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

SECRETARY

September 11, 2008

COMMISSION VOTING RECORD

DECISION ITEM: SECY-08-0115

TITLE: 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 (with Chairman Klein and Commissioners Lyons and Svinicki agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of September 11, 2008. Commissioner Jaczko approved in part and disapproved in part.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:
1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Klein
Commissioner Jaczko
Commissioner Lyons
Commissioner Svinicki
OGC
EDO
PDR

VOTING SUMMARY - SECY-08-0115

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. KLEIN	X					8/25/08
COMR. JACZKO	X	X			X	9/2/08
COMR. LYONS	X					8/13/08
COMR. SVINICKI	X				X	8/22/08

COMMENT RESOLUTION

In their vote sheets, Chairman Klein and Commissioners Lyons and Svinicki approved the staff's recommendation and Commissioner Svinicki provided some additional comments. Commissioner Jaczko approved in part and disapproved in part. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on September 11, 2008.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN KLEIN

SUBJECT: 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)

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached ___ None XX

SIGNATURE

8/25/2008
DATE

Entered on "STARS" Yes ✓ No ___

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER JACZKO

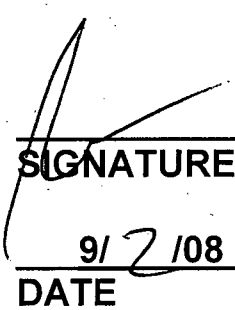
SUBJECT: SECY-08-0115 – PROPOSED RULE: 10 CFR 51.22, "CRITERION FOR CATEGORICAL EXCLUSION; IDENTIFICATION OF LICENSING AND REGULATORY ACTIONS ELIGIBLE FOR CATEGORICAL EXCLUSION OR OTHERWISE NOT REQUIRING ENVIRONMENTAL REVIEW" (RM# 644)

Approved __X__ Disapproved __X__ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached _X_ None ___

Edits submitted via hard copy.



SIGNATURE

9/2/08

DATE

Entered on "STARS" Yes _X_ No ___

Commissioner Jaczko's Comments on 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")

I approve of this proposed rule insofar as it maintains the NRC's commitment to the core principals of NEPA, while eliminating the use of agency resources to evaluate identified types of actions that have no potential for significant environmental impacts. The adoption of "categorical exclusions" for those actions identified as having no potential for significant environmental impact (*e.g.* changes in position titles in a license) will enhance the NRC's efficiency by eliminating the need to expend staff resources to evaluate the environmental impacts of such actions. In general, however, I would disapprove of any categorical exclusion that calls for the satisfaction of detailed criteria relating to the environmental effects (such as the release of effluents offsite) of a type of agency action. These are just the sort of actions that warrant the preparation of an environmental assessment. The public can comment on these environmental assessments, and may sometimes identify environmental effects deserving further evaluation. Therefore, I disapprove of some portions of the proposed rule and would change it as follows:

- Delete Parts 25, 26, and 110 from proposed § 51.22(c)(1);
- Clarify the meaning of "procedures for ... reviewing applications" in proposed § 51.22(c)(3)(i) (the language might be read as applying to the applicable substantive review standards, which are not appropriate for categorical exclusion);
- Delete the proposed changes to § 51.22(c)(9);
- Delete proposed §§ 51.22(c)(10)(i) and (iii);
- Delete the proposed changes to § 51.22(c)(20);
- Delete the proposed criteria in § 51.22(c)(25)(i)-(iv) and the corresponding requirements in § 51.22(c)(25)(v) to which those criteria would apply.

The draft *Federal Register* notice should be changed to conform to the above. I am also providing edits of the draft *Federal Register* notice in hard copy.

5/2/08

Gregory B. Jaczko Date

Enclosure 1

Federal Register Notice

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

RIN 3150-AI27

[NRC -2008-0269]

Categorical Exclusions from Environmental Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations describing the categories of actions which do not require an environmental review under the requirements of the National Environmental Policy Act of 1969 (NEPA) because they have no significant effect on the human environment. The proposed revisions would eliminate the preparation of environmental assessments for NRC actions that are minor, administrative, or procedural in nature. The proposed rule would not change any requirements for licensees but would provide for more timely NRC action.

DATES: The comment period expires (**insert 75 days from date of publication**). Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number, **RIN 3150-AI27,** in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety in NRC's Agencywide Documents Access and Management System (ADAMS). Personal information, such as your name, address, telephone number, e-mail address, etc., will not be removed from your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677. Comments can also be submitted via the Federal eRulemaking Portal. http://www.regulations.gov.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301-415-1677).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301- 415-1101.

Publicly available documents related to this rulemaking, including comments, may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O-1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at http://www.nrc.gov/reading-rm/adams.html. From this site, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS,

contact the PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to pdr.resource@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Cardelia H. Maupin, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-2312, e-mail, Cardelia.Maupin@nrc.gov.

SUPPLEMENTARY INFORMATION:

VIII. Paperwork Reduction Act Statement

IX. Public Protection Notification

X. Regulatory Analysis

XI. Regulatory Flexibility Certification

XII. Backfit Analysis

I. Background

The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321-4370f, requires Federal agencies to undertake an assessment of the environmental effects of their proposed actions prior to making decisions. The NRC's NEPA regulations are contained in 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions."

An EIS documents an agency's evaluation of the environmental impacts of a major Federal action significantly affecting the quality of the human environment.

A. General Overview of Categorical Exclusion

There are three types of NEPA analysis: a categorical exclusion, an environmental assessment (EA), or an environmental impact statement (EIS). An EA is a concise, publicly available document that provides sufficient evidence and analysis for determining whether to prepare an EIS or make a finding of no significant impact (FONSI). If ~~the~~ an EA supports a FONSI, the environmental review process is complete. If the EA reveals that the proposed action may have a significant effect on the human environment, the Federal agency then normally prepares an EIS. If the Federal agency finds that actions in a given category ~~of action has~~ have repeatedly shown been to have no significant effect on the human environment, either individually or cumulatively, then it has the agency may establish a categorical exclusion for that category of action. Once established, the agency is

A categorical exclusion, in contrast, is a ~~rule that~~ category of actions that do not have a significant effect on the human environment, as ~~its regulations~~ by a Federal agency in ~~procedures~~ its procedures implementing NEPA.

not required to prepare an EA or EIS for any action that falls within the scope of the categorical exclusion, unless the agency finds, for any particular action, that there are special (*e.g.*, unique, unusual or controversial) circumstances ~~which~~ that may have a significant effect on the human environment. Categorical exclusions streamline the NEPA process, saving time, effort, and resources.

B. NRC Categorical Exclusion Regulations

On March 12, 1984 (49 FR 9352), the NRC published 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments." The regulation included NRC's first list of 18 categorical exclusions in 10 CFR 51.22, "Criterion for categorical exclusion: identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review."

C. Amendments to NRC Categorical Exclusion Regulations

Over the past 24 years, NRC has made 14 amendments to the categorical exclusions in §51.22. Nine of these amendments were minor, corrective, or conforming changes, and four were more substantive. All resulted from rulemaking efforts addressing other parts of NRC regulations. As a result of the 14 amendments, the list of categorical exclusions in §51.22 (c) increased from 18 to 23 categorical exclusions. The NRC's categorical exclusions include administrative, organizational, or procedural amendments to certain types of NRC regulations, licenses, and certificates; minor changes related to application filing procedures; certain personnel and procurement activities; and activities when environmental review by NRC is excluded by statute.

D. Basis for Proposed Amendment of Categorical Exclusion Regulation

The NRC is proposing additional amendments to the 10 CFR 51.22 categorical exclusions to reflect regulatory experience gained since the development of this regulation in March 1984. Prior to this rulemaking effort, there has been no comprehensive review and update of § 51.22 since its development over 24 years ago. The proposed rulemaking is based, in part, on the Council of Environmental Quality (CEQ) September 2003 NEPA Task Force Report (Task Force Report) "Modernizing NEPA Implementation," http://www.nepa.gov/ntf/report/pdftoc.html. The Task Force Report notes that the development and updating of categorical exclusions by Federal agencies occurs infrequently and recommended that Federal agencies examine their categorical exclusion regulations to identify potential revisions that would eliminate unnecessary and costly EAs. It also provides recommendations for categorical exclusion development and revision.

The Task Force Report notes that in developing new or broadening existing categorical exclusions, a key issue is how to evaluate whether a proposed categorical exclusion is appropriate to support a determination that a category of actions do not individually or cumulatively have a significant impact on the human environment. It recommends the use of information from past actions to establish the basis for the no significant impact determination. It further advises Federal agencies to evaluate past actions that occurred during a particular period to determine how often the NEPA analyses resulted in FONSIs for the category of actions being considered. The Task Force Report indicates that an adequate basis for developing new or broadening existing categorical exclusions exists if all the evaluated past actions resulted in FONSIs. It also provides that criteria for identifying new categorical exclusions should include: (1) repetitive actions that do not individually or cumulatively have significant effects on the human environment; (2) actions that generally require limited

environmental review; and (3) actions that are noncontroversial.

The proposed rule is also based upon a review of NRC regulatory actions. As noted, the Task Force Report recommends that agencies evaluate past EA/FONSIs for particular categories of actions to develop new or broaden existing categorical exclusions. To comply with this recommendation, an NRC search of files for EA/FONSIs completed during the 20-year period from 1987 to 2007 was conducted. The search revealed that more than 1,500 actions resulted in EA/FONSIs. NRC conducted an in-depth review of the EA/FONSIs issued during the last 5 years. That review identified several recurring categories of regulatory actions that are not addressed in 10 CFR 51.22, and have no significant effect on the human environment, either individually or cumulatively. These categories of actions were considered in the proposed revisions.

II. Discussion

A. What is a Categorical Exclusion?

CEQ regulations note that many actions taken by Federal agencies would have no significant effect on the human environment and introduced the term "categorical exclusion." The CEQ developed the categorical exclusion process to reduce the amount of unnecessary paperwork and delays associated with NEPA compliance. If a certain type of regulatory action, such as the issuance of regulations, would not normally result in any significant effect upon the human environment, then it is unnecessary to spend time and effort to repeatedly document that fact. The CEQ definition of a "categorical exclusion" also provides for "extraordinary

circumstances" (essentially, the NRC equivalent of special circumstances) in which a normally excluded action may have a significant environmental effect, thus, requiring preparation of an EA or an EIS.

B. What is NRC's Definition of Categorical Exclusion?

A "categorical exclusion" is defined in NRC's regulations in 10 CFR 51.14 as a category of actions which do not individually or cumulatively have a significant effect on the human environment and which the Commission has found to have no such effect in accordance with procedures set out in § 51.22, and for which, therefore, neither an EA nor an EIS is required. The NRC has determined that the categorical exclusions listed in 10 CFR 51.22 do not have a significant effect on the human environment.

C. How should a Categorical Exclusion be applied?

Before using a categorical exclusion for a proposed action, it should be considered whether there may be any special (*e.g.*, unique, unusual or controversial) circumstances arising from or related to that proposed action, that may result in the potential for a significant effect to the human environment. If such special circumstances are, or are likely to be, present, the NRC would then prepare an EA and if necessary, an EIS. If special circumstances are not present, then the categorical exclusion may be applied and the NRC will satisfy its NEPA obligation for that proposed action. The determination of whether special circumstances are present is a matter of NRC discretion. The determination that special circumstances are not present will not require the preparation of any specific or additional documentation beyond the documentation normally prepared, if any, indicating that the categorical exclusion is being invoked for the proposed action.

have created delays in licensee decisions when organizational name changes occur, because these decisions must await the completion of an EA/FONSI and publication in the Federal Register by the NRC.

III. Discussion of Proposed Amendments by Section

A. Why Revise the description of Categorical Exclusions in 10 CFR 51.22(a)?

A change is proposed to § 51.22(a) to clarify that the types of actions eligible for a categorical exclusion include "administrative" actions, in addition to "licensing" and "regulatory" actions.

B. Why Revise the Categorical Exclusion in 10 CFR 51.22(c)(1) which Addresses Amendments to 10 CFR Parts that Pertain solely to Organizational, Administrative or Procedural Matters?

Since the adoption of 10 CFR 51.22(c)(1) on March 12, 1984, the Commission adopted additional organizational, administrative, or procedural regulations to 10 CFR, and conforming revisions to this section were inadvertently omitted. The proposed amendment would update § 51.22(c)(1) to include such references to those 10 CFR Parts that were inadvertently omitted. The 10 CFR Parts referenced in this section relate to matters regarding Commission organization, administration, or procedure. They serve the dual purpose of making information readily available to the public and of establishing administrative procedures for the orderly conduct of Commission business. It was previously established that these types of regulations comprise actions which do not individually or cumulatively have a significant effect on the human environment.

D. What Action is the NRC Taking?

The NRC is proposing changes to its list of categorical exclusions to clarify the scope of existing categories and to add new categories of actions that have been shown to have no significant effect on the human environment. For example, the provisions in § 51.22(c)(10) cover administrative and procedural changes to a license or permit. However, because of the ambiguity of the language in this provision, the NRC has prepared numerous EA/FONSIs for changes to a licensee's name, address, or telephone number. The proposed action would also expand the categorical exclusion that addresses decommissioning activities and add categorical exclusions that address the awarding of education grants, and the granting of exemptions from certain regulatory requirements.

The proposed revisions of the categorical exclusion regulations would minimize inefficiencies and inconsistencies in the implementation of NRC's regulatory program. The amendment would eliminate the need to prepare unnecessary and costly EAs for NRC regulatory actions that have no significant effect on the human environment. The proposed revisions would also support the NRC's organizational excellence objectives of ensuring that its actions are effective, efficient, realistic, and timely.

E. Who Would This Action Affect?

This amendment would not impose any new requirements on NRC licenses, but would ensure that licensees' amendment requests are completed in a more efficient, effective, and timely manner, and would result in cost savings to the NRC and licensees. The proposed amendments would eliminate the preparation of EA/FONSIs for actions that routinely have been shown to have no effect on the human environment, e.g., administrative, procedural, or organizational licensee requests. Current ambiguities in the categorical exclusion regulations

The proposed amendment would update 10 CFR 51.22(c)(1) to include references to the following Commission organizational, administrative, or procedural requirements in the following 10 CFR Parts:

Part 5—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. This part is designed to eliminate (with certain exceptions) sex discrimination in any education program or activity receiving Federal financial assistance.

Part 12 – Implementation of the Equal Access to Justice Act in Agency Proceedings. This part establishes regulatory requirements for awarding of attorney fees to eligible individuals and entities in certain administrative proceedings before the Commission.

Part 13 – Program Fraud Civil Remedies. This part establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, false, fictitious, or fraudulent claims. It also specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties.

Part 15 – Debt Collection Procedures. This part establishes administrative procedures for the Commission to collect the payment of debts owed to the United States Government in the form of money or property ~~and~~, unless a different procedure is specified in a statute, regulation, or contract.

Part 16 – Salary Offset Procedures for Collecting Debts Owed by Federal Employees to the Federal Government. This part establishes procedures for the collection by administrative

offset of a Federal employee's salary without his/her consent to satisfy certain debts owed to the Federal Government.

Part 26 – Fitness for Duty Programs. This part prescribes requirements and standards for the establishment and maintenance of certain aspects of fitness-for-duty programs and procedures.

Part 160 – Trespassing on Commission Property. This part provides for the protection and security of NRC facilities, installations, and properties from unauthorized entry and from unauthorized weapons or dangerous materials.

C. Why Revise the Categorical Exclusion in 10 CFR 51.22(c)(2) which Addresses Minor or Corrective Amendments to NRC Regulations?

The current § 51.22(c)(2) provides a categorical exclusion for amendments to the regulations that are "corrective or of a minor or nonpolicy nature and do not substantially modify existing regulations." The proposed rule would amend this section to clarify and expand the scope of categorical exclusions to include amendments to the NRC's regulations that update requirements. The proposed amendment would clarify that these types of minor amendments to NRC regulations are excluded from the environmental review process. For example, the NRC routinely modifies the requirements in 10 CFR 50.55a, "*Codes and standards,*" to update incorporation by reference of the NRC-approved American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPV Code) and the Code for Operation and Maintenance of Nuclear Power Plants (OM Code). The ASME frequently updates its BPV Code and OM Code ~~requirements~~ as advances in technologies are made, new procedures are

developed, and new information becomes available. Generally, these changes to the ASME Codes streamline operations, enhance safety, or reduce public exposure to radiation. In the intervals between the issuance of the updated ASME BPV Code and OM Code Editions and Addenda, the various ASME Committees meet and publish Code Cases on a quarterly basis. These Code Cases are alternatives to ~~requirements of~~ the ASME BPV and OM Code requirements and often reflect improvements in technology, new information, or improved procedures.

The NRC's practice has been to review ASME Code Cases and find them acceptable, conditionally acceptable, or unacceptable for use by NRC facility licensees. The acceptable and conditionally acceptable Code Cases are then listed in NRC regulatory guides that are incorporated by reference in the NRC's regulations in § 50.55a, "Codes and standards." Because 10 CFR 51.22(c)(2), as presently worded, is not clear, each time the NRC updates its regulations to incorporate the most current ASME reference or update any other reference, an EA must be prepared. During the past 5 years (2003 through 2007), the Commission prepared at least eight EA/FONSIs in response to a licensee's request to use an updated NRC-approved ASME code. The preparation of EAs for these amendments is costly, and creates unnecessary delays in the completion of regulatory actions.

D. Why Revise the Categorical Exclusion in 10 CFR 51.22(c)(3) which Addresses Amendments to Administrative, Organizational or Procedural Requirements within Other 10 CFR Parts?

This section currently lists several 10 CFR Parts. The NRC is proposing to revise this section to delete the specific listing of 10 CFR Parts and to add a generic reference to reflect any part of CFR Chapter 10. This proposed revision eliminates the need for changes due to

new parts being added or deleted. As a result, efficiencies will be gained in the rulemaking process.

The proposed rule would also add a new paragraph (iv) to § 51.22(c)(3) to expand the categorical exclusion to include amendments concerning education, training, experience, qualification, or other employment suitability requirements established in the regulations.

E. Why Revise the Categorical exclusion in 10 CFR 51.22(c)(9) which Addresses Amendments to a Permit or License for a Reactor under Parts 50 or 52?

The proposed rule expands the scope of the current categorical exclusion to include the granting of an exemption from a requirement pertaining to the installation or use of a facility component located within the restricted area, as defined in 10 CFR Part 20, or an inspection or surveillance requirement. Under the current rule, such an exemption would not be covered by this categorical exclusion, and would therefore requiring the preparation of an EA. The Commission has now determined, however, that there is ample data in the form of EA/FONSIs to justify the categorical exclusion of ~~provide reasonable assurance to categorically exclude~~ such the granting of exemptions ~~from these requirements,~~ provided that the criteria in the current categorical exclusion (i.e., the request involves no significant hazards consideration, there is no significant change in the types of, or increase in the amounts of, effluents that may be released offsite, and there is no significant increase in individual or cumulative occupational radiation exposure) are applied to them. ~~continue to be met~~. During the last five year period, at least 50 such EA/FONSIs resulted from licensee requests for ~~an~~ exemptions ~~from such requirements.~~

F. Why Revise the Categorical Exclusion in 10 CFR 51.22(c)(10) which Addresses Administrative, Procedural, Organizational or Editorial Changes to a Permit or License?

The proposed rule revises § 51.22(c)(10) by deleting the specific listing of 10 CFR Parts

and replacing it with a generic reference to reflect any part of 10 CFR. This proposed revision would eliminate the need for changes due to new parts being added or deleted. As a result, efficiencies are gained in the rulemaking process.

In addition, § 51.22(c)(10) would be revised to add new paragraphs (iii), (iv), and (v) to clarify that changes to a license or permit that are administrative, procedural, organizational, or editorial in nature, are not subject to environmental review. The NRC has conducted several EAs, each resulting in a FONSI, for minor administrative changes to licenses and permits because these actions were not specifically identified in § 51.22(c). These types of amendments to a license or permit facilitate the orderly conduct of the licensee's business and ensure that information needed by the Commission to perform its regulatory functions is readily available. These amendments would also include the changing of references on licenses and other licensee documents (e.g., licensee's operational procedures) to reflect amendments to NRC regulations, updated NRC-approved guidance (e.g., NUREG documents), ASME Codes or International Commission on Radiological Protection (ICRP) ~~requirements~~ provisions. Under the current rule, the NRC has been required to prepare EAs for the following administrative actions:

(1) Amendments to reflect changes in ownership;

(2) Amendments to reflect organization name changes;

(3) Amendments to reflect corporate restructuring, including mergers;

(4) Amendments to licenses to reflect changes in references; and

(5) Amendments correcting typographical and editorial errors on licenses, permits, and associated technical specification documents.

The Commission has consistently determined that these types of amendments have no significant impact on the human environment.

G. Why Revise the Categorical Exclusion in 10 CFR 51.22(c)(20) which Addresses Decommissioning of Sites?

The proposed regulatory action would expand the 10 CFR 51.22(c)(20) categorical exclusion to cover the decommissioning of sites where licensed operations have been limited to the use of radioactive materials in such a manner that a decommissioning plan is not required by §§ 30.36(g)(1), 40.42(g)(1) or 70.38(g)(1), and the NRC has determined that the facility meets the radiological criteria for unrestricted use in § 20.1402, without further remediation or analysis. These types of decommissioning activities are described in NUREG-1757, Vol.1, Rev. 2, "Consolidated NMSS Decommissioning," as Group 2 decommissioning activities, which defines seven decommissioning groups.

Group 2 decommissioning activities cover those:

(1) Facilities where the licensee possessed and used only sealed sources, but the most recent leak tests indicate that the sources leaked or leak tests are not available; or

(2) Facilities where the licensee used unsealed radioactive material, the licensee's survey demonstrated that levels of radiological contamination on building surfaces or surface soils meet the provisions for unrestricted release in 10 CFR 20.1402 by applying NRC-approved decommissioning screening criteria and the licensee is not required to submit a decommissioning plan.

Group 2 decommissioning requests received by the NRC involve licensees who are authorized to possess and use sealed and/or unsealed radioactive materials with half-lives greater than 120 days. For example, the most common unsealed radioactive materials used by Group 2 licensees are tritium (H-3) and Carbon-14.

Normally, Group 2 licensees in the decommissioning process remediate their sites, as necessary, using their operating procedures. These licensees are required to keep records of material receipt, use, and disposal, enabling them to quantify past radiological material possession and use with a high degree of confidence. These licensees have radiological survey records that characterize the residual radiological contamination levels present within the facilities and at their sites. They are able to demonstrate residual radiological contamination levels without more sophisticated survey procedures or dose modeling. Group 2 facilities are not required to have a decommissioning plan, but must demonstrate that ~~their~~ site meets the screening criteria of § 20.1402. A decommissioning plan is not required because worker cleanup activities and procedures are consistent with those approved for routine operations and no dose analysis is required.

In many cases, the NRC conducts confirmatory surveys during the licensee's decommissioning activities to verify the accuracy of the licensee's measuring techniques to satisfy the requirements of § 20.1402. NRC also uses the report of this survey to support a decision on the licensee's application to terminate a license and release the site. The NRC uses a risk-informed process that assigns higher priority for conducting confirmatory surveys at sites that may pose a greater potential threat to the public health and safety. The NRC's approach assumes that in-process inspections are more efficient than one-time confirmatory surveys and allows the release of some facilities from regulatory control based solely on past operations and performance. This approach confirms the NRC's confidence that the facility was adequately remediated by the licensee after a satisfactory closeout inspection. At this point, the NRC has determined that the site, building, or area has already been remediated and is acceptable for unrestricted release based on § 20.1402, and as such, no additional decommissioning activities are required.

At present, §51.22(c)(20) categorically excludes from further NRC environmental review those activities which are defined in NUREG-1757 as Group 1 decommissioning activities, namely, the decommissioning of sites where licensed operations had been limited to the use of small quantities of unsealed short-lived radioactive materials or radioactive materials in sealed sources, provided there is no evidence of leakage of radioactive material from these sealed sources. The current § 51.22(c)(20) decommissioning categorical exclusion was added with the promulgation of the license termination rule; "Radiological Criteria for License Termination," (July 21, 1997; 62 FR 39058). The license termination rule, now codified at 10 CFR Part 20, Subpart E, established a dose-based radiological criterion of 25 mrem/yr in § 20.1402 for the release of a decommissioned site for unrestricted use.

In establishing the decommissioning categorical exclusion, the Commission relied on the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination on NRC-Licensed Nuclear Facilities" (GEIS; NUREG-1496, Vol. 1). The GEIS concluded that with the use of "decay in storage" for the short-lived nuclides (those with a half-life of less than or equal to 120 days) and the time involved in submitting the information necessary to terminate a license, licensed material would reach sufficiently low levels such that decontamination of the building or of soils would not be needed.

However, the GEIS did not enable the Commission to determine ~~with reasonable assurance~~ that there would be no significant effect on the human environment from the use of unsealed radioactive materials with half-lives of more than 120 days. Specifically, the Commission determined that the unique conditions of each licensee facility and the specific uses of unsealed radioactive materials at each site prevented the environmental impacts from being analyzed on a generic basis. Accordingly, the Commission has relied on the GEIS to satisfy its obligations under NEPA regarding decommissioning decisions on sites that meet the

25 mrem/y (0.25 mSv/yr) criterion for unrestricted use, but has continued to require an EA for the decommissioning of any site ~~that possesses~~ on which unsealed radioactive materials with half-lives of more than 120 days are located. As such, based upon the 1997 Commission decision, EAs are performed for Group 2 decommissioning activities.

The Commission has now determined, however, that there is ample data in the form of EA/FONSIs to ~~provide reasonable assurance to categorically exclude~~ justify the categorical exclusion of Group 2 decommissioning activities. The data shows that ~~for each~~ every EA for ~~every~~ a Group 2 decommissioning action in the last 5 years, a total of 73 EAs performed, resulted in a FONSI. Thus, the Commission proposes to add a new paragraph (iii) to § 51.22(c)(20) to categorically exclude from the Commission's environmental review the decommissioning of sites where radioactive material has been used in such a manner that a decommissioning plan is not required based on §§ 30.36(g)(1), 40.42(g)(1), or 70.38(g)(1), and the Commission has determined under § 20.1402 that the facility meets the radiological criteria for unrestricted release without further remediation or analysis. If additional cleanup or analysis is needed to meet § 20.1402, the decommissioning activity would be considered a Group 3 or higher decommissioning activity ~~per~~ in accordance with NUREG-1757, and would not be covered by this categorical exclusion.

H. Why Add a Categorical Exclusion in 10 CFR 51.22(c)(24) which Addresses the Awarding of Education Grants?

The proposed rule would add a new 10 CFR 51.22(c)(24) to categorically exclude the issuance of grants, by the NRC, to institutions of higher education in the United States, for scholarships, fellowships, faculty and curricula development in nuclear safety, nuclear security, nuclear environmental protection, and other fields that the Commission determines to be critical to the NRC's regulatory mission. The proposed categorical exclusion covers those actions that

are specifically geared toward the development of teaching and educational programs in the nuclear field. The purpose of the grant program is to foster a work force capable of supporting the safe design, construction, operation, and regulation of nuclear facilities, and the safe handling of nuclear materials.

Sections 31.b.(2) and 243 of the Atomic Energy Act of 1954, as amended, constitute the statutory basis of this grants program. Section 243 authorizes the creation of a scholarship and fellowship program to fund scholarships, fellowships, and stipends for the study of science, engineering, or another field of study that the NRC determines is a critical skill area related to its regulatory mission, to support faculty and curricular development in such fields, and to support other domestic educational, technical assistance, or training programs (including those of trade schools) in such fields. Section 31.b.(2) authorizes the NRC to provide grants, loans, cooperative agreements, contracts, and equipment to institutions of higher education to support courses, studies, training, curricula, and disciplines pertaining to nuclear safety, security, or environmental protection, or any other field that the NRC determines to be critical to its regulatory mission.

This new categorical exclusion would cover actions that the NRC has determined to be administrative in nature. As such, these actions (the issuance of grant awards and the concomitant administration of the grants program) will have no significant effect on the quality of the human environment. The actions covered by this proposed categorical exclusion are not expected to result in: increased radiation doses to nuclear industry workers or members of the public; degradation of water quality or of the water supply; endangered or threatened species habitat destruction; increased effluents or changes in effluent pathways; increased noise; damage or reduced access to cultural resources; changes to local or regional socioeconomic conditions; increased traffic or other transportation effects; or increased competition for

Isn't the information from here down also property in the EA for this proposed rule?

available resources. Moreover, the NRC will not issue awards to fund programs that include or involve activities directly affecting the environment, such as the construction of facilities; a major disturbance of the local environment brought about by blasting, drilling, excavating, or other means; large-scale acquisitions of computer equipment; field work affecting the local environment (except field work which only involves noninvasive or non-harmful techniques such as taking water or soil samples or collecting non-protected species of flora and fauna); and the testing and release of radioactive material.

I. Why Add a Categorical Exclusion in 10 CFR 51.22(c)(25) which Addresses the Granting of Exemptions from Regulatory Requirements?

The proposed rule would add a new § 51.22(c)(25) to categorically exclude the NRC action of granting exemptions from certain regulatory requirements. The NRC has found that the majority of the exemptions it grants from various regulatory requirements are administrative or procedural in nature, or are otherwise consistent with the existing criteria for approving amendments to licenses and permits under 10 CFR 51.22(c)(9) and (c)(11). As a result, numerous EAs, each resulting in a FONSI, have been prepared to support the granting of such exemptions. For example, the majority of the EA/FONSIs addressed exemption requests concerning the following administrative issues:

(1) Revising the schedule for the biennial exercise requirements for nuclear reactors in 10 CFR Part 50, Appendix E, Sections IV.F. 2.b and c;

(2) Applying updated NRC-approved ASME Codes; and

(3) Training, and experience requirements in 10 CFR Part 35, "Medical Use of Byproduct Material."

The proposed categorical exclusion contains prescriptive language that would limit its application to only those exemptions that will not have a significant effect on the human environment.

IV. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the Federal Register on September 3, 1997 (62 FR 46517), this rule is classified as a Compatibility Category "NRC." The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State. NEPA applies only to Federal agencies. This rulemaking will not have any impact on Agreement States' regulations. Therefore, Agreement States will not need to make conforming changes to their regulations.

V. Plain Language

The Presidential Memorandum "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883), directed that the Government's documents be written in clear and accessible language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the "ADDRESSES" heading of this document.

VI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. The NRC is proposing to amend 10 CFR 51.22, the NRC's list of categories of actions that the NRC has determined to have no significant effect on the human environment. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

VII. Finding of No Significant Environmental Impact: Availability

Under NEPA and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an EIS is not required. The NRC has prepared an EA and, on the basis of this EA, has made a FONSI. The proposed amendments are based upon NRC review of environmental assessments conducted over the past 5 years that have consistently resulted in FONSIs. The proposed amendments to the categorical exclusions are minor, administrative, or procedural in nature (e.g., no increases in releases/uses of radioactive or chemical materials).

The NRC has sent a copy of the EA and this proposed rule to every State Liaison Officer and requested their comments on the EA. The EA may be examined at the NRC Public Document Room, 11555 Rockville Pike, Room O-1F23, Rockville, MD 20852.

VIII. Paperwork Reduction Act Statement

This proposed rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

IX. Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

X. Regulatory Analysis

This proposed rule is anticipated to be cost-effective. It would eliminate the need to prepare EAs for actions that have no significant effect on the human environment, and would eliminate the delays associated with the preparation of these documents. A regulatory analysis is not required because this rulemaking does not impose any new requirements on NRC licensees.

XI. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities.

XII. Backfit Analysis

The NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this proposed rule because this amendment would not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required.

List of Subjects in Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC proposes to adopt the following amendments to 10 CFR Part 51:

PART 51 - ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS.

1. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853-854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95-604, Title II, 92 Stat. 3033-3041; and sec. 193, Pub. L. 101-575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80. and 51.97 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100-203, 101 Stat.

1330-223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036-3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also under Nuclear Waste Policy Act of 1982, sec 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

2. In § 51.22, paragraphs (a), (c)(1), (c)(2), (c)(3), (c)(9), (c)(10), and (c)(20 are revised, and paragraphs (c)(24) and (c)(25) are added to read as follows:

§ 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.

(a) Licensing, regulatory, and administrative actions eligible for categorical exclusion shall meet the following criterion: The proposed action belongs to a category of actions which the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment.

* * * * *

(c) The following categories of actions are categorical exclusions:

(1) Amendments to Parts 1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 15, 16, 19, 21, 25, 26, 55, 75, 95, 110, 140, 150, 160, 170, or 171 of this chapter, and actions on petitions for rulemaking relating to Parts 1, 2, 4, 5, 7, 9, 10, 11, 12, 13, 14, 15, 16, 19, 21, 25, 26, 55, 75, 95, 110, 140, 150, 160, 170, or 171 of this chapter.

(2) Amendments to the regulations in this chapter which are corrective, clarifying or of a minor nature or which update references, provided that such amendments do not substantially

modify existing regulations, and actions on petitions for rulemaking relating to these amendments.

(3) Amendments to any part in this chapter, and actions on petitions for rulemaking relating to these amendments, which relate to--

(i) Procedures for filing and reviewing applications for licenses or construction permits or early site permits or other forms of permission or for amendments to or renewals of licenses or construction permits or early site permits or other forms of permission;

(ii) Recordkeeping requirements;

(iii) Reporting requirements; or

(iv) Education, training, experience, qualification or other employment suitability requirements.

* * * * *

(9) Issuance of an amendment to a permit or license for a reactor under part 50 or part 52 of this chapter, which changes a requirement, or grants an exemption from any such requirement, with respect to installation or use of a facility component located within the restricted area, as defined in part 20 of this chapter, or which changes an inspection or a surveillance requirement, provided that:

(i) The amendment or exemption involves no significant hazards consideration,;

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and

(iii) There is no significant increase in individual or cumulative occupational radiation exposure.

(10) Issuance of an amendment to a permit or license issued under this chapter which --

(i) Changes surety, insurance and/or indemnity requirements;

(ii) Changes recordkeeping, reporting, or administrative procedures or requirements;

(iii) Changes the licensee's or permit holder's name, phone number, business or e-mail address;

(iv) Changes the name, position, or title of an officer of the licensee or permit holder, including but not limited to, the radiation safety officer or quality assurance manager; or

(v) Changes the format of the license or permit or otherwise make editorial, corrective or other minor revisions, including the updating of NRC approved references.

* * * * *

(20) Decommissioning of sites where licensed operations have been limited to the use of-

(i) Small quantities of short-lived radioactive materials;

(ii) Radioactive materials in sealed sources, provided there is no evidence of leakage of radioactive material from these sealed sources; or

(iii) Radioactive materials in such a manner that a decommissioning plan is not required by 10 CFR 30.36(g)(1), 40.42(g)(1), or 70.38(g)(1), and the NRC has determined that the facility meets the radiological criteria for unrestricted release in 10 CFR 20.1402 without further remediation or analysis.

* * * * *

(24) Grants to institutions of higher education in the United States, to fund scholarships, fellowships, and stipends for the study of science, engineering, or another field of study that the NRC determines is in a critical skill area related to its regulatory mission, to support faculty and curricular development in such fields, and to support other domestic educational, technical

assistance, or training programs (including those of trade schools) in such fields, except to the extent that such grants or programs include activities directly affecting the environment, such as:

(i) The construction of facilities;

(ii) A major disturbance brought about by blasting, drilling, excavating or other means;

(iii) Field work, except that which only involves noninvasive or non-harmful techniques such as taking water or soil samples or collecting non-protected species of flora and fauna; or

(iv) The release of radioactive material.

(25) Granting of an exemption from the requirements of any regulation of this chapter, provided that-

(i) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

(ii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

(iii) There is no significant construction impact;

(iv) There is no significant increase in the potential for or consequences from radiological accidents; and

(v) The requirements from which an exemption is sought involve:

(A) Recordkeeping requirements;

(B) Reporting requirements;

(C) Inspection or surveillance requirements;

(D) Equipment servicing or maintenance requirements;

(E) Education, training, experience, qualification, requalification or other employment suitability requirements;

(F) Requirements for safeguard plans, including materials control, accounting, or other inventory requirements;

(G) Scheduling requirements;

(H) Surety, insurance or indemnity requirements;

(I) Requirements to update references; e.g. NRC approved ASME codes, ICRP standards, or regulatory guidance; or

(J) Other requirements of an administrative, managerial, organizational, or procedural nature.

Dated at Rockville, Maryland, this day of , 2008.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

Enclosure 2

Environmental Assessment

ENVIRONMENTAL ASSESSMENT AND FINAL FINDING OF NO SIGNIFICANT IMPACT FOR THE PROPOSED RULE AMENDING 10 CFR PART 51.22

"Criteria for Categorical Exclusion: Identification of Licensing and Regulatory Actions Eligible for Categorical Exclusion or Otherwise not requiring Environmental Review"

Office of Federal and State Materials and Environmental Management Programs

U.S. Nuclear Regulatory Commission

July 2008

I. THE PROPOSED ACTION

The NRC is proposing changes to the list of categorical exclusions in 10 CFR 51.22 to clarify the scope of the existing categories of actions and to add new categories of actions that have been determined by the NRC to have no significant effect on the human environment.

II. THE NEED FOR THE PROPOSED ACTION

Prior to this proposed rule, there has been no comprehensive review and update of the Section 51.22 since its development in 1984. The proposed rulemaking is based, in part, on the September 2003 Council of Environmental Quality's (CEQ) NEPA Task Force Report (Task Force Report) "Modernizing NEPA Implementation," http://www.nepa.gov/ntf/report/pdftoc.html. The Task Force Report notes that the development and updating of categorical exclusions occur too infrequently and recommended that Federal agencies examine their categorical exclusion regulations and identify potential revisions that would eliminate unnecessary and

costly environmental assessments (EAs). It also provides recommendations for categorical exclusion development and revision.

The Task Force Report notes that in developing new or broadening existing categorical exclusions, a key issue is how to evaluate whether a proposed categorical exclusion is appropriate to support a determination that a category of actions do not individually or cumulatively have a significant effect on the human environment. The report recommends the use of information from past actions to establish the basis for the no significant effect determination. This report further advises Federal agencies to evaluate past actions that occurred during a particular period to determine how often the NEPA analyses resulted in findings of no significant impacts (FONSIs) for the category of actions being considered. The Task Force Report indicates that an adequate basis for developing new or broadening existing categorical exclusions exists if all the evaluated past actions resulted in FONSIs. It also provides that criteria for identifying new categorical exclusions should include: (1) repetitive actions that do not individually or cumulatively have significant effects on the human environment; (2) actions that generally require limited environmental review; and (3) actions that are noncontroversial in nature.

The proposed rulemaking is also based upon a review of NRC regulatory actions. As noted, the Task Force Report recommends that agencies evaluate past EA/FONSIs for particular categories of actions to develop new or broaden existing categorical exclusions. To comply with this recommendation, the NRC conducted a file search for EA/FONSIs period from 1987 to 2007. The search revealed that more than 1,500 actions resulted in EA/FONSIs. The NRC conducted an in-depth review of the EA/FONSIs issued in the last 5 years. That review identified several recurring categories of regulatory actions that resulted in FONSIs that are not addressed in the categorical exclusions in 10 CFR 51.22, and have no significant effect on the

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER LYONS

SUBJECT: 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)

Approved __X__ Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached ___ None __X__

Peter B. Lyons
SIGNATURE

8/ 13 /08
DATE

Entered on "STARS" Yes __X__ No ___

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER SVINICKI

SUBJECT: 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)

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached XX None ___

SIGNATURE

08/27/08
DATE

Entered on "STARS" Yes ✓ No ___

Commissioner Svinicki's Comments on 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)

I approve staff recommendations in SECY-08-0115 to publish a proposed rule identifying licensing and regulatory actions eligible for categorical exclusion from the requirement to prepare environmental assessments under the National Environmental Policy Act of 1969 (NEPA). This proposed rule has been developed by staff in response to the 2003 Council on Environmental Quality (CEQ) Task Force Report, which found that development and updating of categorical exclusion regulations should be undertaken more frequently. I support this view and believe that staff's response to this report should not be a one time effort. Staff should add, therefore, to its long term planning the need to evaluate on some set periodicity the adequacy of NRC's categorical exclusion regulations.

I have reviewed the specifics of staff's proposal for modifications and additions to the existing categorical exclusion regulations and concur that the categorical exclusions proposed by staff represent actions which are appropriately administrative or procedural in nature to qualify for categorical exclusion. However, the agency's compliance with NEPA is an area of high stakeholder interest and consequently ample time should be provided for the public to comment on this proposed rule. I call attention therefore to staff's recommendation to allow a 75 day public comment period, which I believe should be adequate to allow appropriate public input to this process.

I compliment staff for the thorough work they have done in reviewing the past 20 years of the agency's NEPA documentation and for this carefully prepared set of recommended changes. In addition, attached are some editorial comments which should be made to the Federal Register Notice before publication.

Kristine L. Svinicki 08/22/08

not required to prepare an EA or EIS for any action that falls within the scope of the categorical exclusion, unless the agency finds, for any particular action, that there are special (*e.g.*, unique, unusual or controversial) circumstances which may have a significant effect on the human environment. Categorical exclusions streamline the NEPA process, saving time, effort, and resources.

B. NRC Categorical Exclusion Regulations

On March 12, 1984 (49 FR 9352), the NRC published 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments." The regulation included NRC's first list of 18 categorical exclusions in 10 CFR 51.22, "Criterion for categorical exclusion: identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review."

C. Amendments to NRC Categorical Exclusion Regulations

Over the past 24 years, NRC has made 14 amendments to the categorical exclusions in §51.22. Nine of these amendments were minor, corrective, or conforming changes, and four were more substantive. All resulted from rulemaking efforts addressing other parts of NRC regulations. As a result of the 14 amendments, the list of categorical exclusions in §51.22 (c) increased from 18 to 23 categorical exclusions. The NRC's categorical exclusions include administrative, organizational, or procedural amendments to certain types of NRC regulations, licenses, and certificates; minor changes related to application filing procedures; certain personnel and procurement activities; and activities when environmental review by NRC is excluded by statute.

D. Basis for Proposed Amendment of Categorical Exclusion Regulation

The NRC is proposing additional amendments to the 10 CFR 51.22 categorical exclusions to reflect regulatory experience gained since the development of this regulation in March 1984. Prior to this rulemaking effort, there has been no comprehensive review and update of § 51.22 since its development over 24 years ago. The proposed rulemaking is based, in part, on the Council on Environmental Quality (CEQ) September 2003 NEPA Task Force Report (Task Force Report) "Modernizing NEPA Implementation," http://www.nepa.gov/ntf/report/pdftoc.html. The Task Force Report notes that the development and updating of categorical exclusions by Federal agencies occurs infrequently and recommended that Federal agencies examine their categorical exclusion regulations to identify potential revisions that would eliminate unnecessary and costly EAs. It also provides recommendations for categorical exclusion development and revision.

The Task Force Report notes that in developing new or broadening existing categorical exclusions, a key issue is how to evaluate whether a proposed categorical exclusion is appropriate to support a determination that a category of actions do not individually or cumulatively have a significant impact on the human environment. It recommends the use of information from past actions to establish the basis for the no significant impact determination. It further advises Federal agencies to evaluate past actions that occurred during a particular period to determine how often the NEPA analyses resulted in FONSIs for the category of actions being considered. The Task Force Report indicates that an adequate basis for developing new or broadening existing categorical exclusions exists if all the evaluated past actions resulted in FONSIs. It also provides that criteria for identifying new categorical exclusions should include: (1) repetitive actions that do not individually or cumulatively have significant effects on the human environment; (2) actions that generally require limited

new parts being added or deleted. As a result, efficiencies will be gained in the rulemaking process.

The proposed rule would also add a new paragraph (iv) to § 51.22(c)(3) to expand the categorical exclusion to include amendments concerning education, training, experience, qualification, or other employment suitability requirements established in the regulations.

E. Why Revise the Categorical exclusion in 10 CFR 51.22(c)(9) which Addresses Amendments to a Permit or License for a Reactor under Parts 50 or 52?

The proposed rule expands the scope of the current categorical exclusion to include the granting of an exemption from a requirement pertaining to the installation or use of a facility component located within the restricted area, as defined in 10 CFR Part 20, or an inspection or surveillance requirement. Under the current rule, an exemption would not be covered by this categorical exclusion, therefore requiring the preparation of an EA. The Commission has now determined, however, that there is ample data in the form of EA/FONSIs to provide reasonable assurance to categorically exclude the granting of exemptions from these requirements, provided that the criteria in the current categorical exclusion (i.e., no significant hazards consideration, no significant change in the types of or, increase in the amounts of, effluents that may be released offsite, and no significant increase in individual or cumulative occupational radiation exposure) continues to be met. During the last five year period, at least 50 EA/FONSIs resulted from licensee requests for an exemption from such requirements.

F. Why Revise the Categorical Exclusion in 10 CFR 51.22(c)(10) which Addresses Administrative, Procedural, Organizational or Editorial Changes to a Permit or License?

The proposed rule revises § 51.22(c)(10) by deleting the specific listing of 10 CFR Parts

and replacing it with a generic reference to reflect any part of 10 CFR. This proposed revision would eliminate the need for changes due to new parts being added or deleted. As a result, efficiencies are gained in the rulemaking process.

In addition, § 51.22(c)(10) would be revised to add new paragraphs (iii), (iv), and (v) to clarify that changes to a license or permit that are administrative, procedural, organizational, or editorial in nature, are not subject to environmental review. The NRC has conducted several EAs, each resulting in a FONSI, for minor administrative changes to licenses and permits because these actions were not specifically identified in § 51.22(c). These types of amendments to a license or permit facilitate the orderly conduct of the licensee's business and ensure that information needed by the Commission to perform its regulatory functions is readily available. These amendments would also include the changing of references on licenses and other licensee documents (e.g., licensee's operational procedures) to reflect amendments to NRC regulations, updated NRC-approved guidance (e.g., NUREG documents), ASME Codes or International Commission on Radiological Protection (ICRP) requirements. Under the current rule, the NRC has been required to prepare EAs for the following administrative actions:

(1) Amendments to reflect changes in ownership;

(2) Amendments to reflect organization name changes; (extra period)

(3) Amendments to reflect corporate restructuring, including mergers;

(4) Amendments to licenses to reflect changes in references; and

(5) Amendments correcting typographical and editorial errors on licenses, permits, and associated technical specification documents.

The Commission has consistently determined that these types of amendments have no significant impact on the human environment.

1330-223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036-3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also under Nuclear Waste Policy Act of 1982, sec 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

2. In § 51.22, paragraphs (a), (c)(1), (c)(2), (c)(3), (c)(9), (c)(10), and (c)(20) are revised, and paragraphs (c)(24) and (c)(25) are added to read as follows:

§ 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.

(a) Licensing, regulatory, and administrative actions eligible for categorical exclusion shall meet the following criterion: The proposed action belongs to a category of actions which the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment.

* * * * *

(c) The following categories of actions are categorical exclusions:

(1) Amendments to Parts 1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 15, 16, 19, 21, 25, 26, 55, 75, 95, 110, 140, 150, 160, 170, or 171 of this chapter, and actions on petitions for rulemaking relating to Parts 1, 2, 4, 5, 7, 9, 10, 11, 12, 13, 14, 15, 16, 19, 21, 25, 26, 55, 75, 95, 110, 140, 150, 160, 170, or 171 of this chapter.

(2) Amendments to the regulations in this chapter which are corrective, clarifying or of a minor nature or which update references, provided that such amendments do not substantially

(i) Changes surety, insurance and/or indemnity requirements;

(ii) Changes recordkeeping, reporting, or administrative procedures or requirements;

(iii) Changes the licensee's or permit holder's name, phone number, business or e-mail address;

(iv) Changes the name, position, or title of an officer of the licensee or permit holder, including but not limited to, the radiation safety officer or quality assurance manager; or

(v) Changes the format of the license or permit or otherwise make editorial, corrective or other minor revisions, including the updating of NRC approved references.

* * * * *

(20) Decommissioning of sites where licensed operations have been limited to the use of-

(i) Small quantities of short-lived radioactive materials;

(ii) Radioactive materials in sealed sources, provided there is no evidence of leakage of radioactive material from these sealed sources; or

(iii) Radioactive materials in such a manner that a decommissioning plan is not required by 10 CFR 30.36(g)(1), 40.42(g)(1), or 70.38(g)(1), and the NRC has determined that the facility meets the radiological criteria for unrestricted release in 10 CFR 20.1402 without further remediation or analysis.

* * * * *

(24) Grants to institutions of higher education in the United States, to fund scholarships, fellowships, and stipends for the study of science, engineering, or another field of study that the NRC determines is in a critical skill area related to its regulatory mission, to support faculty and curricular development in such fields, and to support other domestic educational, technical

ENVIRONMENTAL ASSESSMENT AND FINAL FINDING OF

NO SIGNIFICANT IMPACT

FOR THE

PROPOSED RULE

AMENDING 10 CFR PART 51.22

"Criteria for Categorical Exclusion: Identification of Licensing and Regulatory Actions Eligible for Categorical Exclusion or Otherwise not requiring Environmental Review"

Office of Federal and State Materials and Environmental Management Programs

U.S. Nuclear Regulatory Commission

July 2008

I. THE PROPOSED ACTION

The NRC is proposing changes to the list of categorical exclusions in 10 CFR 51.22 to clarify the scope of the existing categories of actions and to add new categories of actions that have been determined by the NRC to have no significant effect on the human environment.

II. THE NEED FOR THE PROPOSED ACTION

Prior to this proposed rule, there has been no comprehensive review and update of the Section 51.22 since its development in 1984. The proposed rulemaking is based, in part, on the September 2003 Council on Environmental Quality's (CEQ) NEPA Task Force Report (Task Force Report) "Modernizing NEPA Implementation," http://www.nepa.gov/ntf/report/pdftoc.html. The Task Force Report notes that the development and updating of categorical exclusions occur too infrequently and recommended that Federal agencies examine their categorical exclusion regulations and identify potential revisions that would eliminate unnecessary and

costly environmental assessments (EAs). It also provides recommendations for categorical exclusion development and revision.

The Task Force Report notes that in developing new or broadening existing categorical exclusions, a key issue is how to evaluate whether a proposed categorical exclusion is appropriate to support a determination that a category of actions do not individually or cumulatively have a significant effect on the human environment. The report recommends the use of information from past actions to establish the basis for the no significant effect determination. This report further advises Federal agencies to evaluate past actions that occurred during a particular period to determine how often the NEPA analyses resulted in findings of no significant impacts (FONSIs) for the category of actions being considered. The Task Force Report indicates that an adequate basis for developing new or broadening existing categorical exclusions exists if all the evaluated past actions resulted in FONSIs. It also provides that criteria for identifying new categorical exclusions should include: (1) repetitive actions that do not individually or cumulatively have significant effects on the human environment; (2) actions that generally require limited environmental review; and (3) actions that are noncontroversial in nature.

The proposed rulemaking is also based upon a review of NRC regulatory actions. As noted, the Task Force Report recommends that agencies evaluate past EA/FONSIs for particular categories of actions to develop new or broaden existing categorical exclusions. To comply with this recommendation, the NRC conducted a file search for EA/FONSIs during the period from 1987 to 2007. The search revealed that more than 1,500 actions resulted in EA/FONSIs. The NRC conducted an in-depth review of the EA/FONSIs issued in the last 5 years. That review identified several recurring categories of regulatory actions that resulted in FONSIs that are not addressed in the categorical exclusions in 10 CFR 51.22, and have no significant effect on the