '... exclusion, and would therefore requiring the ...' Revise lines 6 through 8 to read '... EA/FONSIs to justify the categorical exclusion of provide reasonable assurance to categorically exclude the granting of such exemptions, from these requirements, provided that the criteria in the current categorical exclusion (i.e., the request involves no significant ...' Revise line 9 of the response to read '... consideration, there is no significant change in the types of, or, increase in ...' Revise line 10 of the response to read '... and there is no ...' Revise line 11 of the response to read '... exposure) are applied to them, continue to be met. During the ...' Revise line 12 of the response to read '... requests for such an exemption, from such requirements.'
16. On page 15, 1st full paragraph, line 3, delete the comma after 'nature'. Revise line 11 to read '... (ICRP) provisions requirements. Under ...'
17. On page 15, paragraph (2), delete the period before the semicolon.
18. On page 17, paragraph 1, revise line 7 to read '... modeling. Licensees of Group 2 ...' Revise line 8 to read '... plan, but such a licensee must demonstrate that their its site meets ...'
19. On page 17, the last paragraph needs clarification with respect to the second sentence and the next to last sentence. Revise line 3 to read '... 20.1402. The NRC also ...'
20. On page 18, paragraph 2, revise line 6 to read '... a license, the activity of licensed ...'

21. On page 18, last paragraph, revise lines 1 and 2 to read ‘ ... determine ~~with reasonable assurance~~ that there’
22. On page 19, revise line 2 from the top to read ‘ ... any site **on which** ~~that possesses~~ unsealed’ Revise line 3 from the top to read ‘ ... 120 days **are located**. As such,’
23. On page 19, 1st full paragraph, revise line 2 to read ‘ ... to **justify the categorical exclusion of** ~~provide reasonable assurance to categorically exclude~~ Group 2’ Revise lines 3 and 4 to read ‘ ... shows that, **over the last five years, every one of the 73** ~~for each EAs performed~~ for **a** ~~every~~ Group 2 decommissioning action **in the last 5 years, a total of 73 EAs performed,** resulted in’ Revise line 11 to read ‘ ... activity **in accordance with** ~~per~~ NUREG-1757,’
24. On page 20, last paragraph, the staff should consider whether the information in sentences 3 to the end should be repeated in the EA for this proposed rule.
25. On page 21, paragraph I.(3), delete the commas after ‘Training’.
26. On page 22, last paragraph, revise line 2 to read ‘ ... (63 FR 3188**53**), directed that the Government’s documents be **written** in clear’
27. On page 26, paragraph 2., revise line 1 to read ‘ ... and (c)(**20**) are’
28. On page 28, paragraph (v), revise line 1 to read ‘ ... otherwise makes **s** editorial’
29. In the Environmental Assessment, page 1, in the title section, line 2, capitalize the ‘R’ in ‘recurring’.
30. In the Environmental Assessment, page 1, last paragraph, revise line 3 to read ‘ ... Council **on** of Environmental’
31. In the Environmental Assessment, page 2, 1st full paragraph, revise line 3 to read ‘ ... appropriate **and how** to support **the** a determination that **it describes** a category of actions **that** do not’
32. In the Environmental Assessment, page 2, last paragraph, revise line 4 to read ‘ ... EA/FONSIs **during the** period from’

cc: Chairman Klein
 Commissioner Jaczko
 Commissioner Lyons
 Commissioner Svinicki
 OGC
 CFO
 OCA
 OPA
 Office Directors, Regions, ACRS, ASLBP (via E-Mail)
 PDR