

RULEMAKING ISSUE NOTATION VOTE

July 2, 2007

SECY-07-0108

FOR: The Commissioners

FROM: Luis A. Reyes
Executive Director for Operations

SUBJECT: RULEMAKING PLAN TO REVISE 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)

PURPOSE:

To obtain Commission approval to initiate a rulemaking to revise Section 51.22 of Title 10 of the *Code of Federal Regulations* (CFR) categorical exclusions to clarify the scope of the categories and to add new categories of actions that have no significant effect on the human environment. This paper does not address any new commitments.

BACKGROUND:

The staff is proposing to amend 10 CFR 51.22, "Criterion for Categorical Exclusion; Identification of Licensing and Regulatory Actions Eligible for Categorical Exclusion or Otherwise Not Requiring Environmental Review." This section contains the list of categories of actions which do not require an environmental assessment (EA) under the requirements of the National Environmental Policy Act of 1969 (NEPA) because they have no significant effect on the human environment. The results of a staff review and the recommendations of the September 2003 NEPA Task Force Report to the Council on Environmental Quality, "Modernizing NEPA Implementation," form the basis for the staff's proposed revisions to the U.S. Nuclear Regulatory Commission's (NRC's) categorical exclusion regulations.

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DISCUSSION:

The Task Force Report noted that the development and updating of categorical exclusions occur too infrequently. The report recommended that Federal agencies examine their categorical exclusion regulations and identify potential revisions that would eliminate unnecessary and costly EAs.

The last major update of the 10 CFR 51.22 categorical exclusions took place nearly 20 years ago. The staff recently conducted a review of this regulation. The staff identified several recurring categories of regulatory actions that result in findings of no significant impact (FONSI), yet such actions are not addressed in 10 CFR 51.22. Consequently, the staff routinely prepares unnecessary EAs/FONSIs that consume NRC resources and delay regulatory actions.

The proposed revisions of the categorical exclusion regulations would minimize inefficiencies and inconsistencies in the implementation of NRC's regulatory program by accomplishing three primary goals. First, they would add new categories of actions identified by the staff as having no significant effect on the human environment that are not addressed by the current categorical exclusions. Second, they would minimize the preparation of EA/FONSIs for NRC actions that are minor, administrative, or of a nonpolicy nature (e.g., no increases in releases/uses of radioactive or chemical materials). Third, they would clarify that the existing categorical exclusions apply to exemptions from regulations, as well as to amendments to permits and licenses. The same criteria that govern the granting of a categorical exclusion for amendments to permits, licenses, and regulations also apply to many exemptions from the regulations. However, there is no current provision for categorically excluding exemptions. The proposed addition of exemptions to the list of categorically excluded actions would capture the same criteria currently used for amendments to permits, licenses, and regulations. Some examples of the proposed changes being considered are as follows: (1) a categorical exclusion covering all exports of nuclear equipment and materials subject to the licensing requirements under 10 CFR Part 110, except for nuclear production or nuclear waste management facilities covered by Executive Order 12114; and (2) a categorical exclusion to include certain decommissioning activities, (e.g., the elimination of the preparation of EAs/FONSIs for decommissioning activities previously approved as standard operating procedures in the license).

The staff's proposed revisions to 10 CFR 51.22 were assessed against the NRC's strategic performance goals. The proposed rulemaking will not adversely impact the agency's goals to ensure: (1) protection of public health and safety and the environment, and (2) secure use and management of radioactive materials. Categorical exclusions only apply to actions with no potential significant effect on the human environment. In fact, in some instances, the proposed revisions will enhance the agency's safety goals. For example, the staff is proposing to expand the categorical exclusions to include the incorporation by reference of certain NRC approved American Society of Mechanical Engineers (ASME) codes and regulatory guides for nuclear power plants exclusions. The Office of Nuclear Reactor Regulation (NRR) routinely modifies the requirements in 10 CFR 50.55a to update its incorporation by reference of the ASME Boiler and Pressure Vessel Code and the Code for Operation and Maintenance of Nuclear Power Plants. These amendments can streamline reactor operations, enhance safety, or reduce public exposure to radiation. In addition, these amendments are nonpolicy in nature, approved

by the Executive Director for Operations, and result in the issuance of EAs/FONSI, but are not covered under NRC's existing categorical exclusions.

By eliminating the preparation of costly and unnecessary EAs, which delay regulatory actions, the proposed revisions will support the NRC's goal of ensuring that its actions are effective, efficient, realistic, and timely. An opportunity for public review and comment on the proposed revisions will be provided as required by the Administrative Procedure Act.

AGREEMENT STATE ISSUES:

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.

RECOMMENDATION:

The staff recommends that the Commission approve the plan to proceed with rulemaking to revise 10 CFR Part 51 categorical exclusion requirements.

RESOURCES:

The required resources to implement and complete the preferred option, which is to complete the final rulemaking are: FY 2007 0.7 FTE (0.5 FSME, 0.1 NRR, and 0.1 OGC) and FY 2008 0.3 FTE (FSME). The required resources are included in the FY 2007 budgets of FSME, NRR, and OGC and are included in FSME's FY 2008 budget request.

COORDINATION:

The Office of the General Counsel has no legal objection to the rulemaking plan. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objection.

/RA William F. Kane Acting for/

Luis A. Reyes
Executive Director
for Operations

Enclosure:
Rulemaking Plan For Revising Categorical
Exclusions in 10 CFR 51.22

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