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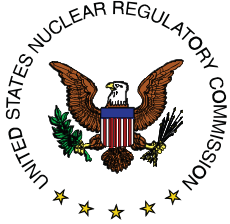


U.S. Nuclear Regulatory Commission Office of Nuclear Reactor Regulation

NRR OFFICE INSTRUCTION

Change Notice

Office Instruction No.:	LIC-203, Revision 1
Office Instruction Title:	Procedural Guidance for Preparing Environmental Assessments and Considering Environmental Issues
Effective Date:	May 24, 2004
Primary Contact:	Stacey Imboden, RLEP 301-415-2462 sxf@nrc.gov
Responsible Organization:	NRR/DRIP/RLEP
<p>Summary of Changes: This is a revision of NRR Office Instruction LIC-203. Changes to the guidance include the clarification of NRR Responsibilities under the Fish and Wildlife Coordination Act. There is a policy change in fulfilling NRR responsibilities under the National Historic Preservation Act. The Commission is presently formulating its policy statement on environmental justice matters. When finalized, appropriate modifications to this Office Instruction will be considered. Other than these, no significant policy or procedural changes have been made to the guidance document.</p>	
Training:	E-mail announcement with recommended self-study
ADAMS Accession No.:	ML033550003



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**NRR OFFICE INSTRUCTION
LIC-203, Revision 1**

**Procedural Guidance for Preparing Environmental Assessments and
Considering Environmental Issues**

1. POLICY

It is the policy of NRR to establish procedures and guidance for its staff to meet the requirements established by legislation and regulation. The purpose of 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," is to ensure that NRC meets its statutory obligations under the National Environmental Policy Act of 1969 (NEPA).

2. OBJECTIVE

This office instruction, along with the attached guidance documents, provide all staff in the NRC's Office of Nuclear Reactor Regulation (NRR) a basic framework for maintaining NRC's responsibility to comply with 10 CFR Part 51. This office instruction is intended to:

- define the responsibilities of the License Renewal and Environmental Impacts Branch (RLEP) to ensure that NRR is consistent in its implementation of NRC regulations and other Federal environmental requirements;
- define NRR staff responsibilities; and,
- provide guidance to NRR staff on the procedural requirements for demonstrating compliance with environmental statutes and regulations covering environmental issues for regulated facilities.

The office instruction contains guidance for preparing environmental assessments (EAs), in accordance with the NEPA and 10 CFR Part 51, and for considering environmental issues associated with:

- Executive Order (E.O.) 12898,
- Coastal Zone Management Act of 1972 (CZMA),
- Endangered Species Act of 1973 (ESA),
- National Historic Preservation Act of 1966 (NHPA), and
- Fish and Wildlife Coordination Act (FWCA) of 1934.

This office instruction describes, in part, how the staff should determine whether or not a proposed action would have an impact on protected coastal zones, threatened or endangered species, archaeological or historical sites, or disparate impacts on minority populations or low-income populations. This office instruction does not address the preparation of an environmental impact statement (EIS). This office instruction supersedes previous guidance on these subjects.

3. BACKGROUND

Office Letter 906, Revision 2, "Procedural Guidance for Preparing Environmental Assessments and Considering Environmental Issues", was issued on September 21, 1999. A revision to Attachment 3 of Office Letter 906, Revision 2, was issued on October 7, 1999. These documents were issued to include guidance on environmental justice in the office letter and to make improvements to the format and content of an example EA. On November 5, 2003 (68 FR 62642), the Commission published for comment a draft policy statement on the treatment of environmental justice matters in NRC regulatory and licensing activities. It is not formalized, but the procedural guidance from this office instruction and the earlier Office Letter 906 is consistent with the draft Policy Statement.

Office Instruction LIC-203 is a revision to Office Letter 906, providing minor clarifications to guidance. The initial issuance of Office Instruction LIC-203 was June 21, 2001.

4. BASIC REQUIREMENTS

4.1 RLEP Staff

RLEP is responsible for providing implementation guidance and technical support to the NRR staff for the resolution of environmental issues for regulated facilities. RLEP is also responsible for coordinating environmental issues with other NRC offices, for ensuring NRR meets its obligations under Federal environmental requirements and for properly implementing the requirements of 10 CFR Part 51.

4.2 All NRR Staff

In addition to its regulatory responsibilities embodied in the health and safety requirements of the Atomic Energy Act, NRC has responsibilities that are derived from NEPA and from other environmental laws (such as the CZMA, the ESA, the NHPA, and the FWCA). The NRR staff should consider environmental issues when performing license amendment activities including, but not limited to:

- increasing the authorized power level of commercial power reactors beyond the power rating stated in the original Environmental Impact Statement or the Final Environmental Statement (power uprate);

- changing the license expiration date to recapture time between the construction permit and actual operation (construction recapture);
- performing decommissioning activities under 10 CFR Part 50; and,
- revising Appendix B of a licensee's operating license (environmental protection plan).

The NRR staff should consider environmental issues when processing license renewal applications under 10 CFR Part 54, requests for exemptions from NRC regulations, and when conducting rulemaking.

However, the staff need not perform an environmental review when performing licensing and regulatory activities eligible for categorical exclusions under 10 CFR 51.22(c). The Division of Licensing Project Management (DLPM) and Office of General Counsel (OGC) will determine whether an action qualifies as a categorical exclusion and, if so, include the criterion in the licensing documents. The NRR staff is encouraged to seek early assistance from RLEP in dealing with environmental issues that are unique, particularly difficult, or unfamiliar. Moreover, the NRR staff may request formal guidance in developing EAs from RLEP. Since environmental reviews are fee recoverable under 10 CFR Part 170, when seeking concurrence, assistance, or safety evaluation input, the NRR staff should provide a Technical Assignment Control (TAC) number for tracking and billing purposes.

5. RESPONSIBILITIES AND AUTHORITIES

5.1 RLEP Staff

RLEP will:

- Review and concur on plant-specific and generic EAs prepared by the NRR staff for the activities listed above.
- Prepare input for or originate EAs when appropriate (e.g., extended power uprates).
- Review and provide guidance and support to the NRR staff participating in the preparation of all EISs (draft, final, and supplements).
- Participate in environmental rulemaking activities. RLEP will ensure that NRR is current with appropriate environmental legislation, statutes, regulations, and guidance, and will participate in Federal Government-wide meetings. RLEP will provide guidance to the NRR staff regarding the implementation of other applicable environmental statutes.

- Review new and emerging environmental issues and provide support to the NRR staff in resolving environmental issues.
- Review environmental documents submitted by other Federal and State agencies, when appropriate.
- Review recovery plans for endangered species and prepare or direct the preparation of biological assessments (BAs) as required by the ESA.
- Coordinate environmental issues with other NRC Headquarters and Regional offices and Federal, State, and Tribal agencies.
- Maintain and update this office instruction.

5.2 All NRR Staff

Individual NRR staff members are responsible for implementing the procedural requirements of this office instruction; the staff should consult with RLEP when reviewing environmental issues or safety issues that require an environmental assessment.

5.2.1 NRR Responsibilities under NEPA: EAs and EISs

As previously discussed under "Basic Requirements," EAs must be prepared for certain licensing and rulemaking activities. Although most environmental reviews performed by NRC result in EAs, it is important to understand the distinction between an EA and an EIS, and when an EA or an EIS is used.

The process used to determine whether an action will significantly impact the environment is the development of an EA. If the review documented in an EA demonstrates that the proposed action will not have a significant impact on the environment, a finding of no significant impact (FONSI) is made in the conclusion of the EA and no EIS need be prepared. If, on the other hand, the environmental review in the EA reveals that the proposed action will, or has the potential to, significantly affect the environment, then the EA must conclude that a more detailed review of the environmental effects (i.e., an EIS) should be prepared. NEPA requires that a detailed statement of the environmental impact of the proposed action and alternatives be prepared for "major Federal actions significantly affecting the quality of the human environment." This detailed statement takes the form of an EIS. In general, an EIS contains much more detail about the specific environmental impacts of the proposed action and alternatives than an EA, and requires extensive public participation, public comment, and coordination with other

agencies. Normally, project managers (PMs) prepare EAs; should an EIS need to be prepared, RLEP will assign an environmental Project Manager (EPM) who will be responsible for coordinating the preparation of the EIS with the PM.

Licensing Actions: Upon receipt of a proposed action, the PM should determine whether an environmental review is needed and, if so, the type of review that should be prepared. If the proposed action is unique or involves unusual circumstances, then the PM should consult with the RLEP staff before initiating the environmental review. Additionally, as mentioned previously in this office instruction, 10 CFR 51.22 identifies categories of actions that are excluded from environmental reviews because the NRC has determined that these actions do not individually or cumulatively have a significant effect on the human environment. If the PM, in consultation with OGC, determines that the proposed action is not within one of the excluded categories, then the PM should prepare the EA in accordance with the requirements in 10 CFR 51.30. If the EA concludes that the proposed action will result in significant environmental impacts, then the PM should contact RLEP, and an EIS will be prepared. Section 51.30 requires that an EA:

- (1) identify the proposed action,
- (2) briefly discuss the need for the proposed action,
- (3) briefly discuss the alternatives to the proposed action,
- (4) describe the environmental impacts of the proposed action and alternatives, and
- (5) list agencies and persons consulted and identify sources used.

EAs should not duplicate the safety details of the review; only the environmental impacts of the proposed action should be considered. An EA should include a FONSI if the EA supports a conclusion that the proposed action will not have a significant effect on the quality of the human environment. If such a finding cannot be made, then an EIS will have to be prepared.

The preparation of the EIS by RLEP will be coordinated with the PM. Appendix B of this office instruction provides a flow chart outlining the process and detailed guidance for each step in the preparation of an EA. Appendix C contains a sample (template) of the appropriate form and content of an EA for licensing actions. The sample is intended to be used as guidance and is not a substitute for an objective consideration of the impacts. PMs must independently determine whether any template

statements used are correctly applied to the specific action being reviewed. The templates are to ensure stability and predictability whenever appropriate.

Rulemaking Activities: When an EA is written in support of rulemaking activities that affect NRR regulatory practices, the initiating office, if other than NRR, may implement additional procedures. Detailed guidance is provided in the NRC Regulations Handbook, NUREG/BR-0053. If the EA is not included in the preamble to the proposed rule or final rule (i.e., if the EA is presented in a separate document), then the form and content of the sample (template) EA for rulemaking referenced in Appendix C is appropriate. If the EA review is documented in the preamble for a final or proposed rule, guidance and language in the NRC Regulations Handbook should be followed. The guidance states that the text of the environmental assessment should be considered for paragraphs entitled "Finding of No Significant Environmental Impact: Environmental Assessment." The environmental impacts of the proposed action and the alternative actions should be discussed. Appendix C contains template language that can be considered for this situation.

In general, after the Federal Register notice (FRN) for the proposed rule is signed by the Secretary to the Commission or the Executive Director for Operations (EDO), and, before the FRN is published, a cover letter with a copy of the draft EA and the FRN should be sent to the State Liaison Officer requesting comments from State organizations. As with an EA for a licensing action, the consultation must be documented in a brief summary in the EA, and must address the comments and staff response. A sample letter is included in NUREG/BR-0053.

5.2.2 NRR Responsibilities Regarding Environmental Justice

In February 1994, the President issued an Executive Order mandating that Federal agencies make "environmental justice" part of each agency's mission by addressing disproportionately high and adverse human health or environmental effects of Federal programs, policies, and activities on minority populations and on low-income populations. The Council on Environmental Quality developed guidelines on how to integrate environmental justice into the NEPA process. The guidelines are contained in the document "Environmental Justice Guidance Under the National Environmental Policy Act," December 10, 1997. On November 5, 2003 (68 FR 62642) the Commission published for comment a draft policy statement on the treatment of environmental justice matters in NRC regulatory and licensing actions. NRR has developed a corresponding procedure (Appendix D) for incorporating environmental justice into the licensing process, which is consistent with the draft policy statement.

Environmental justice reviews will be performed for all actions requiring preparation of an EIS (or a supplement thereto). An environmental justice review is not usually required for an EA in which a FONSI is made. In most cases, when a FONSI is reached, the staff can conclude that there are no disproportionately high and adverse human health or environmental effects associated with the proposed action. However, special circumstances may warrant an environmental justice review for an EA in which a FONSI is made. These cases may include regulatory actions that involve a significant site modification with an identifiable impact on the environment or that have substantial public interest. In these circumstances, the staff will inform NRR senior management and a decision will be made on a case-by-case basis as to whether the circumstances warrant an environmental justice review for an EA. If there is a clear potential for significant offsite impacts from the proposed action to minority and low-income communities, then an appropriate environmental justice review might be needed to provide a basis for concluding that there are no unique impacts that would be significant. If the impacts are significant because of the uniqueness of the communities, then a FONSI may not be possible and mitigation or an EIS should be considered. Appendix D provides a more detailed explanation of environmental justice and a flow chart for conducting environmental justice reviews.

5.2.3 NRR Responsibilities under CZMA

The CZMA was promulgated to encourage and assist States and territories in developing management programs that preserve, protect, develop, and, where possible, restore the resources of the coastal zone. A "coastal zone" is generally described as the coastal waters and the adjacent shore lands strongly influenced by each other. This includes islands, transitional and intertidal areas, salt marshes, wetlands, beaches, and Great Lakes waters. Activities of Federal agencies that are reasonably likely to affect coastal zones shall be consistent with the approved coastal management program (CMP) of the State or territory to the maximum extent practical. The CZMA provisions apply to all Federal licenses and actions requiring Federal approval (new plant licenses, license renewals, materials licenses, and major amendments to existing licenses) that affect the coastal zone in a State or territory with a Federally approved CMP. Appendix E of this office instruction lists those States and territories with Federally approved CMPs.

PMs should determine whether the State or territory has an approved CMP and whether their licensee is within the boundary of the CMP because it will influence the schedule for completing certain licensing actions. If the plant is located within the CMP boundary, the PM should

consult with RLEP. Within the CMP, predetermined activities are listed that may affect the coastal zone. When the PM determines that a proposed licensing activity may affect coastal uses or resources, the PM should inform the licensee of the need to contact the government of the State or territory and to comply with the provisions of the CZMA.

National Oceanic and Atmospheric Administration (NOAA) regulations also specifically require consistency certification for license renewal applications and major amendments that will affect any coastal use or resource. Regulations implementing the Federal consistency provisions of the CZMA have been promulgated by NOAA at 15 CFR Part 930. Amendments to NOAA's federal consistency certification (65 FR 77124) define major amendments as activities involving a change that affects any coastal use or resource in a way that is substantially different than the description or understanding of the effects at the time of the original activity. Applicants for Federal licenses that are likely to affect a State's coastal zone must submit to the State and Federal licensing agency a certification that the proposed activity is consistent with the State's CMP. Appendix E contains a draft model certification for license amendment applicants, however, some States require use of a state-specific form for consistency certification. If a Federal agency receives an application for an activity that has been pre-listed in a State's CMP, that agency has an obligation to withhold approval until the State has concurred or the Secretary of Commerce overrides any State objection. If an applicant seeks a license or license amendment potentially affecting the coastal zone for an activity that is not listed in the State's CMP, the State has the responsibility to inform the Federal agency and the applicant within 30 days of being notified of the activity that the activity requires State review. Otherwise, the State waives its right to review the unlisted activity.

In general, the only NRC licensing actions requiring a consistency certification are (1) new plant construction permit and operating license applications, and (2) license renewal applications. However, the Act provides States with the right to request a consistency certification for any unlisted activity affecting any coastal use or resource. Potentially affected States have 30 days from the notice of the proposed action in the *Federal Register* to notify the NRC and applicant of the need for a consistency review. The following guidance is provided regarding operating reactor PMs' responsibilities under the CZMA consistency certification requirements.

- (1) PMs should determine whether their assigned facility is located in a State's coastal zone *or is located such that changes in the facility could reasonably be expected to affect any coastal use or resource of any coastal zone (e.g., any coastal zone is within a reasonable downstream distance from a facility sited on a river)*. A list of State coastal management program summaries, with links

to the individual programs, is available at
<http://www.ocrm.nos.noaa.gov/czm/czmsitelist.html>.

For plants located in a coastal zone or located such that activities could reasonably be expected to affect any coastal use or resource of any coastal zone, identify listed activities requiring a consistency certification (typically, new plant licenses and license renewals are the only listed activities).

- (2) Upon receipt of an application for a listed activity, ensure the licensee has provided a consistency certification. Approval of the requested action should be withheld until the State has concurred with the licensee's consistency determination, or the Secretary of Commerce has overridden any State objection.

Note: For new plant licenses and license renewals, RLEP will be responsible for review of the action and will ensure consistency certification, as required.

- (3) Upon receipt of an application for an unlisted activity, make a determination as to whether coastal effects are reasonably foreseeable due to the requested action (e.g., significant change in effluents, construction of shoreline structures, etc). Consult with RLEP as needed.
 - a. For routine licensing actions where coastal effects may be reasonably foreseeable, NRC approval should be withheld for 30 days from the date of issuance of the FR notice to allow the State to notify the NRC that a consistency review is required. If the State has not notified the NRC within 30 days that review is necessary, the State waives its right to conduct a review and the action may be approved.
 - b. For exigent or emergency actions where coastal effects may be reasonably foreseeable, the PM should consult with RLEP and, if determined to be necessary, should contact the cognizant State agency to ensure timely State determination of the need for consistency review.
 - c. In either of the above cases, upon notification that consistency review is required, approval of the requested action may be withheld until the State has concurred with the licensee's consistency determination, or the Secretary of Commerce has overridden any State objection.

5.2.4 NRR Responsibilities under ESA

The ESA was promulgated to ensure protection of endangered or threatened species and critical habitats. Section 7 of the ESA imposes two basic requirements on Federal agencies. First, Section 7 requires each Federal agency to ensure that any action authorized, funded, or carried out by an agency is not likely to jeopardize the continued existence of any endangered species or threatened species, or result in the destruction or impairment of any critical habitat for such species. "Action" has been interpreted broadly and comprises licensing, rulemaking, and lesser regulatory actions that could jeopardize an endangered species. A Federal agency should act, if possible (where it has the legal authority), to prevent endangered species and their habitats from being threatened or destroyed.

Second, Section 7 requires that Federal agencies fulfill the requirements of the ESA in consultation with, and with the assistance of, the Secretary of the Interior (for freshwater and terrestrial species through the Fish and Wildlife Service [FWS]) or the Secretary of Commerce (for oceanic and coastal matters through the National Oceanic and Atmospheric Administration Fisheries [NOAA Fisheries], formerly National Marine Fisheries Service). If the Federal agency fails to consult with FWS or NOAA Fisheries, and the action by the agency or its licensee results in the "taking" (harassment, harm, pursuit, hunting, shooting, wounding, killing, trapping, capture, collection, or attempt to engage in such activities) of an endangered species or the impairment or destruction of a critical habitat, then the Federal agency (here, the NRC) would be in violation of the ESA. NRR PMs are expected to remain vigilant regarding operational activities that may have an adverse impact on listed species or critical habitats; should takings approach limits in incidental take statements or new takings where take statements do not exist be reported to the NRC, then the NRR PM should contact RLEP at the earliest opportunity. RLEP will initiate consultation early in the review process for activities requiring preparation of an EIS. When an activity requires preparation of an EIS, RLEP will request a list of threatened or endangered species from FWS or NOAA Fisheries early in the review process for the site area and surroundings associated with the proposed action.

Under Section 7 of the ESA, four consultation processes can be used and are discussed briefly below. The two main types of consultation are informal and formal; early consultation and conference are related processes.

Early Consultation: The applicant (licensee) can request that the Federal agency enter into early consultation with FWS or NOAA Fisheries. This

may be done if the applicant believes one or more listed species or critical habitats may be affected by the proposed action. Early consultation occurs prior to an applicant filing an application. The agency initiates early consultation in writing. The process followed is the same as the one discussed under "Formal Consultation"; however, a preliminary biological opinion (BO) is issued. A preliminary BO does not constitute the authority to "take" listed species. The action agency may request confirmation of a preliminary BO as a final BO after the licensee submits an application.

Conference: The conference process is designed to be used at an early planning stage, and is used to discuss effects on proposed species or habitat. Formal and informal consultations are used to discuss effects on listed species or habitat. Conference involves informal discussions between a Federal agency and FWS or NOAA Fisheries regarding the impact of a proposed action on proposed species or proposed critical habitat and recommendations to minimize or avoid harm (mitigation). A conference is required when the proposed action is likely to jeopardize the continued existence of a proposed species or proposed critical habitat.

Informal Consultation: Most consultations with FWS or NOAA Fisheries are informal consultations. Informal consultation is a process of discussion between FWS or NOAA Fisheries and the Federal agency that may result in formal consultation. A Federal agency may also elect to proceed directly to formal consultation. A biological assessment (BA) may be prepared as part of the informal consultation process. A BA is prepared when a major activity takes place that may affect listed species or critical habitats. The Federal agency requests a list from FWS or NOAA Fisheries of endangered or threatened species and critical habitats or sends FWS or NOAA Fisheries a list of species and habitats that are being reviewed in the BA. Within 30 days of the request, FWS or NOAA Fisheries provides an initial response (provides a list or concurs on the list that was prepared by the Federal agency). If no species or critical habitats are affected, then no further action is required. If only proposed species or habitats (not yet listed as an endangered or threatened species or critical habitat) are involved, then the Federal agency must confer with FWS or NOAA Fisheries, but a BA is not required to be submitted to FWS or NOAA Fisheries. If listed species or critical habitats are involved, then the Federal agency must begin the BA within 90 days of the initial FWS or NOAA Fisheries response. (Although the NRC may coordinate the preparation of the BA with others (e.g., applicant, licensee, contractor) all correspondence with FWS or NOAA Fisheries should be transmitted by the NRC and the NRC is ultimately responsible for assuring the reliability of the information presented.) The BA may include the findings of onsite inspections, opinions of recognized experts, results

of an information review, an analysis of the proposed actions, and alternatives. The BA must be submitted to FWS or NOAA Fisheries within 180 days of their initial response. If the BA concludes that the action is not likely to jeopardize the listed species or critical habitat and FWS or NOAA Fisheries concurs, no further consultation is required. If the BA concludes that the action affects listed species or critical habitat, then the Federal agency may initially request an informal consultation to determine whether the action can be modified so that the species or critical habitats are not adversely affected. Otherwise, formal consultation is required.

Formal Consultation: Formal consultation is a process between FWS or NOAA Fisheries and the Federal agency that takes place after the BA has been prepared determining that the action affects or may affect listed species or critical habitats. Appendix F of this instruction contains a flow chart illustrating the formal ESA consultation process. The Federal agency sends a written request for formal consultation to FWS or NOAA Fisheries. The written request for consultation must be accompanied by a BA containing a description of the action, a description of the area, a description of the listed species, the effects of the action, an analysis of the cumulative effects, and a review of reports and other information. Within 90 days of formal consultation initiation, FWS or NOAA Fisheries is expected to issue a BO. The BO contains a summary of the action, the effects, an opinion on whether the species is in jeopardy as a result of the action, alternatives, incidental "take" provisions, and any proposed conservation measures. After the consultation is complete, the Federal agency must determine whether it has taken all necessary actions. Although the Federal agency is not legally bound to comply with FWS or NOAA Fisheries opinions and can adopt measures that differ from the recommendations, the courts give substantial weight to FWS or NOAA Fisheries opinions. The NRC then provides the BO, including the incidental "take" provisions and conservation measures, to the applicant or licensee for implementation.

5.2.5 NRR Responsibilities under NHPA

The National Historic Preservation Act (NHPA) was promulgated in 1966 and amended in 1992 and 2000 to coordinate and support public and private efforts to identify, evaluate, and protect significant historic and archaeological resources. Section 106 of the NHPA directs Federal agencies to consider the effects of their undertakings on historic properties. The Act allows the Advisory Council on Historic Preservation (ACHP) an opportunity to review and comment on any Federal agency action that might harm historic property. Appendix G is a flow chart

illustrating the Section 106 process. "Undertakings" denotes a broad range of Federal activities, including the issuance of NRC licenses and permits. "Historic property" is any property listed in or eligible for inclusion in the National Register of Historic Places (National Register).

The NHPA statute also provides provisions for review of historic properties in conjunction with a NEPA review (36 CFR 800.8). In 36 CFR 800.8, "Coordination with the National Environmental Policy Act", the NHPA consultation can be achieved in conjunction with the NEPA process to demonstrate Section 106 compliance. RLEP will use the NEPA process to fulfill the requirements of the NHPA when preparing an EIS. Under 36 CFR 800.8, an agency can use the NEPA process to comply with Section 106 as an alternative to the procedures set forth in 36 CFR 800.3 through 36 CFR 800.6. This allows an agency to "streamline" its overall environmental and Section 106 review process. The key to using the NEPA process to comply with Section 106 of the NHPA is early coordination.

The Agency must do the following:

- (1) *Early coordination.* Coordinate section 106 compliance through NEPA. Agencies should plan their section 106 responsibilities as early as possible in the NEPA process, and plan public participation, analysis, and review requirements of both statutes. The Agency must also determine whether the undertaking is a "major Federal action significantly affecting the quality of the human environment." If the Agency determines that the undertaking is a "major Federal action significantly affecting the quality of the human environment", then NEPA requires the preparation of an EIS.
- (2) *Consulting party roles.* Identify the appropriate State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO), Indian tribes, Native Hawaiian organizations, local governments, preservation organizations, and individuals who may be concerned with the possible effects of the proposed undertaking on historic properties in a manner consistent with Section 800.3(f)
- (3) *Inclusion of historic preservation issues.* Identify historic properties and assess effects on them in a manner consistent with Section 800.4 through 800.5, but the scope and timing of identification and effect determination may be "phased to reflect the Agency Official's consideration of project alternatives in the NEPA process" and the effort of the Agency shall be "commensurate with the assessment of other environmental factors."

- (4) *Coordination.* Coordinate with the SHPO/THPO, Indian tribes, Native Hawaiian organizations, and other parties during NEPA scoping, analysis, and documentation. As commensurate with the Agency's NEPA process, the public must be invited to participate.
- (5) *Development of an EIS.* Develop alternatives and mitigation measures in consultation with other stakeholders, and describe these measures in its EIS.

Therefore, when using the NEPA process to comply with Section 106 of the NHPA, the Agency must perform the substantive steps that the Section 106 regulations call for, but the Agency does not have to follow precisely the same procedures it would if it were following the standard Section 106 review. The Agency has the flexibility to accomplish its assessment in "phases," and the level of effort it puts forth will be similar to that for other kinds of environmental resources.

Section 800.8(c)(2) requires that an EIS be reviewed by the SHPO/THPO and other consulting parties. Since the product of NRC's NEPA analysis is an EIS, NRC must notify the ACHP by letter of the proposed undertaking and submit the EIS (both draft and final) to the ACHP. If any of these parties objects within the comment period, the Agency will refer the matter to the ACHP, which has thirty days to review the objection. If comment is not received within the thirty day period, then the Agency can complete its NEPA review and make its decision (record of decision [ROD] and in the NRC's case, issue the licensing action) without further Section 106 review. Section 800.4(c)(4) also requires the Agency to specify within its ROD the measures that it will take to mitigate adverse effects on historic properties.

5.2.6 NRR Responsibilities under FWCA

The FWCA was promulgated in 1934 to ensure that water resource development projects (e.g., impounding, damming, diverting, flood control, hydroelectric power) do not conflict with the conservation of fish and wildlife resources. Conversely, water resource development projects can be designed to enhance the quality and enjoyment of fish and wildlife resources if such goals are incorporated into the project plans.

The FWCA requires that a Federal agency consult with the Department of the Interior, through FWS, when any body of water is proposed or authorized to be modified for any reason. Types of modification include impounding a body of water, damming, diverting a stream or river, deepening a channel, irrigation, or altering a body of water for navigation or drainage. The FWCA also requires that provisions must be made for the conservation of wildlife and its habitat upon modification of any body

of water. The Secretary of the Interior is authorized under the FWCA to investigate water resource development projects to determine effects on wildlife. The Secretary of the Interior will conduct investigations through FWS or the U.S. Bureau of Mines. These agencies are authorized to investigate to determine the effects of polluting substances (sewage, wastes, erosion silt) from water resource development projects on wildlife, and report to Congress with recommendations to alleviate negative effects. The Secretary of the Interior is also authorized to consult with Federal agencies regarding protection and stocking of wildlife, minimizing loss of wildlife and its habitat through disease, minimizing effects of overabundant species, and providing public hunting and fishing areas.

PMs should determine whether the licensee is planning any water resource development projects, including any of the modifications mentioned above. If any type of modification is occurring, the PM should ensure that measures are in place for the conservation of wildlife and its habitat. Such activities at regulated facilities will likely result in an environmental review under NEPA. Consequently, the requirements of the FWCA are satisfied through NRC's compliance with NEPA, and separate consultation with FWS is not required.

6. PERFORMANCE MEASURES

Not applicable

7. PRIMARY CONTACT

Stacey F. Imboden
NRR/RLEP
301-415-2462
sxf@nrc.gov

8. RESPONSIBLE ORGANIZATION

NRR/DRIP/RLEP

9. EFFECTIVE DATE

May 24, 2004

10. REFERENCES

- 10 CFR Part 50, "Domestic Licensing and Production and Utilization Facilities"
- 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions"
- 10 CFR 51.22, "Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review."
- 10 CFR 51.30, "Environmental assessment."
- 10 CFR Part 170, "Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended"
- 59 FR 7629-7633. 1994. Executive Order 12898, "*Federal Actions to Address Environmental Justice in Minority and Low-Income Populations.*" Washington, D.C.
- 68 FR 62642. 2003. Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions. Washington, D.C.
- Atomic Energy Act of 1954, 42 USC 2011 et seq.
- Coastal Zone Management Act of 1972, as amended, 16 USC 1451 et seq.
- Council on Environmental Quality. 1997. "*Environmental Justice: Guidance Under the National Environmental Policy Act.*" Council on Environmental Quality, Executive Office of the President, Washington, D.C.
- Endangered Species Act of 1973, as amended, 16 USC 1531 et seq.
- Fish and Wildlife Coordination Act of 1934, as amended, 16 USC 661 et seq.
- National Environmental Policy Act of 1969, as amended, 42 USC 4321 et seq.
- National Historic Preservation Act of 1966, as amended, 16 USC 470 et seq.
- National Ocean and Atmospheric Administration, 2003. State and Territory Coastal Management Program Summaries.
<<http://www.ocrm.nos.noaa.gov/czm/czmsitelist.html>> (accessed April 25, 2003).
- U.S. Fish and Wildlife Service. Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service: Fish and Wildlife Coordination Act.
<<http://laws.fws.gov/lawsdigest/fwcoord.html>> (accessed April 30, 2003).

- U.S. Fish and Wildlife Service and National Marine Fisheries Service, 1998. *Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act.*
- U.S. Nuclear Regulatory Commission, 1996. *Generic Environmental Impact Statement for License Renewal of Nuclear Plants.* NUREG-1437, Volumes 1 and 2, Washington, D.C.
- U.S. Nuclear Regulatory Commission, 2001. *U.S. Nuclear Regulatory Commission Regulations Handbook.* NUREG/BR-0053, Revision 5, Washington, D.C.
- U.S. Nuclear Regulatory Commission, 2003. "Delegation of Signature Authority", Office Instruction ADM-200. Washington, D.C.

Appendices:

Appendix A: Change History

Appendix B: Environmental Assessment Guidance and Procedural Flow Chart

Appendix C: Format and Content of an Environmental Assessment for a Licensing Action and Rulemaking

Appendix D: Environmental Justice Guidance and Flow Chart

Appendix E: List of States with Federally approved Costal Management Programs, Examples of Consistency Certification, and Coastal Zone Management Act Flow Chart

Appendix F: Endangered Species Act Consultation Flow Charts

Appendix G: National Historic Preservation Act Flow Chart

Appendix A - Change History

Office Instruction LIC-203, “Procedural Guidance for Preparing Environmental Assessments and Considering Environmental Issues”

LIC-203 Change History - Page 1 of 1			
Date	Description of Changes	Method Used to Announce & Distribute	Training
06/21/2001	This OI is a conversion of OL-906. Changes to the guidance include minor clarifications offered by the NRR staff. No significant policy or procedural changes have been made to the guidance document	(1) E-mail to all staff (2) Copies to SES and licensing assistants	E-mail announcement with recommended self-study
05/24/2004	This is a revision of NRR Office Instruction LIC-203. Changes to the guidance include the clarification of NRR Responsibilities under the Fish and Wildlife Coordination Act. There is a policy change in fulfilling NRR responsibilities under the National Historic Preservation Act. The Commission is presently formulating its policy statement on environmental justice matters. When finalized, appropriate modifications to this OI will be considered. Other than these, no significant policy or procedural changes have been made to the guidance document.	E-mail to all staff	E-mail announcement with recommended self-study

Appendix B - Environmental Assessment Guidance and Procedural Flow Chart

This guidance is intended to provide assistance in developing an environmental assessment (EA). It outlines specific sections in an EA and provides insight on the content that should be in each of those sections. They are:

- identification of the proposed action,
- the need for the proposed action,
- the environmental impacts of the proposed action,
- the environmental impacts of alternatives to the proposed action,
- the alternative use of resources, and
- agencies and persons consulted.

The specific sections of the EA are differentiated below by the underscore. Figure 1, a procedural flow chart, also follows.

Identification of the Proposed Action

This section should briefly describe the action proposed and reference the pertinent licensee application.

The Need for the Proposed Action

Section 51.30(a)(1)(i) of Title 10 of the Code of Federal Regulations requires that an EA shall contain a brief discussion of the need for the proposed action. When writing this portion of the EA, the person preparing the EA should discuss the applicant's motivation for submitting the application to the NRC. For example, does the requested exemption or amendment provide some benefit to the applicant if granted? How would the applicant be affected if the application was not approved?

Environmental Impacts of the Proposed Action

The environmental impacts of the proposed action must be evaluated by the Commission in accordance with 10 CFR 51.30(a)(1)(iii). The person writing the EA should describe how the environmental resource (e.g., land or water) is used, how the resource would be affected by a change in (or addition of) a plant component (e.g., the construction of a building) or a change in the operation of the plant (the amount of water taken in by the plant), and the significance of the

relationship between the environmental resource and the change. For example, air (the environmental resource) would be affected by a release of radioactive chemicals from plant effluents (the plant component) and the significance of the release would depend on the types and amounts of the emission. Is the emission for the contaminant above the regulatory limits or is it a small fraction of the regulatory limits? These are the relationships that should be described. The section should include an evaluation of radiological and non-radiological impacts. The impacts section should also certify that the proposed action will not significantly increase the probability of accidents or entail an NRC undertaking involving historic sites. Additionally, if the proposed action (typically a change in a plant component or a change in plant operation) does not affect any environmental resources, explain that in this section.

Environmental Impacts of the Alternatives to the Proposed Action

Sections 51.30(a)(1)(ii) and (iii) require that an EA include alternatives to the proposed action and the environmental impact of the alternatives. NEPA requires NRC to consider alternatives in the preparation of all EAs whenever the following two conditions are present: (1) there is some identifiable environmental impact from the proposed action and (2) there is an unresolved conflict of available resources. The fact that the EA involves a finding of no significant impact (FONSI) does not automatically exempt the person preparing the EA from considering alternatives. As long as there is some identifiable impact on the environment from the proposed action, the person preparing the EA should consider alternatives. At a minimum, all EAs must include the no-action alternative.

For those actions involving a small impact, it is reasonable to consider a limited range of alternatives. In fact, in several decisions, the courts have stressed that the range of alternatives an agency must consider in an EA decreases as the environmental impact of the proposed action becomes less and less substantial.

A non-significant impact does not equate to no impact. Therefore, if an even less harmful alternative is feasible, then it ought to be considered. If the environmental impact of a proposed action is zero, there is no need to consider alternatives because there is no use of natural resources associated with the action. In those cases involving no environmental impact at all, it is reasonable to limit the discussion of alternatives to consideration of the no-action alternative. If the "no-action" alternative is the only alternative examined, the alternatives section may contain the following:

"As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action alternative"). Denial of the proposed action would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar."

Alternative Use of Resources

In accordance with Section 102(2)(E) of NEPA, agencies must consider alternative courses of action if the proposed action involves an unresolved conflict on how available resources, such as water, land, or other physical materials, will be used under the proposed action. This consideration will take place when the objective of the proposed action can be achieved in one of two or more ways that will have differing impacts on the environment even if a FONSI has been made.

Agencies and Persons Consulted

Section 51.30(a)(2) requires the EA to list Federal and State agencies and persons consulted and to identify the sources used. The person preparing the EA must consult with the affected State before the EA is issued and must solicit comments on the environmental impact of the proposed action and any other comments the State may have. Additionally, the person preparing the EA is responsible for ensuring that other appropriate agencies are contacted if an action may involve some impact on the natural or physical environment. The consultation must be documented in a brief summary in the EA and should contain (1) the name of the agency or person contacted (consulted with), (2) the date and purpose of the consultation, (3) a brief summary of the views or comments expressed and the staff's resolution, and (4) references to publicly available documents containing additional information, as applicable.

The person preparing the EA should briefly describe why the consultation was initiated. For example, if the National Marine Fisheries Service was contacted on July 25, 1995, to discuss a specific issue involving short-nosed sturgeon, the summary could make the following statement:

"The National Marine Fisheries Service was contacted on July 25, 1995, to discuss the evaluation of the ability of short-nosed sturgeon to avoid capture after the proposed modification of the river water intake."

If the consultation was made to meet strictly a programmatic requirement and not a specific issue, the consultation with the State could be summarized as follows:

"In accordance with its stated policy, on [insert date], the staff consulted with the [insert name of State] State official, [insert name of official] of the [insert name of agency], regarding the environmental impact of the proposed action. The State official had [choose one - comments or no comments]."

If comments are received from the State or agency, the comments should be summarized in the EA. Minor comments could be characterized as "general agreement" or "no objection" by the State or agency. More extensive comments require the person preparing the EA to summarize the details of the issues and the resolution of the comments in the EA or to place them in a separate document and reference them in the EA. Resolution of the comments should be placed in the NRC Public Document Room (PDR) to ensure public access.

Before issuing an EA supporting an exemption to the regulations, the person preparing the EA should contact the State government to solicit comments on the environmental impact of the proposed action. Although notifying the State is not required by 10 CFR 50.91, it is required by NEPA. This requirement may be met by sending a copy of the incoming exemption request to the State. If the State has a comment, the person preparing the EA should resolve and document the comments in the EA, as previously discussed.

**Appendix C - Format and Content of an Environmental Assessment
for a Licensing Action and Rulemaking**

**Format and Content of an Environmental Assessment and Cover Letter
for a Licensing Action**

(Addressee)

SUBJECT: PLANT NAME - (TAC NOS. MXXXX and MXXXXX)

Dear:

Enclosed is a copy of the Environmental Assessment and Finding of No Significant Impact related to your application for [amendment/exemption] dated ____, as supplemented on _____. The proposed [amendment/exemption] would _____.

The assessment is being forwarded to the Office of the Federal Register for publication.

Sincerely,
[Signature Authority as Outlined in NRR Office Instruction ADM-200, "Delegation of Signature Authority"]
Project Directorate
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket Nos. ____ and ____

Enclosure: Environmental Assessment

cc w/encl: See next page¹

¹[PREPARER: WHEN PROCESSING THE ENVIRONMENTAL ASSESSMENT FOR CONCURRENCE, ATTACH A NOTE TO THE ENVIRONMENTAL ASSESSMENT FOR THE THE OGC MAILROOM THAT IDENTIFIES THE STANDARD REVIEW PLAN SECTION NUMBER TO WHICH THE PROPOSED ACTION PERTAINS. THE OGC MEMBER THAT REVIEWS THE SAFETY EVALUATION REPORT FOR THE PROPOSED ACTION SHOULD ALSO REVIEW THE ENVIRONMENTAL ASSESSMENT FOR THE PROPOSED ACTION.]

UNITED STATES NUCLEAR REGULATORY COMMISSION(LICENSEE)(DOCKET NOS.)(PLANT NAME)ENVIRONMENTAL ASSESSMENT AND FINDING OFNO SIGNIFICANT IMPACT

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an [amendment to/ exemption from 10 CFR 50.____ for] Facility Operating License Nos. ____ and ____, issued to [insert name of licensee] (the licensee), for operation of the [facility name], located in _____. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

ENVIRONMENTAL ASSESSMENTIdentification of the Proposed Action:

The proposed action would [briefly describe what the amendment/exemption would do].

The proposed action is in accordance with the licensee's application dated ____, as supplemented by letter dated _____.

The Need for the Proposed Action:

The proposed action [describe why amendment/exemption is needed].

Environmental Impacts of the Proposed Action:

The NRC has completed its safety evaluation of the proposed action and concludes [give safety conclusion]. The details of the staff's safety evaluation will be provided in the [license amendment or exemption] that will be issued as part of the letter to the licensee approving the [license amendment or exemption to the regulation].

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. [PREPARER SHOULD DECIDE IF THE PROPOSED ACTION IS A TYPE OF ACTION THAT HAS THE POTENTIAL TO AFFECT HISTORIC PROPERTIES]. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action:

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the “no-action” alternative). Denial of the application would result in no change in current environmental impacts. [PREPARER PLEASE NOTE THAT ANY OTHER ALTERNATIVES CONSIDERED TO BE REASONABLE SHOULD BE EVALUATED AND DISCUSSED.] The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources:

The action does not involve the use of any different resources than those previously

considered in the Final Environmental Statement for the [insert name of facility], NUREG ____, dated ____ [and the Final Supplemental Environmental Impact Statement (NUREG-1437 Supplement __) dated ____].

Agencies and Persons Consulted:

On [insert date], the staff consulted with the [insert name of State] State official, [insert name of official] of the [insert name of agency], regarding the environmental impact of the proposed action. The State official had no comments.

FINDING OF NO SIGNIFICANT IMPACT

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated ____, as supplemented on _____. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who

do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1-800-397-4209, or 301-415-4737, or send an e-mail to pdr@nrc.gov.

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

FOR THE NUCLEAR REGULATORY COMMISSION
[Signature Authority as Outlined in NRR Office Instruction ADM-200,
"Delegation of Signature Authority"]
Project Directorate
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

**Format and Content of an Environmental Assessment
for a Rulemaking¹**

UNITED STATES NUCLEAR REGULATORY COMMISSION

ENVIRONMENTAL ASSESSMENT AND FINDING OF

NO SIGNIFICANT IMPACT

FOR [AN AMENDMENT TO 10 CFR PART XX / THE PROPOSITION OF A NEW RULE]

The U.S. Nuclear Regulatory Commission (NRC) is evaluating the environmental impacts of [an amendment to its regulations in 10 CFR Part ___/a proposed new rule]. Therefore, as required by 10 CFR 51.21, the NRC is performing this environmental assessment review and documenting its finding of no significant impact.

ENVIRONMENTAL ASSESSMENT

Identification of the Proposed Action:

The proposed action would [DESCRIBE THE AMENDMENT TO THE RULE OR THE NEW RULE].

The Need for the Proposed Action:

The proposed action is [DESCRIBE WHY THE AMENDMENT TO THE RULE OR NEW RULE IS NEEDED].

¹This is an example format and content of an environmental assessment for when the rulemaking review is documented in a separate document apart from the preamble. The provision of the NRC Regulatory Handbook should be followed when *summarizing* the findings of the environmental assessment in the preamble. No formal cover letter is needed, as the environmental assessment documented apart from the preamble is inserted into the rulemaking package to the Commission. When the environmental assessment review is documented in the text of the preamble, the NRC Regulatory Handbook should be followed, and the sample language for the sections titled “Environmental Impacts of the Proposed Action,” “Environmental Impacts of the Alternatives to the Proposed Action,” and “Alternative Use of Resources” can be used as guidance where the NRC Regulatory Handbook directs the authors of the preamble to “insert the text of the environmental assessment.”

Environmental Impacts of the Proposed Action:

The NRC has completed its evaluation of the proposed action and concludes that [DISCUSS THE ENVIRONMENTAL IMPACTS. IF IT IS LOGICAL THAT THERE WOULD BE NO ENVIRONMENTAL IMPACTS OF THE PROPOSED ACTION, STATE THAT LOGIC].

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types or quantities of radiological effluents that may be released. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites [PREPARER SHOULD DECIDE IF THE PROPOSED ACTION IS A TYPE OF ACTION THAT HAS THE POTENTIAL TO AFFECT HISTORIC PROPERTIES]. No changes are being made in the type or quantities of non-radiological plant effluents and there are no changes in activities that would disrupt the environment. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action:

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the “no-action” alternative). Denial of the proposed action would result in no change in the current environmental impacts. [PREPARER - IDENTIFY ANY ALTERNATIVES OUTLINED IN THE REGULATORY ANALYSIS AND DOCUMENT THE ENVIRONMENTAL IMPACTS OF THOSE ALTERNATIVES. THE ALTERNATIVES ANALYZED IN THE EA

SHOULD MATCH THE ALTERNATIVES ANALYZED IN THE REGULATORY ANALYSIS.]

The environmental impacts of the proposed action and the alternative action [(s)] are similar.

Alternative Use of Resources

This action does not involve the use of any different resources than those previously considered in the original rule dated _____. [IF THE PROPOSED ACTION IS A NEW RULE, LIST THE RESOURCES (I.E., LAND, WATER, OTHER PHYSICAL MATERIALS) THAT ARE EXPECTED TO BE AFFECTED BY THE NEW RULE AND STATE IF THERE ARE ANY UNRESOLVED CONFLICTS OVER THE USE OF THOSE RESOURCES.]

Agencies and Persons Consulted:

The NRC has sent a copy of the [proposed/final] rule to every State Liaison Officer and requested their comments on the environmental assessment. [STATE WHETHER COMMENTS WERE RECEIVED AND IF SO, WHAT THE COMMENTS WERE]

FINDING OF NO SIGNIFICANT IMPACT:

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the [proposed/final] rule dated _____. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not

have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1-800-397-4209, or 301-415-4737, or send an e-mail to pdr@nrc.gov.

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

FOR THE NUCLEAR REGULATORY COMMISSION
[Signature Authority as Outlined in NRR Office Instruction ADM-200,
"Delegation of Signature Authority"]
Policy and Rulemaking Program
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation

Appendix D - Environmental Justice Guidance and Flow Chart

BACKGROUND

This procedure provides guidance to the Office of Nuclear Reactor Regulation (NRR) staff on conducting environmental justice (EJ) reviews for proposed actions requiring an environmental impact statement, and in special cases an environmental assessment, as part of NRC's compliance with the National Environmental Policy Act (NEPA). This guidance does not create any new NEPA-related requirements, as consideration of environmental justice is consistent with the purposes and policies of NEPA. This guidance is intended to ensure that NRR is fully discharging its existing NEPA responsibilities. Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 FR 7629 (1994), directs Federal agencies in the Executive Branch to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities" on minority and low-income populations. Although an independent agency, the NRC indicated its willingness to comply with the Executive Order.

The Council on Environmental Quality (CEQ) developed guidelines to assist Federal agencies with integration of EJ into the NEPA process. The guidelines are contained in CEQ's December 10, 1997, document, "Environmental Justice Guidance Under the National Environmental Policy Act." CEQ's guidance is not binding on NRC activities; however, much of CEQ's guidance has been incorporated in this procedure. On November 5, 2003, the Commission published for comment a draft policy statement on the treatment of environmental justice matters in NRC regulatory and licensing actions. It is not finalized, but the following guidance is consistent with the draft policy statement and previous practice.

SCOPE OF ENVIRONMENTAL JUSTICE FOR NRR REVIEWS

Environmental justice reviews will be performed for all regulatory actions, including licensing actions and rulemaking activities, requiring preparation of an environmental impact statement (EIS). An EIS is required for licensing and regulatory actions that are major Federal actions significantly affecting the quality of the human environment or actions that involve a matter which the Commission has determined should be covered by an EIS. A list of types of actions requiring an EIS is found in 10 CFR 51.20(b), and includes issuance of a limited work authorization or a permit to construct a nuclear power reactor and issuance or renewal of a full power or design capacity license to operate a nuclear power reactor. It is important to note that agency consideration of impacts on minority or low-income populations may lead to the identification of disproportionately high and adverse human health or environmental effects that are significant and that otherwise could be overlooked.

For environmental assessments (EAs) with a Finding of No Significant Impact (FONSI) determination, the staff concludes, as part of its analysis, that there will be no significant environmental impacts as a result of the proposed action. The potential for environmental justice impacts should be considered when preparing an EA to ensure that minority and low-income populations are not significantly impacted by the proposed action. If significant environmental impacts are identified, then a FONSI determination cannot be made. For most licensing actions requiring an environmental assessment, there will be no potential for disproportionately high and adverse human health or environmental effects to minority or low-income populations and an environmental justice review will not be necessary. However,

under special circumstances, environmental justice reviews may be needed for actions in which an EA is prepared if there is the potential that an analysis of environmental justice issues may identify significant environmental impacts that would otherwise not be identified. If a potential for environmental justice impacts is recognized either as a result of public interest in the proposed action, knowledge about particular groups that may be effected, or the nature of the impacts, then RLEP, the program responsible for environmental reviews, should be notified for assistance. RLEP concurs on all EAs issued by NRR and will notify management if it appears that an environmental justice review is warranted. NRR management will then make a decision on a case-by-case basis whether the circumstances are such that a minority or low-income population may be affected and an environmental justice review should be performed for the action. An environmental justice review is not required for those actions listed in 10 CFR 51.22 as being categorically excluded from environmental review.

GENERAL PRINCIPLES OF ENVIRONMENTAL JUSTICE

Environmental justice issues encompass the usual broad range of impacts normally covered by NEPA. The staff should be sensitive to the fact that environmental justice issues may arise at any step of the NEPA process.

The staff should consider the composition of the affected area to determine whether minority or low-income populations are present in the area and may be affected by the proposed action. If there are significant impacts from the proposed action, the staff needs to determine whether there may be disproportionately high and adverse human health or environmental effects on minority or low-income populations.

The staff should develop effective public participation strategies. The staff should acknowledge and seek to overcome linguistic, cultural, institutional, geographic, and other barriers to meaningful participation and should incorporate active outreach to affected groups.

The staff should strive for meaningful community representation in the process. The staff should be aware of the diverse constituencies within any community and should endeavor to have complete representation of the community as a whole. The staff should be aware that community participation must occur as early as possible if it is to be meaningful.

The staff should seek Tribal agency representation in the process in a manner that is consistent with government-to-government relations.

The staff should consider relevant public health data and industry data concerning the potential for multiple or cumulative exposure to human health or environmental hazards in the affected population and historical patterns of exposure to environmental hazards, to the extent such information is reasonably available.

The staff should recognize the interrelated cultural, social, occupational, historical, or economic factors that may amplify the natural and physical environmental effects of the proposed agency action. These factors should include the physical sensitivity of the community or population to

particular impacts; the effect of any disruption on the community structure associated with the proposed action; and the nature and degree of impact on the physical and social structure of the community.

The review is forward looking and should focus on the action being taken. For example, if the action is a license amendment, only the activities covered by the amendment and not the overall impact from the issuance of the original license should be reviewed even if an EJ review was not performed for the original action.

Under NEPA, the identification of a disproportionately high and adverse human health or environmental effect on a minority or low-income population does not preclude a proposed agency action from going forward, nor does it necessarily compel a conclusion that a proposed action is environmentally unsatisfactory. Rather, the identification of such an effect should heighten agency attention to alternatives (including alternative sites), mitigation strategies, monitoring needs, and preferences expressed by the affected community or population.

PROCEDURES FOR LICENSING ACTIONS

The following guidance should be used when performing an environmental justice review. This procedure may not address all situations that may occur. Project managers should consult with RLEP whenever an environmental justice review is undertaken. See Figure 1 on page D-5 for an environmental justice process flow chart.

1. *Determine if the action requires an environmental justice review.* Determine whether the regulatory action will be supported by an EIS or by an EA. When the regulatory action requires the preparation of an EIS, an EJ review must be conducted using the process discussed in steps 2 through 5, below. When the regulatory action involves the siting or licensing of new facilities, or requires the evaluation of alternative sites, then environmental justice information must be developed for each site.

Under most circumstances, no environmental justice review is required when an EA is prepared. However, in special cases, the staff will conduct an environmental justice analysis in preparing an EA. As discussed in the scope section above, such a determination will be made on a case-by-case basis and only when there is a clear potential that the consideration of specific demographic information may identify significant impacts that would not otherwise be considered. In the event that an environmental justice analysis is performed for an EA, the process outlined in steps 2 through 5, below, should be followed.

2. *Conduct a screening for minority and low-income groups and integrate environmental justice into the scoping process.* Early on in the process (before or at the beginning of scoping), the staff should attempt to identify the location of any minority or low-income groups in the area potentially affected by the proposed action, usually within a 50-mile radius, using the procedures in the following subsection, "Identifying Minority and Low-income Populations." If any potentially affected minority or low-income groups are identified, then the staff should develop a strategy for effective public involvement in the NRC's scoping process.

3. *Identifying minority and low-income populations*

The staff should use the following steps to assist with identification of minority and low-income populations at the beginning of the review (before or at the beginning of scoping). These steps can also be used to help determine whether there are any disproportionately high and adverse human health or environmental effects, when a potentially effected minority or low-income group is identified. In the latter case, environmental impact areas will be defined for potentially significant environmental impacts and the steps will be used to determine if there is a minority or low-income population within the environmental impact area.

A. Determine geographic area for comparison

In determining whether a minority or low-income population exists, define the geographic area to be used for the comparative analysis . The area used for the comparative analysis is larger and encompasses the entire area of potential impact from the proposed action or all of the environmental impact areas (it is called the geographic area). See Figures 2 and 3 for examples.

When a regulatory action is being considered that involves alternative site considerations, such as an early site or construction permit, then, in addition to determining the individual geographic area for each site as defined above, determine an overall geographic area that encompasses all of the alternative site geographic areas. See Figure 3 for an example.

If the environmental impact areas overlap more than one government jurisdiction (State, County, etc.), then the geographic area will encompass parts of each government jurisdiction. The geographic area does not have to follow established boundaries such as county or State lines.

B. Determine the minority and low-income composition in the geographic area

Determine the percentage of the total population within the geographic area for each minority and low-income category and for the aggregate minority population.

The staff should use the most recent demographic data available from the Bureau of the Census (the Bureau) to identify the composition of the potential geographic area. Geographic distribution by race, ethnicity, and income, as well as delineation of tribal lands and resources, should be examined. Information may be found through demographic information and studies, such as the LandView environmental mapping software developed by the Bureau to assist in utilizing data from a geographic information system. This information is also contained in RLEP's Geographical Environmental & Siting Information System (GEn&SIS).

Minority categories are defined as: American Indian or Alaskan Native; Asian; Native Hawaiian or other Pacific Islander; or Black races; or Hispanic ethnicity (“other” may be considered a separate minority category).²

Low-income households should be identified using the annual statistical poverty thresholds from the Bureau.

C. Determine the minority and low-income composition in the environmental impact area

For the area of potential impact for all impacts (typically, a 50-mile radius) or for the environmental impact area for a particular impact, determine the percentage of each minority category in the area and for the aggregate minority categories. Likewise, determine the percentage of the households within the area that are below the poverty level (low-income). The selection of the appropriate unit of geographic analysis may likely be a census block group because this geographic area is small enough so as not to dilute a potential minority or low-income population within the larger general population. At the beginning of the scoping process, it is more appropriate to compare individual census block groups, or other similar geographic unit, with the larger area of potential impact for all impacts associated with the proposed action in order to determine the location of any potential minority or low-income groups. If, during the review, it appears that a minority or low-income group may be affected, then it will be necessary to focus the review on potentially significant impacts and to determine the environmental impact area for each potentially significant environmental impact. The percentage of minorities and low-income households in the census block groups, or other similar geographic unit, that are located in the environmental impact area should be used in the comparison to determine if the area contains a minority or low-income population. A determination of whether or not a census block group that only partially falls in an environmental impact area should be included in the comparison may be based on the population density of the census block group within the environmental impact area or use of other appropriate criteria.

D. Determine if there are any minority or low-income populations

A "minority population" is considered to be present if: 1) the minority population in the census block group or environmental impact site exceeds 50 percent, or 2) the minority population percentage of the environmental impact area is significantly greater (typically at least 20 percentage points) than the minority population percentage in the geographic area chosen for the comparative analysis, for example, the county or State.

²The 2000 Census included multi-racial data. The staff should consider multi-racial individuals in a separate minority category, in addition to the aggregate minority category when the Bureau releases the updated information.

A "low-income population" is considered to be present if: 1) the low-income population in the census block group or the environmental impact area exceeds 50 percent, or 2) the percentage of households below the poverty level in an environmental impact area is significantly greater (typically at least 20 percentage points) than the low-income population percentage in the geographic area chosen for the comparative analysis.

In identifying minority or low-income populations, reviewers may consider a community either as a group of individuals living near one another or a group of individuals that experience common conditions of environmental exposure or effect. The criteria listed above should only serve as a guideline for determining the presence of a minority or low-income population. If it is apparent through interviews, public comment/interest, or by investigation that there is a distinct minority or low-income population that may be adversely effected by the proposed action, then the reviewer should proceed with the environmental justice review, even if the population is not identified through use of the census data.

If no minorities or low-income households are identified in the potentially affected area or environmental impact area, then document the conclusion. The environmental justice review is complete.

Consistent with scoping activities conducted under NEPA, the staff may consider measures for increasing participation of minority and low-income groups such as outreach through minority business and trade organizations, schools, colleges, labor organizations, or other appropriate organizations. Meetings open to the public should be advertised through locally-targeted media, mailings, and the internet. Other means of advertising include posting of flyers in local shopping, community, government and other public places. If representatives of the affected group(s) are identified, these individuals should be included on the mailing list for the review. When communicating with the public, the staff should consider innovative approaches to overcoming linguistic, institutional, cultural, economic, historical, or other potential barriers to effective participation in the decision-making process. During the scoping process the staff should supplement the census data with inquiries of the local planning departments, social service agencies, and other local offices to identify minority or low-income groups that may not be identified through the census data.

If no minority or low-income groups are found during scoping or later on in the review, then the results should be documented and the environmental justice review is complete.

4. *Determine whether there are potentially significant environmental impacts to minority or low-income populations.* If any minority or low-income groups are identified during the scoping process or at any other stage of the review, then the staff should determine the significance of environmental impacts to these groups during development of the EIS. The staff should use a graded approach and focus the review on any adverse human health or environmental impacts that are known to be significant or perceived as significant by groups and/or individuals. The locations that have been identified as areas affected by the proposed action are called environmental impact areas. More than one environmental impact area may exist if multiple impacts can occur from the

proposed action. The size, shape, and geographic location of the environmental impact area will vary according to the nature of the impact and should be consistent with the areas used to review environmental impacts in the EIS. For example, an environmental impact area may include transmission line rights-of-way, a river or other surface water body, a 10-mile radius, etc. Environmental impact areas may or may not follow political jurisdictions. Typically, the severity of environmental impacts will vary inversely with the distance from the facility; therefore, the review should be focused on areas closer to the site. See Figure 2 for examples of individual environmental impact areas and the larger geographic area.

The percentage of minorities and low-income households in the census block groups, or other similar geographic unit, that are located in the environmental impact area should be used in the comparison to determine if the area contains a minority or low-income population using the steps outlined in the subsection, "Identifying Minority and Low-Income Populations."

If there are no minority or low-income populations within the impact area(s) or if there are no potentially significant environmental impacts, then these results should be documented and the environmental justice review is complete.

5. *Determine whether there are disproportionately high and adverse human health or environmental effects to minority or low-income populations.* When the review does identify minority or low-income populations in a potentially significant environmental impact area(s), the staff needs to determine whether disproportionately high and adverse effects result from the proposed action by considering the following:

- Are the radiological or other health effects significant or above generally accepted norms? Is the risk or rate of hazard significant and appreciably in excess of the general population? Do the radiological or other health effects occur in groups affected by cumulative or multiple adverse exposures from environmental hazards?
- Is there an impact on the natural or physical environment that significantly and adversely affects a particular group? Are there any significant adverse impacts on a group that appreciably exceed or is likely to appreciably exceed those on the general population? Do the environmental effects occur or would they occur in groups affected by cumulative or multiple adverse exposure from environmental hazards?

Reviewers should recognize that the impacts to minority or low-income populations may be different from impacts on the general population due to a community's distinct cultural practices. In addition, reviewers should take into account different patterns of living and consumption of natural resources, such as subsistence consumption.

Reviewers should assess the significance or potential significance of such adverse impact on each minority or low-income population and also provide an assessment of the degree to which each minority or low-income population is disproportionately receiving benefits compared to the entire geographic area.

If there are significant impacts to the minority or low-income population, then it is necessary to look at mitigative measures and benefits. The reviewer should determine and discuss whether there are any mitigative measures that could be taken to reduce the impact. To the extent practicable, mitigation measures should reflect the needs and preferences of the affected minority or low-income populations. The conclusion may be that there are disproportionately high and adverse impacts to minority or low-income populations; however, factors such as the mitigative measures and/or the benefits of a project may outweigh the disproportionate impacts. In any case, the facts should be presented so that the ultimate decision-maker can weigh all aspects in making the agency decision. The Executive Order does not prohibit taking an action when the agency taking the action determines that there are disproportionate high and adverse impacts to minority or low-income populations.

6. *Make a determination regarding environmental justice impacts and document the conclusion.* Each EIS shall contain a section titled, "Environmental Justice," which will either contain the complete environmental justice review or a reference to another document containing the review. If a reference to another document is used, a summary of the review and its conclusions should be included in the EIS section. An EA will only have an environmental justice section in the rare situation where a review was performed as a result of an NRR management decision.

The staff should clearly state the conclusion regarding whether or not the proposed action will have disproportionately high and adverse environmental impacts on minority or low-income populations. This statement should be supported by sufficient information to allow the public to understand the rationale for the conclusion. The underlying information should be presented as concisely as possible, using language that is understandable to the public and that minimizes use of acronyms or jargon.

PROCEDURES FOR RULEMAKING ACTIVITIES

1. The staff responsible for rulemaking should integrate EJ into the proposed and final rules that require an EIS to the same extent that it integrates other relevant environmental considerations.
2. If it is known in advance that a particular rulemaking might impact a specific population disproportionately, then the NRC staff should ensure that the population knows about the rulemaking and is given the opportunity to participate. Such actions may include translating the *Federal Register* Notice (FRN) into a language other than English for publication in a local newspaper and holding public outreach meetings in the affected area.
3. As noted in the "Scope" section, there may be special circumstances under which a rulemaking that has an EA/FONSI prepared may identify special environmental impacts not otherwise identified. In these cases, the staff will inform NRR senior management and a decision will be made on a case-by-case basis whether the circumstances warrant an environmental justice review.

4. If an environmental justice analysis is performed for a rulemaking activity, then the staff should include language contained in NUREG/BR-0053, Revision 5, "NRC Regulations Handbook," Section 5.15 and Section 7.15 in the FRN to seek public comments on environmental justice. The staff should follow steps 2-5 of "Procedures for Licensing Actions," above, to perform the environmental justice review.
5. Public comments received pertaining to environmental justice on a rulemaking should be addressed in the final FRN in the same section and at the same level of detail as comments received on other aspects of the environmental considerations for the rule.
6. When a rule is being modified or developed that contains siting evaluation factors or criteria for siting a new facility, the staff should consider including specific language in the rule or supporting regulatory guidance to state that an environmental justice review will be included as part of the normal environmental analysis performed in siting a new facility.

**Appendix E - List of States With Federally-Approved
Coastal Management Programs, Example of Consistency Certification, and
Coastal Zone Management Flow Chart**

List of States with Federally-Approved Coastal Management Programs

1. Alabama
2. Alaska
3. American Samoa
4. California
5. Connecticut
6. Delaware
7. Florida
8. Georgia
9. Guam
10. Hawaii
11. Indiana
12. Louisiana
13. Maine
14. Maryland
15. Massachusetts
16. Michigan
17. Minnesota
18. Mississippi
19. New Hampshire
20. New Jersey
21. New York
22. North Carolina
23. Northern Mariana Islands
24. Ohio
25. Oregon
26. Pennsylvania
27. Puerto Rico
28. Rhode Island
29. South Carolina
30. Texas
31. Virginia
32. Virgin Islands
33. Washington
34. Wisconsin

Example of Consistency Certification for Federal Permit and License Applicants

The Coastal Zone Management Act of 1972 (CZMA) requires that any applicant for a Federal license or permit or authorization, certification, approval, or other form of permission, which any Federal agency is empowered to issue to an applicant to conduct an activity, inside or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of that State, shall certify in the application to the approving Federal agency that the proposed activity complies with the enforceable policies of the State's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the State or its designated agency a copy of the certification, with all necessary information and data. See 16 U.S.C. 1456(c)(3)(A); 15 CFR 930.51(a). At the earliest practicable time, the State agency shall notify the Federal agency and the applicant whether the State agency concurs or objects to a consistency certification. [15 CFR 930.63(a).]

[Insert name of State] has an approved CZMA Program, which includes [insert the statutory provisions and regulations of the State's CZMA Program].

Consistency Certification:

[Insert name of applicant] has determined that the proposed [insert name of project] complies with the [insert name of State] approved coastal management program (CMP) and will be conducted in a manner consistent with such program.

Necessary Data and Information:

1. This section provides a detailed description of the proposed activity and its associated facilities. [Provide a copy of the Federal application and other materials pursuant to 15 CFR 930.58(a)(1), which will permit adequate assessment of probable coastal zone effects by the State.]
2. This section contains the necessary information and data required by the State's CMP as described in the State's CMP program document and subsequent approved amendments. [Provide information pursuant to 15 CFR 930.58(a)(2) and 930.56(b).]
3. This section contains a brief assessment relating the probable effects of the proposed [insert name of project] and its associated facilities on any land or water use or natural resource of the coastal zone to the relevant enforceable policies of the [insert name of State] CMP. [Contact the State coastal management agency to help determine relevant enforceable policies, briefly describe the relevant policies, and write a brief assessment of how the effects of the proposed activity relate to the relevant policies.]
4. This section contains a brief set of findings, derived from the assessment, that the proposed [insert name of project], its associated facilities, and their effects are all consistent with the enforceable policies of the [insert name of State] CMP. [Prepare a set of findings for each distinguishable aspect of the proposed activity-essentially a conclusion of fact based on the assessment.]

By this certification that the [insert name of project] is consistent with the [insert name of State] CMP, the State of [insert name of State] is notified that it has 6 months from receipt of this letter and accompanying information in which to concur with or object to [insert name of applicant] certification. However, pursuant to 15 CFR 930.63(b), if [insert name of State] has not issued a decision within 3 months following commencement of State agency review, it shall notify [insert name of applicant] and the Federal agency of the status of the matter and the basis for further delay. The State's concurrence, objection, or notification of review status shall be sent to [insert name of applicant contact].