

October 23, 2008

STATE LIAISON OFFICERS

**SUBJECT: Categorical Exclusions from Environmental Review**

On October 9, 2008, the U.S. Nuclear Regulatory Commission (NRC) published in the *Federal Register* (FR) the enclosed proposed amendment to the Commission's rules in 10 CFR 51.22, "Criteria for Categorical Exclusion: Identification of Licensing and Regulatory Actions Eligible for Categorical Exclusion or otherwise not requiring Environmental Review," 73 FR 59540-59547. This proposed rule would amend NRC's regulations describing the 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.

Prior to this rulemaking effort, there has been no comprehensive review and update of the Section 51.22 list of categorical exclusions since the development of this rule in 1984. These amendments are based on a review of NRC regulatory actions and the Council of Environmental Quality's September 2003 NEPA Task Force Report (Task Force Report) "Modernizing NEPA Implementation," <http://www.nepa.gov/ntf/report/pdfoc.html>. The Task Force Report noted 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 EAs.

The NRC recently conducted a review of this regulation. The review identified more than 1500 EAs that resulted in findings of no significant impacts (FONSI) for the period 1987-2007. An in-depth review of the EA/FONSI issued in the last 5 years was conducted. The NRC identified several recurring categories of regulatory actions that result in FONSI, yet such actions are not addressed in the categorical exclusion list in 10 CFR 51.22.

The proposed revisions would eliminate the preparation of EAs 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. The proposed rulemaking will not adversely impact the agency's goals to ensure protection of public health and safety and the environment, and the secure use and management of radioactive materials since categorical exclusions only apply to actions with no potential significant effect on the human environment. By eliminating the preparation of costly and unnecessary EAs, the proposed revisions will ensure that NRC's actions are effective, efficient, realistic, and timely.

Also enclosed is an EA that has been prepared in support of the proposed rule. The conclusion of the EA is the Commission's finding that no significant environmental impact will result from the proposed rule. The EA and *Federal Register* notice are provided for your review and comment. If you have any comments on the rule and its environmental impact, please send them by December 23, 2008. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

You can use the following methods to transmit your comments: (1) you can mail your written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff; (2) you can fax your comments to (301) 415-1672; or (3) you can also provide comments via the <http://www.regulations.gov>. This site provides capability to upload comments as files (any format), if your web browser supports that function.

For additional information on this action, contact Cardelia H. Maupin, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-2312, e-mail [Cardelia.Maupin@nrc.gov](mailto:Cardelia.Maupin@nrc.gov).

Sincerely,

**/RA/**  
Mark R. Shaffer, Director  
Division of Intergovernmental Liaison  
and Rulemaking  
Office of Federal and State Materials  
and Environmental Management Programs

Enclosures:

1. Federal Register Notice
2. Environmental Assessment

You can use the following methods to transmit your comments: (1) you can mail your written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff; (2) you can fax your comments to (301) 415-1672; or (3) you can also provide comments via the <http://www.regulations.gov>. This site provides capability to upload comments as files (any format), if your web browser supports that function.

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Mark R. Shaffer, Director  
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**ML081150613**

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