

OFFICE OF NUCLEAR REACTOR REGULATION

LIC-203, Revision 4	Procedural Guidance for Categorical Exclusions, Environmental Assessments, and Considering Environmental Issues
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<p>Summary of Changes: This revision modifies the Objectives and Basic Requirements sections to add the newly established NMSS Environmental Center of Expertise roles to reflect the reorganization of NRR and NMSS; 10 CFR Part 50 and 10 CFR Part 52 requirements; and the National Environmental Policy Act of 1969, as amended, requirements. Additionally, it incorporates significant modifications to Sections 5.2.3, 5.2.4, 5.2.5, and 5.2.6 and deletes Appendices E, F, and G. Lastly, the References section has been updated to reflect the NMSS and NRR roles and responsibilities in implementing this office instruction.</p>	
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Acronyms Used

ACHP	Advisory Council on Historic Preservation
ADAMS	Agencywide Documents Access and Management System
CAA	Clean Air Act of 1963, as amended
CEQ	Council on Environmental Quality
CMP	Coastal Management Plan
CWA	Clean Water Act of 1972, as amended
CZMA	Coastal Zone Management Act of 1972, as amended
DORL	Division of Operating Reactor Licensing
EA	environmental assessment
EFH	essential fish habitat
EIS	environmental impact statement
EJ	environmental justice
EnvCOE	Environmental Center of Expertise
EPA	Environmental Protection Agency
EPU	extended power uprate
ESA	Endangered Species Act of 1973, as amended
FONSI	finding of no significant impact
FR	<i>Federal Register</i>
FWS	U.S. Fish and Wildlife Service
MOA	memorandum of agreement
MSA	Magnuson–Stevens Fishery Conservation and Management Act of 1976, as amended
NAAQS	National Ambient Air Quality Standards
NEPA	National Environmental Policy Act of 1969, as amended

NHPA	National Historic Preservation Act of 1966, as amended
NMFS	National Marine Fisheries Service
NMSS	Office of Nuclear Materials Safety and Safeguards
NOAA	National Oceanic and Atmospheric Administration
NPDES	National Pollution Discharge Elimination System
NRR	Office of Nuclear Reactor Regulation
OGC	Office of the General Counsel
OI	office instruction
PM	project manager
REMP	radiological environmental monitoring program
SHPO	State Historic Preservation Officer
THPO	Tribal Historic Preservation Officer

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1. **POLICY**

It is the policy of the U.S. Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation (NRR) to establish procedures and guidance for its staff to meet the requirements established by applicable statute and regulation. The purpose of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," is to ensure that the NRC meets its statutory obligations under the National Environmental Policy Act of 1969 (NEPA).

2. **OBJECTIVES**

This office instruction (OI) provides the NRR and Office of Nuclear Material Safety and Safeguards (NMSS) staff with a basic framework for meeting the NRC's responsibility to comply with 10 CFR Part 51. This OI is intended to:

- Define the roles and responsibilities of NRR and Nuclear Materials Safety and Safeguards (NMSS) staff to ensure that the NRC is consistent in its implementation of the 10 CFR Part 51 NEPA-related regulations and other Federal environmental statutory and regulatory requirements.
- Define the roles and responsibilities of the NMSS Environmental Center of Expertise (EnvCOE) in performing NEPA reviews and fulfilling other Federal environmental statutory and regulatory requirements.
- Provide guidance to NRR and NMSS staff on the procedural requirements for demonstrating compliance with NEPA and other Federal environmental statutory and regulatory requirements for NRC actions at regulated facilities.

This OI contains guidance for applying categorical exclusions and preparing environmental assessments (EAs) in accordance with NEPA and 10 CFR Part 51 and for considering environmental issues associated with:

- Environmental Justice;
- Coastal Zone Management Act of 1972, as amended (CZMA);
- Endangered Species Act of 1973, as amended (ESA);
- Magnuson–Stevens Fishery Conservation and Management Act of 1976, as amended (MSA);
- National Historic Preservation Act of 1966, as amended (NHPA);
- Clean Air Act of 1963, as amended (CAA);
- Clean Water Act of 1972, as amended (CWA);
- Safe Drinking Water Act of 1974, as amended (Safe Drinking Water Act); and
- Fish and Wildlife Coordination Act enacted March 10, 1934.

This OI describes how environmental reviews that involve application of a categorical exclusion or preparation of an EA should be performed for NRR licensing actions. Although this OI addresses some aspects of environmental impact statement (EIS) preparation, it should not serve as primary guidance for EISs. The NRC has codified requirements pertaining to EISs in 10 CFR Part 51, and the NRC maintains other guidance describing how the staff should implement these requirements when preparing EISs. For reactor licensing actions, detailed staff guidance appears in NUREG-1555, "Standard Review Plans

for Environmental Reviews for Nuclear Power Plants.” This NUREG addresses EISs for new reactor licensing, and Supplement 1, Revision 1, addresses EISs for commercial power reactor license renewal. For non-power reactors (including medical isotope production facilities), detailed staff guidance for preparing EISs appears in NUREG-1537, “Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors” and the NRC’s 2012 “Interim Staff Guidance for Augmenting NUREG-1537 for Licensing Radioisotope Production Facilities and Aqueous Homogenous Reactors.” For rulemaking EISs, staff guidance appears in NUREG/BR-0053, “United States Nuclear Regulatory Commission Regulations Handbook.”

3. BACKGROUND

On June 21, 2001, LIC-203 was initially issued as a revision to Office Letter 906, Revision 2, which included guidance on environmental justice and improvements to the format and content of the EA template. Office Letter 906, Revision 2, was issued on September 21, 1999, and was entitled, “Procedural Guidance for Preparing Environmental Assessments and Considering Environmental Issues.” LIC-203 has been through several revisions to address the enactment of environmental regulations and office restructuring. Appendix A discusses the changes made in each revision to this OI.

4. BASIC REQUIREMENTS

4.1 EnvCOE Staff

The NMSS’s EnvCOE is responsible for ensuring that NRC meets its obligations under Federal environmental requirements and properly implements the requirements of 10 CFR Part 51. The EnvCOE supports environmental reviews of agency actions required by NEPA, ESA, MSA, NHPA, and various other environmental statutes, policies, and regulations. As described in the September 19, 2019, memorandum entitled, “Creation of the Environmental Center of Expertise,” the EnvCOE supports environmental reviews for:

- (1) new, advanced, and operating reactors, as well as nonpower utilization facilities;
- (2) nuclear materials, including production of nuclear fuel used in commercial nuclear reactors, as well as storage, transportation, and disposal of high-level radioactive waste and spent nuclear fuel;
- (3) facilities (reactor and materials) undergoing decommissioning; and
- (4) rulemakings.

The EnvCOE also develops, maintains, and implements agencywide environmental review guidance and training.

4.2 All NRR Staff

In addition to its regulatory responsibilities embodied in the health and safety requirements of the Atomic Energy Act of 1954, as amended, the NRC has responsibilities that are derived from NEPA and from other environmental laws, including ESA, MSA, NHPA, and various other environmental statutes, policies, and

regulations. In addition, the NRC is required to follow its environmental justice policy statement (69 FR 52040), which is based upon Executive Order 12898. Some of these laws may require the NRC to consult or coordinate with other Federal, State or local agencies, or Tribal governments. NRR staff should contact the appropriate subject matter expert in the EnvCOE to discuss consultation activities associated with the CZMA, ESA, MSA, NHPA, and the NRC's environmental justice policy statement.

NRR staff must consider these environmental laws and the NRC's environmental justice policy statement when performing regulatory activities, such as:

- Reviewing construction permit or operating license applications under 10 CFR Part 50, which includes both power and non-power reactors;
- Reviewing early site permit and combined license applications, including applications for advanced reactors, under 10 CFR Part 52;
- Reviewing power reactor license renewal applications under 10 CFR Part 54;
- Reviewing non-power license renewal applications under 10 CFR Part 50; and
- Reviewing license amendment and exemption requests under 10 CFR Part 50 and 10 CFR Part 52, including:
 - Reviewing requests for license amendments and regulatory exemptions that are not covered by a categorical exclusion under 10 CFR Part 51.22(c);
 - Revising Appendix B (Environmental Protection Plan) of a licensee's operating license or combined license;
 - Power Uprates: Increasing the authorized power level of commercial power reactors beyond the power rating stated in the facility's final environmental impact statement or supplement to NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," regarding the facility being reviewed; and
 - Construction Recapture: Changing the license expiration date to recapture time between the construction permit and actual operation.
- Reviewing decommissioning-related actions under 10 CFR Part 50; and
- Conducting rulemaking that may lead to environmental impacts.

For any of these NRR actions, the NRR project manager (PM) may request formal guidance from the EnvCOE on developing an EA or appropriately applying and documenting a categorical exclusion. As general review guidance and to promote consistency in processing of license amendments and exemptions, the NRR staff follows the guidance provided in LIC-101, "License Amendment Review Procedures," and LIC-103, "Requests for Exemptions from NRC Regulations." Relief requests are major Federal actions and need an environmental action. A rulemaking plan for categorical exclusions from environmental review (10 CFR Part 51) is in progress.

Once it is approved, LIC-203 will be updated to reflect relief requests along with the guidance. If the NRR action requires an EIS, the EnvCOE will prepare the EIS.

The NRR PM should provide the EPID established for respective licensing actions to which the applicable NRR and EnvCOE staff can charge their time when reviewing, concurring, providing input to, conducting, or otherwise assisting on environmental reviews.

Agency actions eligible for categorical exclusions under 10 CFR 51.22(c) do not require the staff to perform an environmental review or prepare an EA or EIS. The PM should follow guidance provided in LIC-101 and LIC-103 for license amendments and requests for exemptions. Some agency actions, however, may require the staff to document their determination that a categorical exclusion applies. Section 5.2.1 and Appendix B of this OI describe categorical exclusions in further detail. The appropriate NRR division and the Office of the General Counsel (OGC), with support from the EnvCOE, as necessary, will determine whether an action qualifies as a categorical exclusion. If a categorical exclusion applies, the NRR PM should include the applicable criterion in the safety evaluation or other licensing document prepared in connection with the staff's review.

NRR staff is encouraged to seek early assistance from the EnvCOE in addressing environmental issues that are unique, complex, or unfamiliar.

5. RESPONSIBILITIES AND AUTHORITIES

5.1 EnvCOE Staff

With respect to NRR licensing actions, the EnvCOE will:

- Review and concur on plant-specific and generic EAs prepared by NRR staff for the NRR licensing actions listed above in Section 4.2;
- Review and concur on plant-specific categorical exclusions prepared by NRR staff for eligible activities under 10 CFR 51.22, when appropriate;
- Prepare input for and/or originate EAs for NRR licensing actions, when Appropriate;
- Prepare EISs for NRR licensing actions;
- Participate in environmental rulemaking activities;
- Review new and emerging environmental issues;
- Track amendments to existing or issuance of new environmental statutes, regulations, applicable executive orders, and guidance. Inform NRR management and staff of such developments, as appropriate;
- Review environmental documents submitted by other Federal and State agencies and respond or comment on such documents, as appropriate;

- Conduct all necessary ESA Section 7 consultations with the U.S. Fish and Wildlife Services (FWS) and National Marine Fisheries Service (NMFS);
- Conduct all necessary MSA EFH consultations with the NMFS;
- Conduct all necessary NHPA Section 106 consultations with the Advisory Council on Historic Preservation (ACHP) and the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer(s) (THPO);
- Perform all environmental justice reviews for NRR licensing actions, as necessary;
- Coordinate with OGC to ensure that the requirements of all environmental laws, regulations, and executive orders have been met;
- Coordinate environmental matters with other NRC headquarters and regional offices; Federal, State, and local agencies; and, if appropriate, Tribal governments; and
- Collaborate with NRR to update this OI.

5.2 NRR Staff

NRR staff should consult with the EnvCOE when reviewing environmental issues or safety issues that require an EA, an EIS, or in which the applicability of a categorical exclusion is unclear. NRR staff should also consult with the EnvCOE for all licensing actions requiring ESA Section 7 consultation, EFH consultation, NHPA Section 106 consultation, or an environmental justice review, among other situations that require environmental expertise, as discussed below.

5.2.1 NRR Responsibilities under NEPA: EISs, EAs, and Categorical Exclusions

Section 102 of NEPA, passed by Congress in 1969, requires the use of a systematic approach to integrate the social and natural sciences when making decisions that may have environmental impacts. NEPA requires that Federal agencies prepare EISs for “major Federal actions that may significantly affect the quality of the human environment.” EISs must include a thorough analysis of the environmental effects of the proposed action, as well as appropriate alternatives to the proposed action. The findings of EISs must then be considered in the decision-making process.

To implement the requirements of NEPA, NRC prepares EISs and EAs. NRC regulatory requirements regarding these documents can be found in 10 CFR Part 51. The NRC has previously determined that certain categories of actions do not have significant impacts on the environment. For those categories of actions, the NRC has established categorical exclusions, which are listed in 10 CFR 51.22(c). If a specific action falls within the scope of a listed categorical exclusion, the NRC does not need to prepare an EA or EIS.

Environmental Impact Statements:

It is the responsibility of EncCov that an EIS is prepared for any action determined to be a “major Federal action significantly affecting the quality of the human environment.” Section 51.20(b) of 10 CFR provides a specific list of NRC actions that require preparation of an EIS. For instance, renewal of a license to operate a nuclear power reactor requires the preparation of an EIS. In general, an EIS contains detailed analyses of the environmental impacts of the proposed action and the alternatives to the proposed action and involves extensive public participation and typically involves coordination with other Federal, State, and local agencies, and, if appropriate, Tribal governments.

Environmental Assessments:

For those actions that are not listed in 10 CFR 51.20(b) or covered by a 10 CFR 51.22(c) categorical exclusion, the NRC will need to prepare an EA. An EA documents the evaluation of whether an action constitutes a “major Federal action significantly affecting the quality of the human environment.” If the review documented in the EA demonstrates that the proposed action will not have a significant impact on the environment, a finding of no significant impact (FONSI) is prepared in accordance with the criteria of 10 CFR 51.32; no EIS need be prepared. The FONSI may be set forth in the conclusion section of the EA. If the EA demonstrates that the proposed action will, or has the potential to, significantly affect the environment, but can be mitigated to the point where the action will no longer have a significant impact, contact the EnvCOE for additional guidance (this scenario may involve the preparation of a “mitigated” FONSI). If the environmental review documented in the EA reveals that the proposed action will, or has the potential to, significantly affect the human environment, and mitigation is not viable, then the NRC must prepare an EIS. Refer to Figure 2 in Appendix C for the flow chart of the process by which a reviewer should determine whether an action requires an EA, EIS, or meets the criteria for a categorical exclusion, as defined in 10 CFR 51.22. For an extended power uprate (EPU), the staff prepares an EA that goes into greater depth and provides more opportunity for public involvement than a typical EA for licensing actions. The EnvCOE will prepare EAs for all EPU requests. For additional guidance on the process of power uprate reviews, please refer to LIC-112, “Power Uprate Process.”

Categorical Exclusions:

A categorical exclusion is prepared for an action that an agency has previously determined does not individually or cumulatively have a significant effect on the human environment. Section 51.22(c) of 10 CFR identifies NRC licensing and regulatory actions that are eligible for categorical exclusion. A categorical exclusion should be documented with a brief explanation as to how the proposed action would not have any significant environmental effects and a description of how the proposed action is included under 10 CFR 51.22(c). Appendix B of this OI provides guidance on the use and documentation of categorical exclusions. If it is not clear whether a particular action is categorically excluded under 10 CFR 51.22(c), Appendix B.3 provides an analysis and checklist that can be performed to determine if a categorical

exclusion applies. The NRR PM should consult with OGC and the EnvCOE, as appropriate, to determine whether a proposed action is eligible for categorical exclusion.

Environmental Review Process:

Licensing Actions

Upon receipt of a proposed licensing action, the NRR PM should determine what level of environmental review is needed (categorical exclusion, EA, or EIS). Refer to Figure 2 in Appendix C for a flow chart of the process to determine whether an action requires an EA, EIS, or meets the criteria for a categorical exclusion. If the proposed action is unique or involves unusual circumstances, then the NRR PM should consult with the EnvCOE before initiating the environmental review. Additionally, as mentioned previously in this OI, 10 CFR 51.22(c) lists those NRC licensing and regulatory actions that are eligible for categorical exclusion and, therefore, do not require preparation of an EA or EIS. The NRR PM should follow guidance provided in LIC-101 and LIC-103 for license amendments and requests for exemptions. However, as mentioned earlier, some licensing and regulatory actions may require the staff to document the determination that a categorical exclusion applies. The NRR PM should consult with OGC and the EnvCOE, as appropriate, to determine whether a proposed action is eligible for categorical exclusion. In such case, a categorical exclusion should be documented in accordance with Appendix B of this OI.

If the NRR PM, in consultation with OGC and the EnvCOE, determines that the proposed action is not eligible for a categorical exclusion and it is not one of the listed actions that require preparation of an EIS (see 10 CFR 51.20(b)), then an EA should be prepared in accordance with the requirements of 10 CFR 51.30 and the guidance in this OI. Section 51.30 of 10 CFR requires that an EA:

1. Identify the proposed action.
2. Briefly discuss the need for the proposed action.
3. Discuss the alternatives to the proposed action.
4. Describe the environmental impacts of the proposed action and alternatives.
5. List agencies and persons consulted and identify sources used.

An EA should not duplicate the safety details of the review. While it may describe some safety aspects in characterizing the proposed action, the EA's analysis should focus on the environmental impacts of the proposed action. Appendix C of this OI provides detailed guidance for each step in the preparation of an EA.

The staff should prepare 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. The FONSI may be set forth in the conclusion section of the EA. The FONSI must be prepared and published in the *Federal Register* in accordance with the requirements of 10 CFR 51.32, 10 CFR 51.34, 10 CFR 51.35, and 10 CFR 51.119. The staff may issue a draft FONSI (e.g. EPU EAs) for public comment. Issuance of a draft FONSI is at the discretion of the appropriate NRC office director. The regulations at 10 CFR 51.33(b) specify circumstances in which a draft FONSI is typically issued. In such a case, the EnvCOE would perform the environmental review because this would typically mean that the review is more complex. A draft FONSI must be published in the *Federal Register* with a minimum comment period of 30 days, in accordance with the requirements set forth in 10 CFR 51.33 and 51.119. If the EA supporting a draft FONSI relies on the safety evaluation or proposed license conditions, those documents must be publicly available during the comment period for the draft FONSI.

If the PM believes mitigation of the effects is possible (i.e., a mitigated FONSI), contact the EnvCOE for guidance. If the EA concludes that the proposed action will result in significant environmental impacts, then the NRR PM should contact the EnvCOE to coordinate the preparation of an EIS.

Should an EIS need to be prepared, the EnvCOE will be responsible for coordinating the preparation of the EIS with the NRR PM for the facility in question. An EA does not need to be prepared before an EIS for those specific actions listed under 10 CFR 51.20(b) as requiring an EIS.

Rulemaking Activities

When an EA is written in support of rulemaking activities that affect NRR, the initiating office, if other than NRR, may coordinate with the EnvCOE in the preparation of an EA. Detailed guidance on incorporation of the NEPA process within rulemaking activities is provided in the NRC Regulations Handbook, NUREG/BR-0053, Revision 6.

5.2.2 NRR Responsibilities Regarding Environmental Justice

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (69 FR 52040), was issued on February 11, 1994, mandating that Federal agencies make "environmental justice" (EJ) 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 low-income populations. Subsequently, the Council on Environmental Quality (CEQ) developed guidelines on how to integrate environmental justice into the NEPA process entitled, "Environmental Justice Guidance Under the National Environmental Policy Act," dated December 1997. The guidance is available at: <https://ceq.doe.gov/nepa-practice/justice.html>.

On August 24, 2004, the Commission issued a "Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions" (69 FR 52040), which states: "The Commission is committed to the general goals set forth in Executive Order 12898 and strives to meet those

goals as part of its NEPA review process.” NRR developed a corresponding procedure (Appendix D), which incorporates the Commission’s policy statement on environmental justice into the licensing process.

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; however, special circumstances may warrant an environmental justice review. Special circumstances occur when there is a clear potential for offsite impacts and there are some indications of populations that might signal the existence of an EJ issue. If there is a clear potential for significant offsite impacts from the proposed action, an EJ review might be needed to provide a basis for concluding that there are no disproportionately high or adverse impacts. In such circumstances, NRR senior management will decide whether an EJ review is warranted for an EA on a case-by-case basis. Also, NRR generally conducts an EJ review for an EPU, the findings of which are documented in the EA. Appendix D provides a more detailed explanation of the process for conducting an EJ review and a chart illustrating the steps in the review.

5.2.3 NRR Responsibilities Under the Coastal Zone Management Act

Congress promulgated the CZMA to encourage and assist states and territories in developing management programs that preserve, protect, develop, and, where possible, restore or enhance, the resources of the coastal zone. The coastal zone is defined by the CZMA as the “coastal waters and the adjacent shorelands, as well as islands, transitional and intertidal areas, salt marshes, wetlands, and beaches.” The coastal zone applies to oceanic as well as Great Lakes regions. Coastal zone states are responsible for developing a Federally approved Coastal Management Plan (CMP) and implementing a coastal management program in accordance with such a plan.

Section 307(c)(3)(A) of the CZMA requires that all Federal actions that may have reasonably foreseeable effects on the uses or resources of a State’s coastal zone be consistent with the enforceable policies of the State’s CMP. This is called “Federal consistency.” For CZMA purposes, a Federal action is one proposed in or outside the coastal zone that affects any land or water use or natural resource of a state’s coastal zone (National Oceanic and Atmospheric Administration (NOAA) 2018)). NRC actions that may require applicants to obtain Federal consistency include the NRC’s issuance of new facility licenses, the NRC’s issuance of renewed facility licenses, or the NRC’s approval of major amendments¹ to facility licenses.

Federal consistency is between the applicant and the State, and it is ultimately the applicant’s responsibility to obtain consistency. However, prior to the NRC taking action, the applicant must obtain certification from the State that the

¹ “Major amendments” are those which approval will affect any coastal use or resource in a way that is substantially different than the description or understanding of effects at the time of the original activity (15 CFR 930.51(c)).

State has found the proposed action to be consistent with the State's CMP. This is referred to as "consistency certification." The NRC cannot issue a license or permit until the State has provided the applicant with such certification or otherwise waived the requirement by not issuing a decision within six months. The NOAA's regulations specifically require the State's concurrence with consistency certifications for commercial power reactor license renewal and major amendments that will affect any coastal use or resource. In cases where the State objects to an applicant's consistency determination request, the CZMA regulations instruct the Federal agency to withhold the permit or license approval until the Secretary of Commerce presides over such objection (15 CFR 930.64).

NRR licensing actions that require CZMA consistency certification include (but are not limited to): commercial power reactor construction permits, operating licenses, early site permits, combined licenses, renewed licenses; EPU license amendments; and non-power reactor construction permits and operating licenses.

The NOAA maintains regulations pertaining to Federal consistency at 15 CFR Part 930. The NOAA has also issued guidance for Federal agencies entitled, "CZMA Federal Consistency Overview" (NOAA 2016). The NOAA also maintains a webpage with descriptions of each State and territory's coastal zone and links to Federally approved CMPs at: <https://coast.noaa.gov/czm/mystate/>.

Procedure for Licensing Actions:

NRR staff should follow the steps below to determine whether Federal consistency applies to a proposed licensing action and to properly document the State's consistency certification as part of the environmental review. Because this procedure may not address all situations, NRR PMs should consult with the EnvCOE whenever a CZMA consistency certification is required.

1. Determine whether the facility lies within a State's coastal zone or whether the proposed licensing action could have a reasonably foreseeable effect on any coastal use or resource within the coastal zone, as defined in 15 CFR 930.11. For instance, a facility located on a river or estuary within a reasonable downstream distance from a coastal zone may affect that coastal zone even if the facility itself lies outside the coastal zone boundary.
2. Identify whether the proposed licensing action is a listed activity that requires the State's consistency certification. Listed activities are identified in State Federal consistency lists, which are available on NOAA's website at: <https://coast.noaa.gov/czm/consistency/states/>. Many State lists include a section specific to NRC actions.
3. For a listed activity, ensure that the applicant has obtained the State's concurrence with its consistency certification for the proposed licensing action.

4. For an unlisted activity, determine whether the proposed licensing action could have a reasonably foreseeable effect on any coastal use or resource within the coastal zone, as defined in 15 CFR 930.11. Consult with the EnvCOE as needed to make this determination.
 - a. If the proposed licensing action would not affect any coastal use or resource within the coastal zone, no further action need be taken.
 - b. If the proposed licensing action may affect any coastal use or resource within the coastal zone, ensure that the applicant has obtained the State's concurrence with its consistency certification for the proposed licensing action.
5. For either a listed or unlisted activity requiring a consistency certification, the EA or EIS should document whether the applicant has obtained the State's concurrence. Typically, such documentation is included within the "land use" section(s) of the EA or EIS.
6. For either a listed or unlisted activity requiring a consistency certification, if the applicant has not provided the NRC with a copy of the State's consistency certification, the NRR PM should contact the applicant and the applicable State agency early in the NRC's review of the proposed licensing action to ensure timely State determination of whether a Federal consistency review is required.
7. For either listed or unlisted activities requiring Federal consistency, the NRC cannot approve the proposed action until the State has concurred with the licensee's consistency certification or, upon appeal by the applicant, the Secretary of Commerce has overridden any State objection. If the State fails to act (issues no decision at all) within 6 months, the NRC may approve the proposed action.

5.2.4 NRR Responsibilities Under the Endangered Species Act

Congress enacted the ESA to protect and recover imperiled species and the ecosystems upon which they depend. The ESA directs the FWS and NMFS (collectively, the services) to create a list of endangered and threatened species (collectively, listed species) and prohibits any person from "taking" a listed species, as defined in the ESA, without a permit. The ESA further directs the services to designate critical habitat for listed species and to develop and implement species recovery plans. The services divide responsibility for listing and managing species. The FWS is responsible for terrestrial and freshwater species, and the NMFS is responsible for marine and anadromous species.

Section 7 of the ESA contains interagency consultation requirements pertaining to Federal agencies and their actions. Under ESA Section 7(a)(2), Federal agencies must consult with one or both of the services for actions that may affect Federally listed species and critical habitats and to ensure that their actions do not jeopardize the continued existence of those species or destroy or adversely modify those habitats. Private actions with a Federal nexus, such as construction and operation of facilities that involve Federal licensing or

approval, are also subject to consultation. For instance, the NRC's issuance of new, renewed, or amended facility licenses may trigger consultation requirements. Consultation pursuant to ESA Section 7(a)(2) is commonly referred to as "Section 7 consultation."

The services maintain joint regulations that implement ESA Section 7 at 50 CFR Part 402. Subpart B of these regulations prescribes the Section 7 interagency consultation requirements. Consultation may be informal or formal. Generally, the appropriate type of consultation relates to the effect determinations made by the Federal agency, as described below. For a proposal to list the species or designate an area as a critical habitat, the regulations prescribe a process called a conference.

Formal Consultation:

Formal Section 7 consultation is appropriate when a Federal agency determines that an action may affect and is likely to adversely affect listed species or critical habitats. For any action that would take a listed species or destruction or adverse modification of critical habitat may occur, formal consultation is required.

As the Federal action agency, the NRC is responsible for initiating formal consultation if it is required. The NRC staff must provide the service with relevant information to support their request for formal consultation, including a biological assessment, if required. The staff must provide the service with the best scientific and commercial data available, and the service may request additional information during the consultation process.

Formal consultation takes place over a 90-day timeline (50 CFR 402.14(e)). However, consultation may be extended through agreement between the Federal action agency, the service, and any applicant.

The outcome of formal consultation is the service's formulation of a biological opinion, which the service must provide within 45 days after the conclusion of formal consultation. A biological opinion evaluates the nature and extent of effects of the action. It is prepared by the FWS or NMFS and documents the service's assessment of effects to listed species and critical habitat and whether the Federal action is likely to jeopardize the continued existence of those species or result in destruction or adverse modification of critical habitat. Biological opinions may include an incidental take statement consisting of the level of anticipated take, reasonable and prudent measures, and terms and conditions (including reporting requirements). Any take that is subject to and in compliance with an incidental take statement is not prohibited under the ESA. Biological opinions may also include discretionary conservation recommendations.

For consultations resulting in the service's issuance of a biological opinion, the NRC requires its licensees to comply with the incidental take statement of the biological opinion by incorporating environmental conditions into the relevant NRC facility license(s). As conditions of NRC-issued licenses, the NRC has a continuing duty to monitor compliance at facilities with valid biological opinions.

This role is performed by the NRC's ESA Consultation Coordinator in the EnvCOE.

Informal Consultation:

Informal Section 7 consultation is appropriate when a Federal agency determines, per 50 CFR 402, that an action may affect, but is not likely to adversely affect listed species or critical habitats. This type of consultation is a less structured approach to meeting Section 7 requirements. It includes discussions, correspondence, and meetings between NRC staff and the service. It can also include exploring ways to modify the action to reduce or remove adverse effects and can help the agencies determine the need to engage in formal consultation.

As part of informal consultation, the NRC staff submits ESA effect determination(s) or a biological assessment (if one is required) to the service, along with supporting information, and requests the service's concurrence with its determination(s) that the action is not likely to adversely affect listed species or critical habitats. The service reviews the supporting information and respond that either (a) the service concurs that the action is not likely to adversely affect listed species or critical habitats, which concludes consultation, or (b) that formal consultation is required.

Informal consultation takes place over a 60-day timeline (50 CFR 402.13(c)(2)). However, consultation may be extended through agreement between the Federal action agency, the service, and any applicant.

Conference:

Conference is required for Federal actions that are likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat. A proposed species is a species for which the service has issued a proposed rule to list as endangered or threatened under the ESA. Proposed critical habitat is habitat for which the service has issued a proposed rule to designate as critical under the ESA. For actions requiring conference, the Federal agency typically makes ESA effect determinations of may affect and is likely to adversely affect for proposed species and may destroy or adversely modify for proposed critical habitat.

In practice, conferences are conducted similarly to consultations. The outcome of a conference is either the service's issuance of a conference opinion or the service's written documentation of the conclusions reached during the conference, along with any recommendations.

A conference does not fulfill a Federal agency's duty to consult under ESA Section 7(a)(2) if the service subsequently lists the proposed species or designates the proposed critical habitat. Upon listing or designation, the Federal agency must initiate consultation with the service, as appropriate, and as described previously. However, information developed during the conference can help streamline the subsequent consultation process such that the Federal agency and the service can focus the consultation on significant

new information developed during the listing process and significant changes to the Federal action that would alter the content of the service conference opinion or written conclusion. Additionally, the service may adopt its conference opinion as the biological opinion after the species is listed or critical habitat is designated.

No Consultation:

Section 7 consultation is not required when the Federal agency determines that an action would have no effect on listed or proposed species or on proposed or designated critical habitats.

Responsibilities for Conducting Consultation:

The EnvCOE is responsible for conducting Section 7 consultations and for coordinating with FWS and NMFS on an ongoing basis for endangered species issues at all NRC-licensed facilities, including operating and decommissioning reactors. NRR PMs should contact the EnvCOE's ESA Consultation Coordinator for any NRR actions that have the potential to affect species and habitats protected under the ESA. PM can also use optional checklist provided to Support an Environmental Finding of Categorical Exclusion provided in B.2 under Appendix B, for need of a consultation. The ESA Consultation Coordinator will determine if consultation is required. Note that reinitiated consultation may also be required during regular operations under certain conditions, such as when there is a take of a species not authorized in a biological opinion or when there is a listing of a new species under the ESA. The ESA Consultation Coordinator is responsible for identifying and determining when reinitiated consultations are required and for conducting such consultations on behalf of the NRC.

5.2.5 NRR Responsibilities Under the Magnuson–Stevens Fishery Conservation and Management Act

Congress enacted the MSA to foster long-term biological and economic sustainability of the nation's marine fisheries. The MSA is a comprehensive, multi-purposed statute. Its key objectives are to prevent overfishing, rebuild overfished stocks, increase long-term economic and social benefits, and ensure a safe and sustainable supply of seafood. The NOAA, together with eight regional Fishery Management Councils established under the MSA, implement the provisions of the MSA.

The MSA directs the Fishery Management Councils, in conjunction with NMFS, to designate areas of EFH and to manage marine resources within those areas. EFH is defined as the coastal and marine waters and substrate necessary for fish to spawn, breed, feed, or grow to maturity (50 CFR 600.10). EFH applies to Federally managed finfish and shellfish. The Councils have designated EFH for nearly 1,000 species at multiple life stages.

Section 305 of the MSA contains interagency consultations requirements pertaining to Federal agencies and their actions. Under MSA Section 305(b)(2), Federal agencies must consult with the NMFS for actions

that may adversely affect EFH. Private actions with a Federal nexus, such as construction and operation of facilities that involve Federal licensing or approval, are also subject to consultation. For instance, the NRC's issuance of new, renewed, or amended facility licenses may trigger consultation requirements. Consultation pursuant to MSA Section 305(b) is commonly referred to as "EFH consultation."

The NMFS maintains regulations that implement MSA Section 305 at 50 CFR Part 600. Subpart K of these regulations prescribes the EFH interagency consultation requirements. Consultation may be abbreviated, expanded, or programmatic as specified at 50 CFR 600.920. Generally, the appropriate type of consultation relates to effect determinations made by the Federal agency, as described below.

Abbreviated and Expanded Consultation:

Abbreviated consultation is appropriate when a Federal agency determines that an action would involve "minimal adverse effects" on EFH. Abbreviated consultation allows the NMFS to determine quickly whether, and to what degree, a Federal action may adversely affect EFH. This type of consultation is used when the adverse effects of an action can be alleviated through minor modifications to the action.

Expanded consultation is appropriate when a Federal agency determines that an action may result in "substantial adverse effects." Substantial adverse effects are effects that may pose a relatively serious threat to EFH and typically could not be alleviated through minor modifications to a proposed action. Expanded consultation allows more opportunity for the Federal agency and NMFS to work together to review the action's impacts on EFH and for the NMFS to develop measures to avoid, minimize, mitigate, or otherwise offset adverse effects.

A Federal agency may also determine that an action would involve "more than minimal, but less than substantial adverse effects." In such cases, the Federal agency should work with the NMFS to determine which type of consultation (abbreviated or expanded) is most appropriate for actions involving such conclusions.

The processes for abbreviated and expanded consultations are nearly identical. The primary difference is the timeframe for each step. For both abbreviated and expanded consultations, the NRC staff submits an EFH assessment to the NMFS and requests to initiate EFH consultation with the NMFS. The NRC staff must submit the EFH assessment at least 60 days prior to the final agency decision on the action for abbreviated consultation and at least 90 days prior to the final agency decision for expanded consultation. If the action will adversely affect EFH, the NMFS formulates EFH conservation recommendations, which may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects. The NMFS must provide such recommendations to the NRC within 30 days for abbreviated consultation or within 60 days for expanded consultation. If the NMFS determines that the action would not adversely affect EFH or that no EFH conservation

recommendations are needed, the NMFS notifies the NRC informally or in writing.

If the NMFS provides the NRC with EFH conservation recommendations, the NRC staff must prepare a detailed written response within 30 days of receiving the recommendations. The response must include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on EFH. If the NRC's response is inconsistent with any of the NMFS's EFH conservation recommendations, the response must be provided at least 10 days prior to the final agency decision and must explain the NRC's reasons for not following the recommendations, including the scientific justification for any disagreements with the NMFS. The NRC's response completes consultation.

Programmatic Consultation:

Programmatic consultation is appropriate when a Federal action is a funding program, large-scale planning effort, and other project where enough information is available to address all reasonably foreseeable adverse effects on EFH of an entire program, parts of a program, or several similar individual actions occurring within a given geographic area. Programmatic consultation allows the Federal agency and NMFS to address many individual actions that may adversely affect EFH at one time and for the NMFS to develop programmatic EFH conservation recommendations. Within NRC, the types of agency actions that may be appropriate for programmatic consultation include rulemakings or development of generic environmental impact statements. The process for programmatic consultation is like the process described above for abbreviated and expanded consultations. However, five outcomes are possible. The NMFS may:

- (1) formulate programmatic EFH conservation recommendations that cover all individual actions of the program;
- (2) formulate programmatic recommendations that cover individual actions, but that require individual consultations for some or all actions;
- (3) determine that no programmatic recommendations can be developed and that all individual actions will require individual consultation;
- (4) determine that all individual actions qualify for a general concurrence, as defined in the MSA; or
- (5) determine that there are no adverse effects and that no recommendations are needed.

If the NMFS provides the Federal agency with EFH conservation recommendations as part of a programmatic consultation, the agency must

prepare a detailed written response within 30 days of receiving the recommendations.

No Consultation:

EFH consultation is not required when the Federal agency determines that an action would have “no adverse effects” on EFH.

Responsibilities for Conducting Consultation:

The EnvCOE is responsible for conducting EFH consultations. NRR PMs should contact the EnvCOE’s ESA Consultation Coordinator for any NRR actions that have the potential to affect EFH protected under the MSA. The ESA Consultation Coordinator will determine if consultation is required and is responsible for coordinating such consultations on behalf of the NRC.

5.2.6 NRR Responsibilities Under the National Historic Preservation Act

Congress promulgated the NHPA to coordinate public and private efforts to preserve significant historic and cultural resources. Section 106 of the NHPA directs Federal agencies to take into account the effects of their “undertakings” on historic properties and allow the ACHP an opportunity to review and comment on the undertaking. ACHP is an independent Federal agency charged with implementing Section 106 throughout the Federal Government; ACHP Section 106 implementing regulations are at 36 CFR Part 800. The Section 106 process may proceed on a separate track from NEPA or may be encompassed within the agency NEPA process (see 36 CFR 800.8). “Undertakings” denotes a broad range of Federal activities, including the issuance of NRC licenses and permits. “Historic property” is any prehistoric or historic district, site, building, structure, traditional cultural property, or object included in or eligible for inclusion in the National Register of Historic Places (National Register). Figure 1, “National Historic Preservation Act Section 106 Process Flow Chart,” on page 22 below illustrates the Section 106 process. When performing an EA or EIS, the NRC must determine if effects exist that may harm any historic property or historic and cultural resources. A finding of an adverse effect on historic properties does not necessarily require an EIS. The standard Section 106 process is comprised of the following steps:

- *Initiate the Section 106 Process (36 CFR 800.3).* Establish the undertaking and identify the appropriate SHPO and/or THPO, as well as concerned members of the public.
- *Identify Historic Properties (36 CFR 800.4).* Through consultation with the applicable SHPO and/or THPO, determine the scope of effort, the area of potential effects, identify historic properties and resources, and evaluate the historic significance.
- *Assess Effects (36 CFR 800.5).* Determine whether or not the proposed *action* will have an adverse effect upon any historic property within the area of potential effects by applying the criteria of adverse effect (36 CFR 800.5(a)).

- *Resolve Adverse Effects (36 CFR 800.6).* Adverse effects are resolved through mitigation and/or consultation.

Coordinating Section 106 Consultations with NEPA:

In 36 CFR 800.8, "Coordination with the National Environmental Policy Act", compliance with Section 106 can be achieved in conjunction with the NEPA process for the same action. NRR staff may use the NEPA process to fulfill the requirements of the NHPA when preparing both EAs and EISs. Under 36 CFR 800.8(c), 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. The key to using the NEPA process to comply with Section 106 of the NHPA is early coordination. The staff should be aware when coordinating Section 106 with NEPA, if a memorandum of agreement (MOA) is entered into by the NRC as part of the resolution of any adverse effects upon historic properties, then the MOA must be referenced in the draft EA or draft EIS for public comment.

When using the NEPA process to comply with the Advisory Council on Historic Preservation Section 106 regulation of the NHPA, NRR staff should contact the EnvCOE who will perform most of these steps in coordination with the PM. The following should be used as guidance for licensing actions when using the NEPA process to satisfy the NRC's obligations under Section 106 (also refer to the flow chart on page 22 below).

1. *Identify the proposed action.* Determine if the proposed undertaking is an undertaking as defined in 36 CFR 800.16(y).
2. *Determine if the proposed action has the potential to affect historic properties.* If the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties are present, the NRC has no further Section 106 obligations. Report this determination in the EA's FONSI or the EIS record of decision. If, however, the undertaking is a type of activity that does have the potential to cause effects on historic properties, the steps listed in paragraphs 3 through 11 below should be conducted.
3. *Identify the consulting parties.* Identify the appropriate SHPO/THPO, Federally recognized tribes, and other consulting parties. Typically, public participation will also be required. See 36 CFR 800.2(d) and 36 CFR 800.3(e).
4. *Determine area of potential effects.* In consultation with the SHPO/THPO, determine the scope of the review (the physical area affected by the proposed action). The term "area of potential effects" is defined in the ACHP regulations at 36 CFR 800.16(d).
5. *Engage in consultation.* In consultation with the applicable SHPO/THPO, affected Federally recognized tribes, and other consulting parties (including the public), identify the presence of historic properties, evaluate

historical significance, and assess the effects of the proposed action on historic properties. See 36 CFR 800.4.

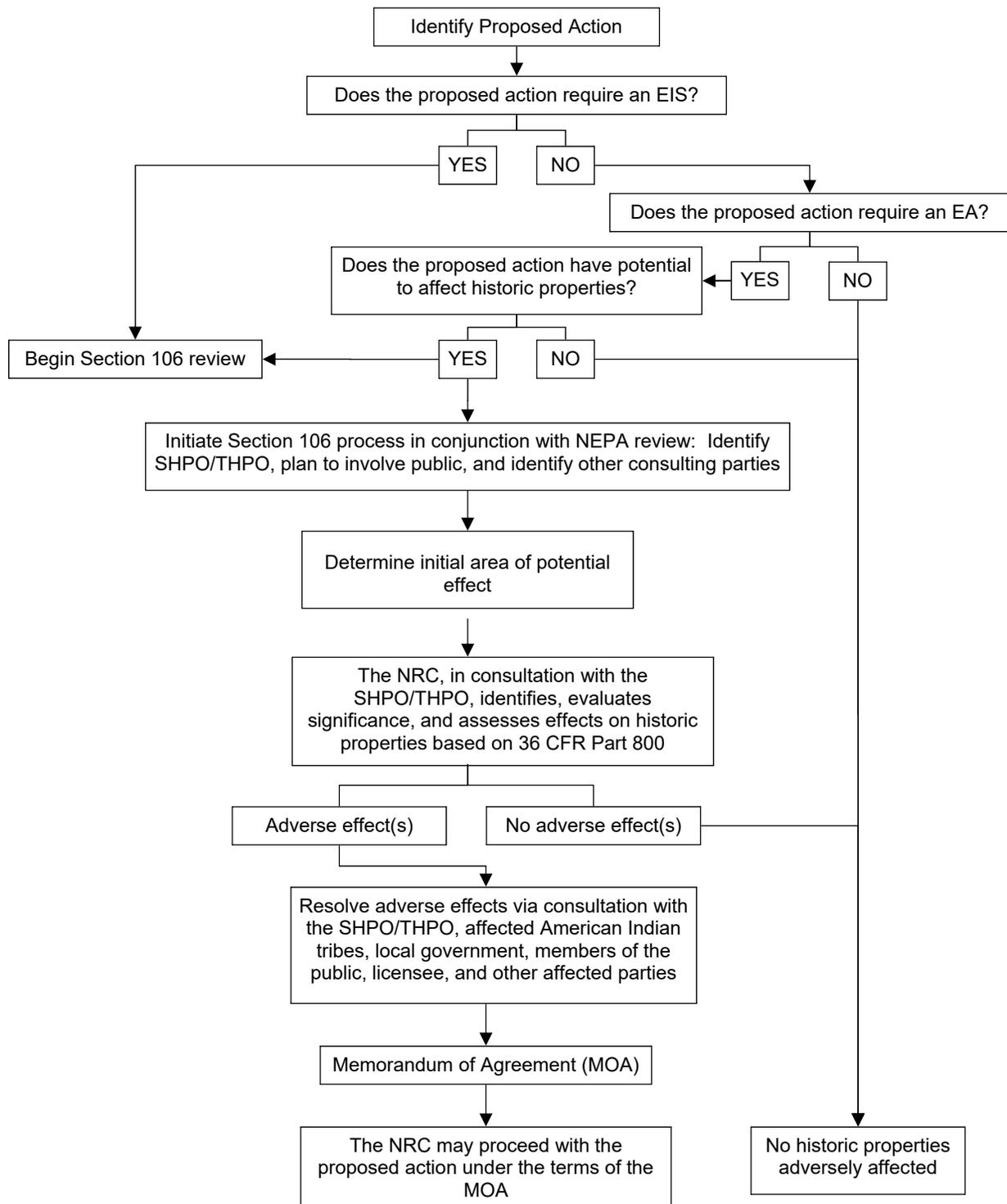
6. *Determine if adverse effects exist and issue draft EA or EIS for public comment.* Applying the ACHP's criteria of adverse effect (36 CFR 800.5(a)), determine if there are any adverse effects to historic properties within the area of potential effects. The determination of whether there are any adverse effects is made in consultation with the applicable SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified historic properties. If the agency has determined a no adverse effect on historic properties finding, this determination shall be documented in the draft EA or EIS in accordance with 36 CFR 800.11(e). The draft EA or EIS will be submitted to the SHPO/THPO, ACHP, affected Federally recognized tribes, and other consulting parties for review prior to or when making the document available for public comment. The SHPO/THPO, ACHP, affected Federally recognized tribes, and consulting parties have 30 days from receipt of this documentation to review. If the SHPO/THPO agrees or does not respond by the close of the 30-day review period, and no other consulting party objects, then the Section 106 process is closed, and the NRC may proceed with the action. The determination of no adverse effect and the closure of the Section 106 process shall be documented in the final EA or EIS.
7. *Resolve adverse effects.* If there is an adverse effect, or if within the 30-day review period, the SHPO/THPO or any consulting party notifies the agency official in writing that it disagrees with the finding and specifies the reasons for the disagreement in the notification, the agency official shall continue to work with the consulting parties to resolve the disagreement or request review by the ACHP. The resolution of adverse effects is typically memorialized in a MOA that is entered into by the NRC, the SHPO/THPO, the licensee/applicant, and possibly, other consulting parties. (See 36 CFR 800.6(b)(1)(iv) and (c).) Mitigative actions may be discussed in the EA or EIS or through the MOA.
8. *Issue FONSI or record of decision.*
9. *Proceed with action.*

Note: If a proposed action, activity, or program is unique or involves unusual circumstances and is categorically excluded under 10 CFR 51.22(c), the NRR PM should consult with the EnvCOE to determine if it still qualifies as an undertaking requiring a separate review under Section 106 pursuant to 36 CFR 800.3(a).

As discussed above, for licensing actions that require consultation under Section 106 of the NHPA, the NRR PM should contact EnvCOE staff to initiate the process. For those regulatory actions that may require consultation, coordination, or outreach with Indian Tribes, the NRR PM should request support from the Materials Safety and Tribal Liaison Branch (MSTB) in NMSS (see Tribal

Policy Statement (82 FR 2402); Management Directive 5.1, "Intergovernmental Consultation"; and TR-100, "Tribal Liaison Roles and Responsibilities"), and should inform MSTB of any actions for which Indian Tribes may have an interest.

Figure 1. National Historic Preservation Act Section 106 Process Flow Chart



5.2.7 NRR Responsibilities Under the Clean Air Act

The CAA regulates air pollutant emissions from stationary and mobile sources in the United States. The CAA authorizes the Environmental Protection

Agency (EPA) to establish National Ambient Air Quality Standards (NAAQS) (40 CFR Part 50) to protect public health and welfare and to regulate emissions of hazardous air pollutants. NAAQS, also called “criteria” pollutants, have been set for six principal pollutants that are considered harmful to human health and the environment: carbon monoxide, lead, nitrogen dioxide, particulate matter, ozone, and sulfur dioxide. In order to meet the NAAQS set forth by the EPA, states are required to create state implementation plans and update the plans periodically. The CAA also includes provisions for the EPA to implement the Acid Rain Program, which entails a market-based nationwide cap and trade program to reduce sulfur dioxide emitted by electric power plants. Additionally, the CAA includes programs and provisions for reducing toxic air pollutants and ground-level ozone. Larger industrial and commercial sources of air emissions are required to obtain an operating permit from the State, which may consolidate the information requirements of the programs described above into one permit.

The 1990 amendments to the CAA include a provision that no Federal agency may support any activity that does not conform to a state implementation plan designed to achieve the NAAQS. EPA issued the General Conformity Rule to implement Section 176(c) of the CAA, as amended (58 FR 63214, November 30, 1993). The rule ensures that Federal actions do not interfere with a state’s plans to bring an area into attainment with a NAAQS or any applicable State Implementation Plan (SIP) or Tribal Implementation Plan (TIP). EPA issued revised general conformity regulations, in a final rule published on April 5, 2010, with an effective date of July 6, 2010 (75 FR 17254), to streamline the general conformity process.

The EPA regulations (40 CFR Part 93, Subpart B) require Federal agencies to conduct an applicability analysis and possibly prepare a written conformity determination if a proposed action occurs in a NAAQS nonattainment area (NAA) or maintenance area, and the total of the action’s direct and indirect emissions of criteria pollutants and their precursors would exceed threshold (i.e., de minimis) emissions levels (40 CFR 93.153(b)). A NAA is any geographic area of the United States that is in violation of any NAAQS and has been designated as nonattainment under the CAA. A maintenance area is any geographic area of the United States previously designated nonattainment and subsequently redesignated to attainment and is subject to the requirement to develop a maintenance plan under the CAA. These areas are designated in 40 CFR Part 81, Subpart C. If the proposed action does not occur in a NAAQS nonattainment or maintenance area, the general conformity rule does not apply.

Procedures for Licensing Actions:

The following guidance is provided regarding the NRC staff’s responsibilities under the CAA. The NRR PM should consult with the EnvCOE for the following actions:

1. Determine if the proposed action lies within an attainment, nonattainment, or maintenance area as identified in 40 CFR Part 81, Subpart C.

2. Determine if the proposed action will result in an increase in air emissions.
3. For a proposed action that will cause an increase in air emissions and lies within a nonattainment or maintenance area, determine if the emissions exceed threshold (i.e., de minimis) emissions levels (40 CFR 93.153(b)).
4. If project emissions exceed threshold emission levels, determine if a conformity analysis is required.

The EA should identify nonattainment or maintenance areas of the proposed action location and the source of air emissions resulting from the proposed action. For most NRR licensing actions resulting in an EA, an assessment of air impacts is generally not necessary unless the proposed action would involve air emissions with potentially significant impacts. If the proposed action would change air emissions, the NRR PM should consult with the EnvCOE to determine if a conformity analysis should be performed.

5.2.8 NRR Responsibilities Under the Clean Water Act

The CWA was enacted to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” The CWA aims to accomplish this objective by preventing point and nonpoint pollution sources, providing assistance to publicly owned treatment works for the improvement of wastewater treatment, and maintaining the integrity of wetlands. The CWA does not directly address groundwater or water availability. However, many states regulate surface water and/or groundwater withdrawals through a combination of registration and/or permitting.

Section 401 of the CWA requires that an applicant for a Federal license or permit that may result in a discharge of regulated pollutants into waters of the United States first obtain and provide to the Federal licensing agency (i.e. NRC), a Section 401 water quality certification from the water pollution agency of the State or authorized tribe with jurisdiction over the discharge. This certification denotes that discharges from the activity or project to be licensed will comply with applicable CWA requirements, and specifically, that the discharge will not cause or contribute to a violation of governing water quality standards. If the applicant has not received a Section 401 certification, the NRC cannot issue a license unless the authorized agency has otherwise waived the requirement. The status of compliance in obtaining a Section 401 certification and requirements should be documented in the EA.

Section 402 of the CWA established the National Pollutant Discharge Elimination System (NPDES) program, which regulates point source discharges of pollutants (effluents) into the waters of the United States. NPDES permits are issued by the EPA or an authorized state or territory to discharging facilities. To date, 47 states and 1 U.S. territory have been delegated and assumed full or partial NPDES permitting authority from the EPA. In summary, NPDES permits set specific technology-based and/or water quality-based discharge limits, prescribe monitoring and reporting requirements, as well as set special conditions

applicable to each discharger. Authorized states are prohibited from adopting standards that are less stringent than those established under the Federal NPDES permit program, but states may adopt or enforce standards that are more stringent than the Federal standards.

To comply with the CWA when reviewing a licensing action, if the licensing action would change any discharge to a water body, the NRR PM should consult with the EnvCOE to determine if the change in discharge quantity or quality would remain within the limits of the facility's NPDES permit. Note also that any NPDES permit holder is required to notify the responsible permitting authority as soon as possible of any planned physical alterations or additions to the permitted facility that could change the nature or increase the quantity of pollutants discharged. The status of compliance of the NPDES permit requirements should be documented in the EA. The environmental impacts of the proposed action need to be considered in the EA irrespective of whether a permit has been obtained. To adequately assess environmental impacts, the State's 303(d) list of impaired waters, which classifies the quality of each State's water bodies, may also need to be reviewed to determine any preexisting and/or potential sources of environmental impacts on the affected water bodies.

5.2.9 NRR Responsibilities Under the Safe Drinking Water Act

Drinking water sources are protected by the Safe Drinking Water Act and other Federal laws. If the NRR PM determines that the proposed action may have an impact on any drinking or potable water source, the NRR PM should consult with the EnvCOE.

6. **PERFORMANCE MEASURES**

None

7. **PRIMARY CONTACT**

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8. **RESPONSIBLE ORGANIZATION**

DORL

9. **EFFECTIVE DATE**

July 13, 2020

10. **CERTIFICATION DATE**

July 13, 2025

11. REFERENCES

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10 CFR Part 51. *Code of Federal Regulations*, Title 10, *Energy*, Part 51, “Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.”

10 CFR Part 52. *Code of Federal Regulations*, Title 10, *Energy*, Part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants.”

10 CFR Part 54. *Code of Federal Regulations*, Title 10, *Energy*, Part 54, “Requirements for Renewal of Operating Licenses for Nuclear Power Plants.”

10 CFR Part 170. *Code of Federal Regulations*, Title 10, *Energy*, Part 170, “Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended.”

15 CFR Part 930. *Code of Federal Regulations*, Title 15, *Commerce and Foreign Trade*, Part 930, “Federal Consistency with Approved Coastal Management Programs.”

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40 CFR Part 50. *Code of Federal Regulations*, Title 40, *Protection of the Environment*, Part 50, “National Primary and Secondary Ambient Air Quality Standards.”

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Enclosures:

1. Appendix A - Change History
2. Appendix B - Preparation and Use of Categorical Exclusions
3. Appendix C - Content of NRR Environmental Assessments
4. Appendix D - Environmental Justice in NRR NEPA Documents

Appendix A - Change History
Office Instruction - LIC-203

Date	Description of Changes	Method Used to Announce & Distribute	Training
6/21/2001	This OI is a conversion of OL-906, Revision 2, which included guidance on environmental justice and improvements to format and content of the EA template. 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
5/24/2004	This revision includes 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.	E-mail to all staff	E-mail announcement with recommended self-study
2/17/2009	This revision incorporates the final Commission policy on environmental justice; incorporates NRR responsibilities under the Magnuson-Stevens Fishery Conservation and Management Act; the Clean Air Act, and the Clean Water Act; clarifies NRR responsibilities under the Coastal Zone Management Act and the Fish and Wildlife Coordination Act; revises figures and tables; removes the environmental assessment templates to enable the templates to be kept by RERB as a living document; and amends the roles and responsibilities to reflect the current NRR office organization.	E-mail to all staff	E-mail announcement with recommended self-study

Date	Description of Changes	Method Used to Announce & Distribute	Training
6/24/2013	<p>This revision incorporates the amended final rule for 10 CFR 51.22 “Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review,” which was published May 19, 2010. This revision incorporates updated guidance on the Clean Air Act and Clean Water Act. In addition, this revision incorporates updated guidance on the Endangered Species Act, Section 7 formal and informal consultations. Lastly, this revision incorporates the Commission’s updated guidance on environmental justice to clarify instructions and account for changes in the 2010 Census and clarifies NRR responsibilities under the National Historic Preservation Act.</p>	E-mail to all staff	E-mail announcement with recommended self-study
7/07/2020	<p>This revision modifies the Objectives and Basic Requirements sections to add the newly established NMSS Environmental Center of Expertise roles to reflect the reorganization of NRR and NMSS; 10 CFR Part 50 and 10 CFR Part 52 requirements; and the National Environmental Policy Act of 1969, as amended, requirements. Additionally, it incorporates significant modifications to Sections 5.2.3, 5.2.4, 5.2.5, and 5.2.6 and deletes Appendices E, F, and G. Lastly, the References section has been updated to reflect the NMSS and NRR roles and responsibilities in implementing this office instruction.</p>	E-mail to all staff	None

Appendix B

Preparation and Use of Categorical Exclusions

Categorical exclusions (CATXs) are specific categories of actions that the NRC has previously determined will not have an individual or cumulative significant effect on the human environment. An agency establishes its list of CATXs by rulemaking. The NRC's list of CATXs is set forth in 10 CFR 51.22(c). The NRC has determined that these activities do not result in any significant effect upon the human environment, and therefore, an in-depth environmental review is not necessary for each successive and identical action. The purpose of categorically excluding activities that have no individual or cumulative significant effects on the environment is to allow the NRC staff to focus on more extensive NEPA analyses for those actions that may significantly affect the quality of the human environment.

The NRC has the option to prepare and issue an EA or EIS for any proposed action, even if the proposed action meets the criteria for a categorical exclusion (10 CFR 51.22(b)). If a proposed action meets the criteria for a categorical exclusion, and the NRC staff wishes to rely upon that categorical exclusion, then the staff must determine that special circumstances are not present that will preclude use of that categorical exclusion. Special circumstances are those in which a normally excluded action has the potential to have a significant environmental effect. Use of a CATX would not be appropriate in those situations in which special circumstances are present; the staff must prepare an EA, or if necessary, an EIS. Special circumstances are discussed further below.

B.1 Documenting the CATX

The NRR PM should document any NRR licensing or regulatory action that is determined to fall within the scope of a categorical exclusion listed in 10 CFR 51.22. This documentation serves as an administrative record that the NRC had a practical rationale for applying the CATX. The written analysis showing the application of the CATX can be included within any NRC publicly available document, such as the safety or technical review, a *Federal Register* notice, a letter of response to the applicant/licensee or otherwise added to the docket for that particular project. A separate standalone decision document is not required to document the CATX.

At a minimum, such documentation should include (1) an explanation on how the action fits within one of the CATXs listed in 10 CFR 51.22 and (2) a statement that no extraordinary circumstances would preclude the proposed project from qualifying as a categorically excluded action. A suggested template and two examples of CATX documentation are provided below.

General Template:²

This action is categorically excluded under 10 CFR 51.22(c) [state subsection(s) that apply], and there are no special circumstances present that would preclude reliance on this exclusion. The NRC staff has made this finding because this action applies [describe how the proposed

actions fits within the categorical exclusion and any subcategories or factors described within the categorical exclusion]. [The following two sentences are added to document that there are no special circumstances that would prevent the use of the categorical exclusion:] *In addition, the NRC staff has determined that there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. As such, there are no special circumstances present that would preclude reliance on this categorical exclusion. [It is the Project Manager's responsibility to ensure the accuracy of the above statements and consult with the EnvCOE, as necessary]. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with [summarize NRC's action].*

Example of a CATX for NRC approval of a licensee's or applicant's request for an exemption from reporting requirements²:

NRC approval of this exemption request is categorically excluded under 10 CFR 51.22(c)(25)(vi)(B), and there are no special circumstances present that would preclude reliance on this exclusion. [The following two sentences apply to the criteria that must be met to use one of the exemption request CATXs listed in 10 CFR 51.22(c)(25)—in this specific example, clause (B), which applies to licensee requests for exemptions from reporting requirements:] The [NRR staff director (or his or her designee)] has made this finding because this action applies to granting of an exemption from the reporting requirements of [identify NRC regulation]. The [NRR staff director (or his or her designee)] has determined that approval of this exemption request involves no significant hazards consideration; no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; no significant increase in individual or cumulative public or occupational radiation exposure; no significant construction impact; and no significant increase in the potential for or consequences from radiological accidents. [The following two sentences are added to document that there are no special circumstances that would prevent the use of the categorical exclusion:] In addition, the NRC staff has determined that there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. As such, there are no special circumstances present that would preclude reliance on this categorical exclusion. [It is the Project Manager's responsibility to ensure the accuracy of the above statements]. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

Example of a CATX for NRC approval of a licensee's request for an amendment to a license issued under 10 CFR Part 50:

NRC approval of this license amendment request is categorically excluded under 10 CFR 51.22(c)(12), and there are no special circumstances present that would preclude reliance on this exclusion. [The following two sentences apply to the criteria that must be

² The NRR PM should be aware that CATXs are appropriate for a limited scope of NRC approvals of licensee exemption requests as specified in 10 CFR 51.22(c)(9) and 10 CFR 51.22(c)(25). In the processing of license amendments and exemptions, the NRR staff is to follow the guidance provided in LIC-101, "License Amendment Review Procedures," and LIC-103, "Requests for Exemptions from NRC Regulations."

met to use the categorical exclusion listed in 10 CFR 51.22(c)(12)—in this specific example, issuance of a Part 50 license amendment request relating solely to safeguards matters:] *The [NRR staff director (or his or her designee)] has made this finding because this action applies to granting an amendment to a license issued under 10 CFR Part 50, the requested amendment relates solely to safeguards matters, and the amendment would be confined to the following activities: (i) organizational and procedural matters; (ii) modifications to systems used for security and/or materials accountability; and (iii) administrative changes. The NRC staff has determined that approval of this license amendment will not involve any significant construction impacts. [The following two sentences are added to document that there are no extraordinary circumstances that would prevent the use of the categorical exclusion:] In addition, the NRC staff has determined that there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. As such, there are no special circumstances present that would preclude reliance on this categorical exclusion. [It is the Project Manager's responsibility to ensure the accuracy of the above statements]. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.*

For actions which clearly qualify for a CATX, no coordination with the EnvCOE is necessary. In some cases, actions are not clearly encompassed by the CATX or there are extraordinary circumstances whereby an action normally covered under a CATX listed in 10 CFR 51.22(c) could cause significant impacts to the human environment. In such cases, a more detailed environmental analysis may be appropriate. The NRR PM should coordinate with the EnvCOE and, if appropriate, the Office of General Counsel (OGC), in making determinations on whether a CATX is applicable for actions that do not clearly qualify as a CATX.

An acceptable method for documenting a CATX decision and considering extraordinary circumstances is to use a checklist. Section B.3 contains a generic checklist with instructions, which can be used to document whether special circumstances are present.

B.2 CATXs Frequently Relevant to NRR

Below is a summary of the CATXs that may be relevant to NRR. The excerpts from the 2010 rulemaking statements of consideration (75 FR 20253) below explain why the categorical exclusion was revised or added to 10 CFR 51.22(c). While this section focuses on a subset of CATXs that are most likely to be used by NRR, any of the 25 CATXs described in 10 CFR 51.22(c) may be used, if appropriate, for NRR activities.

Background for 10 CFR 51.22(c)(3)

This CATX states:

Amendments to any part in this chapter which relate to—

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

- (ii) Recordkeeping requirements;
- (iii) Reporting requirements;
- (iv) Education, training, experience, qualification or other employment suitability requirements; or
- (v) Actions on petitions for rulemaking relating to these amendments.

The final rule amends 10 CFR 51.22(c)(3) to delete the specific listing of 10 CFR Parts and to add a generic reference to reflect any part of CFR Chapter 10. This revision eliminates the need for changes due to new parts being added or deleted. As a result, efficiencies will be gained in the rulemaking process.

This amendment redesignates the existing subparagraph (iv) as subparagraph (v) and adds a new subparagraph (iv) to 10 CFR 51.22(c)(3) to expand the categorical exclusion to include amendments concerning education, training, experience, qualification, or other employment suitability requirements established in the regulations.

Background for 10 CFR 51.22(c)(9)

On June 7, 2013, 10 CFR 51.22(c)(9) was revised to clarify that this categorical exclusion applies to stand alone exemption issuances (78 FR at 34246). This CATX states:

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

- (i) The amendment or exemption involves no significant hazards consideration;
- (ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and
- (iii) There is no significant increase in individual or cumulative occupational radiation exposure.

The final rule amends 10 CFR 51.22(c)(9) to broaden the scope of the categorical exclusion to include the granting of a power reactor licensee exemption request from a requirement pertaining to the installation or use of a facility component located within the restricted area, as defined in 10 CFR Part 20. Under the previous provision, the granting of such an exemption request would not be covered by this categorical exclusion and therefore, would have required the preparation of an EA. The Commission has now determined that there is ample data in the form of EAs and FONSI to justify the categorical exclusion of the granting of these exemptions, provided that for each exemption request, the NRC first finds that the safety criteria set forth in

10 CFR 51.22(c)(9) is met (i.e., the exemption involves no significant hazards consideration, there is no significant change in the types of, or significant increase in the amounts of any effluents that may be released offsite, and there is no significant increase in individual or cumulative occupational radiation exposure). During the period 2003 through 2007, at least 50 EA/FONSIs resulted from licensee requests for such exemptions.

Background for 10 CFR 51.22(c)(10)

This CATX states:

Issuance of an amendment to a permit or license issued under this chapter which—

- (i) Changes surety, insurance and/or indemnity requirements;
- (ii) Changes recordkeeping, reporting, or administrative procedures or requirements;
- (iii) Changes the licensee's or permit holder's name, phone number, business or e-mail address;
- (iv) Changes the name, position, or title of an officer of the licensee or permit holder, including but not limited to, the radiation safety officer or quality assurance manager; or
- (v) Changes the format of the license or permit or otherwise makes editorial, corrective or other minor revisions, including the updating of NRC approved references.

The final rule amends 10 CFR 51.22(c)(10) to delete the specific listing of 10 CFR Parts and to add a generic reference to cover any part of 10 CFR, Chapter 1. This revision eliminates the need for changes due to new parts being added or deleted. As a result, efficiencies are gained in the rulemaking process.

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

- (1) Amendments to reflect changes in ownership;
- (2) Amendments to reflect organization name changes;
- (3) Amendments to reflect corporate restructuring, including mergers;
- (4) Amendments to licenses to reflect changes in references; and

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

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

Background for 10 CFR 51.22(c)(25):

This CATX states:

Granting of an exemption from the requirements of any regulation of this chapter, provided that—

- (i) There is no significant hazards consideration;
- (ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;
- (iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;
- (iv) There is no significant construction impact;
- (v) There is no significant increase in the potential for or consequences from radiological accidents; and
- (vi) The requirements from which an exemption is sought involve:
 - (A) Recordkeeping requirements;
 - (B) Reporting requirements;
 - (C) Inspection or surveillance requirements;
 - (D) Equipment servicing or maintenance scheduling requirements;
 - (E) Education, training, experience, qualification, requalification or other employment suitability requirements;
 - (F) Safeguard plans, and materials control and accounting inventory scheduling requirements;
 - (G) Scheduling requirements;
 - (H) Surety, insurance or indemnity requirements; or
 - (I) Other requirements of an administrative, managerial, or organizational nature.

The final rule adds a new categorical exclusion, 10 CFR 51.22(c)(25), which addresses the granting of licensee exemption requests from certain regulatory requirements. Various NRC regulations allow for the granting of specific exemptions from NRC regulations. Before an exemption may be granted, the NRC must satisfy certain criteria, namely, it must make findings that the exemption is “authorized by law,” “will not endanger life or property or the common defense and security,” and is “otherwise in the public interest.” In the case of Parts 50 and 52 exemptions, the exemption request must meet additional criteria. The NRC thoroughly evaluates each exemption request under these provisions, and only those exemption requests that meet these provisional criteria are granted.

Prior to this final rule, 10 CFR 51.22 did not provide a categorical exclusion for the granting of exemption requests from administrative, managerial, or organizational regulatory requirements that will not have a significant effect on the human environment. The NRC has found that the majority of the exemptions it grants are administrative or otherwise minor in nature and do not trigger any of the significance criteria that are required findings under other CATXs, such as 10 CFR 51.22(c)(9)(i)-(iii). The NRC has prepared numerous EAs, each resulting in a FONSI, to support the granting of such exemption requests.

This categorical exclusion contains prescriptive criteria that limit its application to only those exemptions that will not have a significant effect on the human environment. The categorical exclusion only applies to those exemption requests that meet all of the criteria enumerated in 10 CFR 51.22(c)(25)(i)-(vi). Thus, the requirements from which the exemption is sought must be one of those listed in 10 CFR 51.22(c)(25)(vi). In addition, the granting of the exemption request cannot result in any:

- (1) significant hazards consideration;*
- (2) significant change in the types or significant increase in the amounts of any effluents that may be released offsite;*
- (3) significant increase in individual or cumulative public or occupational radiation exposure;*
- (4) significant construction impact; or*
- (5) significant increase in the potential for or consequences from radiological accidents.*

The NRC has found that granting exemptions for the types of requirements listed in subparagraphs 51.22(c)(25)(vi)(A)-(I) are categories of actions that normally do not result in any significant effect, either individually or cumulatively, on the human environment. Thus, in order for the categorical exclusion to be applicable to a specific exemption request, the NRC staff must first make the safety findings described in 10 CFR 51.22(c)(25)(i)-(v) and then determine that the requirement is of a type listed in 10 CFR 51.22(c)(25)(vi).

B.3 Optional Checklist to Support an Environmental Finding of Categorical Exclusion

A brief analysis is helpful in ensuring that the proposed action clearly falls within the scope of the CATX. Documenting this analysis establishes an administrative record of the NRC staff's rationale that would serve to rebut any challenge to the NRC's use of the CATX. The following optional checklist is intended to assist in both developing and documenting this analysis. The checklist will also assist in identifying any special or extraordinary circumstances that may prevent the use of the CATX and require, instead, the preparation of an EA.

Below is a general checklist. The checklist consists of questions which ask about the likelihood that a particular environmental consequence would result from the proposed action. The NRR PM may consult with the EnvCOE, as necessary, to complete the checklist. If the checklist is used, it would be appropriate to file the documentation in ADAMS.

The preparer of this checklist (typically, the NRR PM) should have knowledge of the proposed action and the environmental features within or near the project area that could be impacted by the proposed action. Although some of the responses may be obtained from the preparer's own

knowledge and observations, the preparer should also refer to previous environmental documents, correspondence between the NRC, the applicant/licensee, and others, and to information available on other Federal agency, State, and local government websites to fully complete the checklist.

To complete the checklist, the preparer should check “Yes” or “No” for each question. A “Yes” response may indicate that an extraordinary circumstance is present, removing the proposed action from the scope of the categorical exclusion. If there is a “Yes” response, the preparer should consult with the EnvCOE. A “No” response would support use of the categorical exclusion, with respect to that resource area. If more data is required to answer a question, note this in the “Rationale and/or Documentation” column. The NRR PM may consult with the EnvCOE about what data are needed and/or how to obtain it.

Checklist to Support an Environmental Finding of Categorical Exclusion (CATX)	
Project Name and Location	[insert]
Project Description	[insert]
CATX Category (identify 10 CFR 51.22 CATX, e.g., 10 CFR 51.22(c)(9)).	[insert]
Does the CATX category selected above cover the full extent of the proposed action?	[insert]

Environmental Resource Area Review for Potential Effects and Impacts	Impact Anticipated?		Rationale and/or Documentation	
	Yes	No		
Potential Impacts to Biota, the Physical Environment, and Land Use Consider whether the proposed action would result in any construction, digging, grading, vegetation clearing, or other ground-disturbing activities, or increases in noise, dust, sedimentation, pollution, effluents, or salt deposits, or other activities that could directly or indirectly affect the resources described below. Note that the terms “project” and “proposed action” are intended to be synonymous.				
1.	Biotic communities: Would the project disturb areas with plant communities, wetlands, or aquatic habitats and/or cause displacement of			

	<p>wildlife, fish, migratory birds, or other biota? If yes, check appropriate boxes below.</p> <p><u>Check all appropriate boxes</u></p> <p><input type="checkbox"/> The proposed action would likely impact previously disturbed natural communities.</p> <p><input type="checkbox"/> The proposed action would likely impact previously undisturbed natural communities.</p> <p><input type="checkbox"/> Noise, construction, or other activities resulting from the proposed action would likely displace wildlife.</p>			
<p>2.</p>	<p>Water Resources: Would the project significantly impact water quality to groundwater, surface water bodies, public water supply systems or violate Federal, State, or Tribal water quality standards? Would the project cause a significant change in the types or a significant increase in the amounts of effluents that may be released to water bodies? Would the project significantly increase erosion or runoff?</p>			
<p>3.</p>	<p>Special Status Species and Habitats: Are there any State or Federally listed endangered, threatened, and candidate species (flora or fauna) or designated critical habitat within the project area that would be impacted by the proposed action? Is the project located in, or could the proposed action cause adverse effects to a waterway, stream, or water body that is designated as essential fish habitat?</p>			
<p>4.</p>	<p>Hazardous materials: Would the proposed action involve or affect hazardous materials or involve construction in an area that contains hazardous materials and/or hazardous waste?</p>			
<p>5.</p>	<p>Air quality: Would the proposed action include construction activities, increased emissions, or increased vehicular traffic? If yes, check appropriate boxes below.</p> <p><u>Check all appropriate boxes</u></p> <p><input type="checkbox"/> Project is located within or adjacent to USEPA-defined Nonattainment or maintenance area.</p>			

	<input type="checkbox"/> Project is accounted for in State Implementation Plan. <input type="checkbox"/> Project air pollutant emissions do not exceed applicable <i>de minimis</i> levels as defined by General Conformity.			
6.	<p>Compatible land use: Would the proposed action impact or change any land uses? If yes, check appropriate boxes below.</p> <p><u>Check all appropriate boxes</u></p> <input type="checkbox"/> The proposed action would likely have an impact on onsite land use. <input type="checkbox"/> The proposed action would likely have an impact on offsite land use. <input type="checkbox"/> Land use changes resulting from the proposed action would not be consistent with State or local plans, goals, policy, zoning or controls.			
7.	<p>Special land use designations: Would the proposed action impact floodplains, a U.S. National Park Service-designated Wild or Scenic River, or a coastal zone as defined by a State's Coastal Management Plan?</p>			
8.	<p>Parks, public lands, refuges and recreational resources: Would the proposed action impact publicly owned land from a public park, recreation area, or wildlife or waterfowl refuge of national, state or local significance?</p>			
<p align="center">Potential Impacts to Historic Properties and Historic and Cultural Resources</p> <p align="center">Consider whether the proposed action would result in any adverse effect to any historic property (as defined in the ACHP regulations at 36 CFR 800.16(l)) or historic or cultural resource, including but not limited to, ground-disturbing activities that could remove or damage historic properties or cultural resources or the construction of new structures that could impact viewsheds, as described below.</p>				
9.	<p>Historic Properties: Would the proposed action have an adverse effect on a prehistoric or historic district, site, building, structure, object or traditional cultural property (TCP) included in or eligible for the National Park Service's <i>National Register of Historic Places</i>, or a State or local</p>			

	<p>register of historic places? If yes, check appropriate boxes below.</p> <p><u>Check all appropriate boxes</u></p> <p><input type="checkbox"/> The proposed action would likely result in a visual impact to the viewshed of a historic property, such as a historic district, site, building, structure, object or TCP that is included in or eligible for listing in the <i>National Register of Historic Properties</i>, or a State or local register of historic places.</p> <p><input type="checkbox"/> The proposed action would likely result in an adverse effect, other than a viewshed impact, to a historic property, such as a historic district, site, building, structure, object or TCP that is included in or eligible for listing in the <i>National Register of Historic Places</i>, or a State or local register of historic places.</p> <p><input type="checkbox"/> The proposed action would directly or indirectly affect a district, site, building, structure, object or TCP over 50 years old.</p>			
<p>10.</p>	<p>Historic and Cultural Resources: Would the proposed action have an effect on historic or cultural resources (<i>i.e.</i>, archaeological sites, TCP, prehistoric or historic districts, buildings, structures, or objects with an associated historical, cultural, archaeological, architectural, community, or aesthetic value) of Federal, Tribal, State, or local significance? If yes, check appropriate boxes below.</p> <p><u>Check all appropriate boxes</u></p> <p><input type="checkbox"/> The proposed action would affect previously disturbed ground.</p> <p><input type="checkbox"/> The proposed action would affect previously undisturbed ground.</p> <p><input type="checkbox"/> The proposed action would likely result in a visual impact to the viewshed of a cultural resource (<i>e.g.</i>, by the construction of new buildings or structures).</p>			
<p>11.</p>	<p>Socioeconomics: Would the project significantly change the amount of taxes paid by the licensee or the number of workers at the facility?</p>			

12.	Transportation: Would the project cause a significant increase in traffic congestion or cause a degradation of level of service?			
13.	Community Services and Housing: Would the project cause disruption of or increased strain on community services (e.g., police, schools, hospitals) or be inconsistent with the plans or goals of the community? Is there adequate available housing for the potential influx of new workers?			
14.	<p>Noise levels: Would the proposed action increase noise levels for noise sensitive areas (residences, schools, churches, hospitals)?</p> <p><u>Check all appropriate boxes</u></p> <p>The proposed action would cause the following type of increase in noise levels:</p> <p><input type="checkbox"/> Intermittent</p> <p><input type="checkbox"/> Temporary (i.e., less than 180 days)</p> <p><input type="checkbox"/> Long-term or permanent</p>			
15.	<p>Environmental justice: Would the proposed action cause any human health or environmental effects on the general population? If yes, check appropriate boxes below.</p> <p><u>Check all appropriate boxes</u></p> <p><input type="checkbox"/> There are potentially affected minority and/or low-income populations within the impact area.</p> <p><input type="checkbox"/> If the above box is checked, would the proposed action cause any disproportionately high and adverse human health or environmental effects on minority and/or and low-income populations? For example, would there be higher exposure rates to minority and/or low-income populations or increased traffic in these communities?</p>			
Potential Impacts to Radiological Health				
16.	Human Health: Would the proposed action cause a significant increase in individual or			

	cumulative occupational or public radiation exposure?			
17.	Accidents: Would the proposed action cause a significant increase in the potential for or consequences from a radiological accident?			
18.	Effluents: Would the proposed action cause a significant change in the types or a significant increase in the amounts of any effluents that may be released offsite?			
Other Considerations				
19.	Cumulative impacts: When considered together with other past, present, and reasonably foreseeable future projects, on or off the project site, regardless of whether it is a Federal or non-Federal project, would the proposed action produce a significant cumulative effect?			
20.	Environmental laws: Has the applicant or licensee provided a list of applicable Federal, State, and local laws and regulations to which the proposed action is subject?			
21.	Controversy: Is the proposed action likely to be highly controversial on environmental grounds or is it likely to generate a great deal of public interest? A proposed action is considered highly controversial when an action is opposed on environmental grounds by a Federal, State, or local or Tribal government agency, or by a substantial number of persons affected by such action. The amount of public involvement and controversy related to previous actions at the site would be important to consider.			
22.	Uncertainty: Is there a high level of uncertainty about the proposed action's environmental impacts? Consider whether there is anything not known about the proposed action's potential impacts, and then whether this information gap has any significance. For example, when considering installation of monitoring equipment, it might not be known whether there are archeological sites in the vicinity. If the			

	installation would result in ground disturbance, this uncertainty should be resolved before using a CATX and proceeding with the installation. If the installation would not result in ground disturbance, there may be no need to resolve the uncertainty.			
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Conclusions

Based on the above checklist, the preparer concludes:

The proposed action meets the criteria of a listed CATX under 10 CFR 51.22(c), and no special or extraordinary circumstances exist that would require further environmental review (*i.e.*, preparation of an EA or EIS).

The proposed action may result in significant impacts to the human environment. Therefore, a more detailed environmental review (*i.e.*, preparation of an EA or EIS) is required.

Licensing Project Manager Name	[insert]
Licensing Project Manager Signature	[insert]
Date	[insert]

Appendix C

Content of NRR Environmental Assessments

This guidance is intended to assist staff in developing an environmental assessment (EA). The reviewer may use Figure 2, "Flow Chart for Determining the Scope of an Environmental Review," in this appendix to aid in determining if the proposed action requires an EA, an Environmental Impact Statement (EIS), or meets the criteria for a categorical exclusion. In accordance with subsection (a) of 10 CFR 51.30, "Environmental Assessment," EA sections are outlined below with a summary of the information that should be included in each section. The sections are as follows:

- identification of the proposed action;
- the purpose and need for the proposed action;
- identification of reasonable alternatives to the proposed action;
- the environmental impacts of the proposed action;
- the environmental impacts of alternatives to the proposed action, as appropriate;
- list of agencies and persons consulted; and
- identification of sources used.

The specific sections of the EA are differentiated below by the underscore.

Identification of the Proposed Action

This section briefly describes the proposed action, references the pertinent licensee application, if any, and includes the date of such application.

The Need for the Proposed Action

A discussion of the need for the proposed action is required by 10 CFR 51.30(a)(1)(i). When writing this portion of the EA, the preparer should discuss the applicant's motivation for submitting the application to the NRC. For example, does the requested exemption or license amendment provide some benefit to the applicant if granted? How would the applicant be affected if the application was not approved?

Identification and Description of Alternatives to the Proposed Action

This section identifies, describes, and evaluates reasonable alternatives to the proposed action, including at a minimum, the no action alternative. In addition, as required by 10 CFR 51.30(a)(1)(ii), this section should describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.

Environmental Impacts of the Proposed Action

The environmental impacts of the proposed action must be evaluated in accordance with 10 CFR 51.30(a)(1)(iii). This section should include an evaluation of both radiological and non-radiological impacts. Impacts can be direct, indirect, cumulative, long-term, and short-term.

The preparer should evaluate the environmental resource areas below. It is important to understand that not all environmental resource areas require a detailed discussion in each EA. The preparer should focus the analysis and discussion on resource areas that are expected to be impacted.

- Radiological and Human Health: The preparer should briefly discuss the radiological impacts (e.g., changes in dose) to members of the public and occupational workers that result from the proposed action. The discussion should include changes to the types and amounts of radioactive discharges (gaseous, liquid, and solid material) and direct radiation during routine operations and any actions considered by the licensee to keep doses as low as is reasonably achievable (ALARA). For the radiological impacts that result from design basis accidents (DBAs), the preparer should briefly discuss the radiological impacts for the proposed action by comparing the calculated dose submitted by the licensee against the applicable dose criteria in 10 CFR 100.11. The preparer should coordinate the draft DBA evaluation with the licensing Project Manager in the Division of Operating Reactor Licensing to ensure that the DBA discussion in the EA or EIS is consistent with the conclusions contained in the safety evaluation for the proposed licensing action. For routine operations, the preparer should compare the public and occupational worker doses that are expected for the proposed action to ensure compliance with the dose limits in 10 CFR Part 20.
- Land Use: The preparer should evaluate any changes in land use including temporary or permanent construction and conversion of undisturbed or previously disturbed land. Note that this resource area may overlap with ecology, archaeological, and other resource areas, but may warrant a separate discussion depending on the type of modification that would occur as a result of the proposed action.
- Water Use: The preparer should evaluate any changes in water use including altered intake or discharge volume, altered temperature of discharged water, or any other change in use of surface or ground water that would result from the proposed action. The preparer should ensure that any changes to water use are within the limits set forth by the applicant's National Pollutant Discharge Elimination System (NPDES) permit, if applicable.
- Air Resources: The preparer should evaluate any changes to non-radiological air emissions, specifically carbon monoxide, lead, nitrogen dioxide, particulate matter, ozone, and sulfur dioxide, which are regulated under the Clean Air Act (CAA). Refer to Section 5.2.7 for a description of NRR's responsibilities under the CAA.
- Ecology: The preparer should evaluate any changes to both the aquatic and terrestrial environment(s) including alterations in natural communities, changes in species composition, population dynamics, and other impacts that may result from the proposed action.

- Federally Protected Species and Habitats: The preparer should evaluate any impacts to Federally threatened and endangered species and/or critical habitat under the Endangered Species Act and impacts to Essential Fish Habitat under the Magnuson-Stevens Act. Refer to Sections 5.2.4 and 5.2.5 for a description of NRR's responsibilities under these laws.
- Historic and Cultural Resources: The preparer should evaluate any changes to historic properties and cultural resources under the National Historic Preservation Act (NHPA). Refer to Section 5.2.6 for a description of NRR's responsibilities under the NHPA.
- Socioeconomics and Environmental Justice: The preparer should evaluate any impact to socioeconomic conditions and minority populations and low-income populations. Refer to Section 5.2.2 for a description of NRR's responsibilities under the NRC's *Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions* (69 FR 52040) and Appendix D for procedures for an environmental justice review.

The preparer should describe each resource that would be affected by the proposed licensing or regulatory action and the significance of the relationship between the environmental resource and the change caused by the proposed action. For example, air (the environmental resource) would be affected by a release of particulate matter (the plant component) resulting from the proposed action and the significance of the release would depend on the types and amounts of the emissions. In this case, the preparer would address the question, would the emission for the contaminant be above the regulatory limits or would it be a small fraction of the regulatory limits? This section should clearly state which resources are affected by the proposed action. Likewise, it should clearly state that no environmental resources are affected, if that is the case.

Although impacts may exist, they may not be significant, and impacts can be beneficial as well as adverse. However, an impact that is not significant does not equate to "no impact." Typical impacts may include, but are not limited to:

- Increased radiation dose to workers and/or members of the public;
- Habitat destruction;
- Degradation of water quality or water supply;
- Increased air emissions;
- Increased noise;
- Degradation of wetlands or bogs;
- Damage or reduced access to historic properties or cultural resources;
- Changes to local or regional socioeconomic conditions or population demographics; and
- Increased traffic or other transportation effects.

If a FONSI is to be issued, the impacts section should certify that the proposed action would not significantly increase the probability of accidents, would not increase any radioactive effluents or the resultant doses above regulatory limits, adversely affect any endangered or threatened species, 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 this in the impacts section.

Environmental Impacts of the Alternatives to the Proposed Action

Alternatives to the proposed action must be evaluated in accordance with 10 CFR 51.30(a)(1)(ii) and (iii). At a minimum, all EAs must include the no-action alternative. For those actions where impacts are not significant, it is reasonable to consider only a limited range of alternatives.

A non-significant impact does not equate to no impact; therefore, the NRC staff should consider all reasonable alternatives. If the “no-action” alternative is the only alternative examined, the alternatives section may contain the following statement, if applicable:

As an alternative to the proposed action, the staff considered denial of the [insert proposed action] (i.e., the “no-action alternative”). Denial of the [insert 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

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

Mitigation Measures (if applicable)

EAs should incorporate mitigation measures in the proposed action and alternatives, when appropriate. These mitigation measures may assist in a FONSI if the mitigation measure can be enforced by the NRC or another Federal, State, Tribal, or local governmental agency. The analysis should address the anticipated effectiveness of these mitigation measures in reducing impacts or enhancing beneficial impacts. Impacts need not be significant for mitigation measures to be considered. Any mitigation measures used to justify FONSIs should be tangible and specific. For example, mitigation measures that avoid, minimize, rectify, reduce over time, or compensate are tangible as opposed to measures that include activities such as further consultation, coordination, and study. Measures should include such things as design alternatives that would reduce emissions, construction impacts, land disturbances, aesthetic intrusion, etc. All relevant, reasonable mitigation measures that could improve the project should be identified, even if they are outside the jurisdiction of the NRC.

Agencies and Persons Consulted

A list of agencies (Federal, State, Tribal, and local government) and persons consulted must be included in accordance with 10 CFR 51.30(a)(2). The consultation must be documented in a

brief summary in the EA and should contain (1) the name of the agency or person contacted, (2) the date and purpose of the consultation, (3) a brief summary of the agency's or person's comments and the staff's resolution or disposition of such comments, 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 to discuss a specific issue involving short-nosed sturgeon, the summary could be worded as follows:

“The National Marine Fisheries Service was contacted on [insert date], to discuss and evaluate the ability of the short-nosed sturgeon to avoid capture after the proposed modification of river water intake.”

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

“In accordance with its stated policy, on [insert date], the staff consulted with [insert name of agency official or person] of the [insert name of agency, if applicable], regarding the environmental impact of the proposed action. The [insert name of agency official or person] had [the following comments/no comments].”

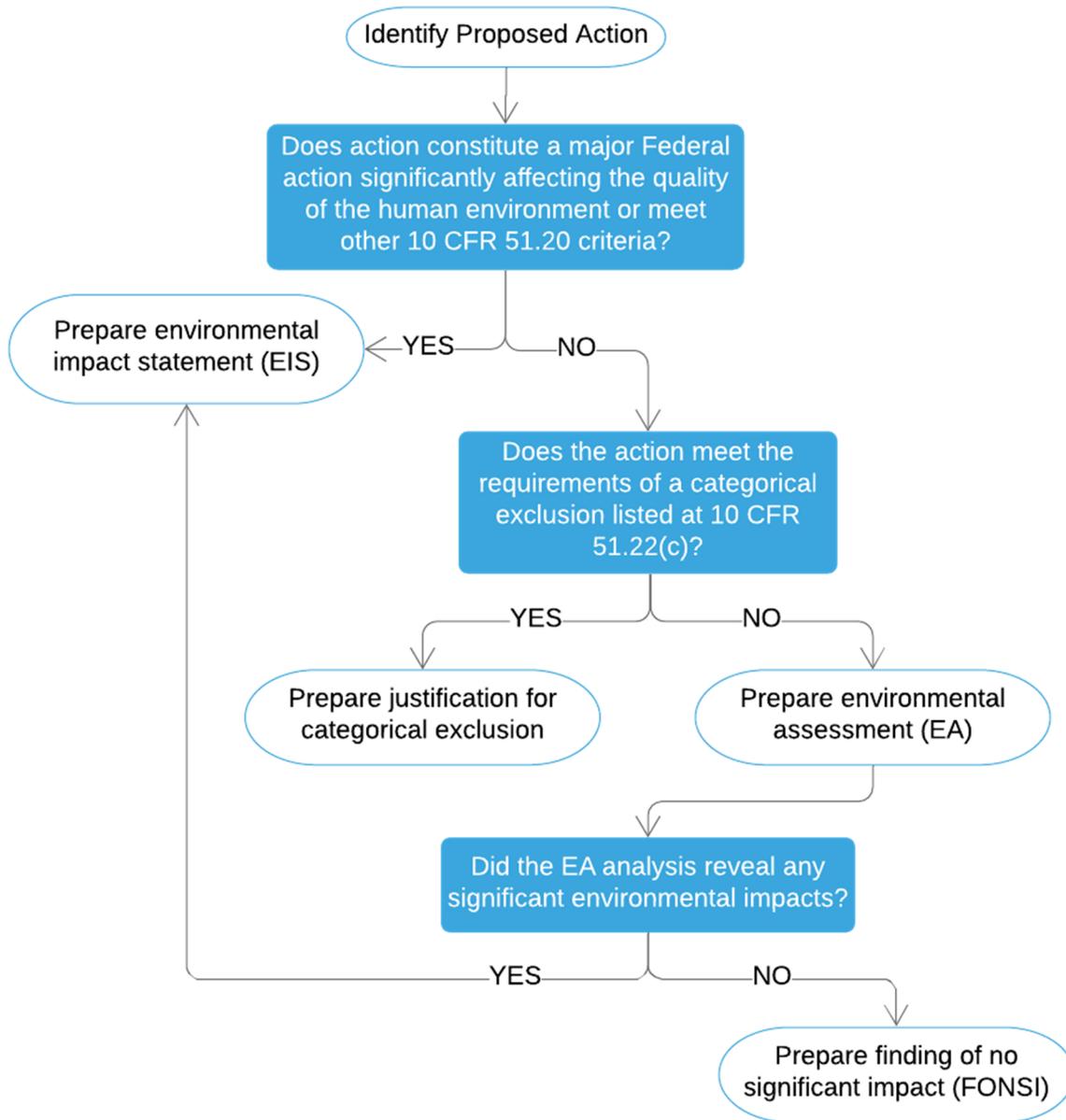
Comments

If a draft EA has been made available for comment in accordance with 10 CFR 51.33, or if the draft EA was otherwise provided to other Federal agencies, or State, local and Tribal governments, and if comments were provided to the NRC in response, the preparer should respond to and document the comments in the EA or in a document that is attached to the EA. The comments may be summarized. Any separate documentation, such as comment letters, should be placed in the NRC Public Document Room and the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room to ensure public access.

Identification of Sources Used

In accordance with 10 CFR 51.30(a)(2), each EA should include a list of resources cited in the document to support the conclusions of the finding.

Figure 2. Flow Chart for Determining the Scope of an Environmental Review



As a general review guidance, if the action meets the categorical exclusion listed in 10 CFR 51.22(c) while processing license amendments and exemptions, the NRR staff is to follow the guidance provided in LIC-101, "License Amendment Review Procedures," and LIC-103, "Requests for Exemptions from NRC Regulations".

Appendix D

Environmental Justice in NRR NEPA Documents

BACKGROUND

On February 11, 1994, the President signed Executive Order 12898 “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” which directs Federal agencies to develop strategies for considering environmental justice in their programs, policies, and activities. Environmental justice is described in the Executive Order as “identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” On December 10, 1997, the Council on Environmental Quality (CEQ) issued “Environmental Justice Guidance Under the National Environmental Policy Act.” The Council developed this guidance to “further assist Federal agencies with their National Environmental Policy Act (NEPA) procedures.” As an independent agency, CEQ’s guidance is not binding on the NRC; however, the NRC considered CEQ’s guidance on environmental justice in this procedure.

CEQ provides the following information in *Environmental Justice: Guidance Under the National Environmental Policy Act* (1997):

Disproportionately High and Adverse Human Health Effects. Adverse health effects are measured in risks and rates that could result in latent cancer fatalities, as well as other fatal or nonfatal adverse impacts on human health. Adverse health effects may include bodily impairment, infirmity, illness, or death. Disproportionately high and adverse human health effects occur when the risk or rate of exposure to an environmental hazard for a minority or low-income population is significant (as employed by NEPA) and appreciably exceeds the risk or exposure rate for the general population or for another appropriate comparison group (CEQ 1997).

Disproportionately High and Adverse Environmental Effects. A disproportionately high environmental impact that is significant (as employed by NEPA) refers to an impact or risk of an impact on the natural or physical environment in a low-income or minority community that appreciably exceeds the environmental impact on the larger community. Such effects may include ecological, cultural, human health, economic, or social impacts. An adverse environmental impact is an impact that is determined to be both harmful and significant (as employed by NEPA). In assessing cultural and aesthetic environmental impacts, impacts that uniquely affect geographically dislocated or dispersed minority or low-income populations or American Indian tribes are considered (CEQ 1997).

On August 24, 2004, the Commission issued a *Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions* (69 FR 52040), which states, “the Commission is committed to the general goals set forth in Executive Order 12898, and strives to meet those goals as part of its NEPA review process.” The following guidance is consistent with this policy statement.

SCOPE OF ENVIRONMENTAL JUSTICE FOR NRR REVIEWS

This procedure provides guidance to the Office of Nuclear Reactor Regulation (NRR) staff on conducting environmental justice reviews for proposed actions requiring either an environmental impact statement (EIS) or an environmental assessment (EA).

Environmental justice reviews will be performed for all regulatory actions requiring the preparation of an EIS, which may include licensing actions and rulemaking activities. 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 evaluated in an EIS. A list of the types of actions requiring an EIS is found in 10 CFR 51.20(b).

When preparing an EA, if there is a clear potential for significant offsite impacts from the proposed action 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 affected minority and/or low-income populations, then a finding of no significant impact (FONSI) may not be possible and mitigation (if authorized) or an EIS may be necessary.

If it is determined, however, that a particular action would have no significant health or environmental impact, then there is no need to consider whether the action would have disproportionately high and adverse impacts on minority populations and/or low-income populations. Similarly, an environmental justice review is not required for those actions listed in 10 CFR 51.22(c) as being categorically excluded from detailed environmental review.

Environmental justice issues and potential impacts on minority and/or low-income populations may be identified through public involvement in NRC’s review in the proposed action (e.g., scoping comments, comments on draft EIS/EAs), knowledge learned through research about minority and/or low-income groups that may be affected, or in determining the nature of the impacts. In these instances, the NRR PM should consult with the Office of Nuclear Materials Safety and Safeguards (NMSS) Environmental Center of Expertise (EnvCOE). The EnvCOE concurs on EAs issued by NRR and will notify management if it appears that an environmental justice review is warranted. NRR management will then decide on a case-by-case basis whether the circumstances are such that minority and/or low-income populations may be affected and that an environmental justice review is warranted.

GENERAL PRINCIPLES OF ENVIRONMENTAL JUSTICE

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

The NRC staff should consider the demographic composition of the affected area to determine the location of minority and/or low-income populations and whether they may be affected by the proposed action. The staff then needs to determine if the proposed action would cause any human health or environment effects and if so, whether these effects would be disproportionately high and adverse on minority or low-income populations.

The staff should develop an effective public participation strategy to include minority and/or low-income individuals and communities in the NEPA process. 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 minority and/or low-income communities.

The staff should strive to include minority and/or low-income community representation in the NEPA 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 also seek Tribal representation in the NEPA 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 minority and/or low-income populations and historical patterns of exposure to environmental hazards, to the extent such information is reasonably available.

The staff should recognize the interrelated social, occupational, cultural, historical, and economic factors that could amplify the natural and physical environmental effects of the proposed action on minority and/or low-income populations. These effects include the sensitivity of minority and/or low-income populations and individuals 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 economic, cultural, and social structure of the community.

The review is forward looking and should focus on the proposed action. For example, if the action is a license amendment, only the activities covered by the amendment should be considered and not the impact of the original license even if no environmental justice review was performed for the original license.

Under NEPA, the identification of a disproportionately high and adverse human health or environmental effect on a minority and/or low-income population does not preclude a proposed action from going forward, nor does it necessarily compel a conclusion that a proposed action is environmentally unreasonable. 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 the EnvCOE whenever an environmental justice review is undertaken. (See Figure 3,

“Environmental Justice Review Flow Chart,” on page D-11 for the environmental justice process.

1. *Determine if the action requires an environmental justice review.*

Determine whether the regulatory action will be supported by an EIS or EA. When the regulatory action requires the preparation of an EIS, an environmental justice review must be conducted, as discussed below.

Under most circumstances, no environmental justice review is required when an EA is prepared. However, the staff will conduct an environmental justice review for an EA when there is a clear potential for human health or environmental impact impacts from the proposed action; an EJ review might be needed to provide a basis for concluding that there are no disproportionately high or adverse impacts to minority and/or low income populations. In the event that an environmental justice review is performed for an EA, the process outlined in steps 2 through 5, below, should be used as guidance.

2. *Locating and identifying minority and low-income populations and integrating environmental justice into the scoping process.*

Early on in the NEPA process (before or at the beginning of scoping), the staff should attempt to identify the location of minority and/or low-income populations in the potentially affected area, usually within a 50-mile (80-kilometer) radius. The staff should also develop a strategy for involving potentially affected minority and/or low-income populations and individuals in NRC’s scoping process.

The following steps can be utilized to assist with locating and identifying minority and/or low-income populations at the beginning of the NEPA review (before or at the beginning of scoping). These steps can be used to help determine whether there would be any potential environmental justice issues or concerns and whether minority and/or low-income populations could be disproportionately affected by the proposed action.

A. *Determine geographic area for comparison.*

In determining the location of minority and/or low-income populations, the geographic area within a 50-mile radius is typically large enough to encompass the entire area of potential effect so the staff can perform its comparative analysis. The 50-mile radius (centered on the nuclear plant or other facility) is consistent with the impact analysis conducted for human health impacts. If the impact area overlaps more than one government jurisdiction (State, county, etc.), then the staff should define the geographic area to encompass parts of each government jurisdiction; such a defined geographic area does not have to stop at established boundaries such as county or State lines.

B. Determine the composition of minority and/or low-income populations in the geographic area.

Determine the percentage of (1) the aggregate minority and (2) low-income populations within the geographic area (50-mile radius). Geographic distribution of race, ethnicity, and poverty, as well as delineation of Tribal lands and resources, should be examined.

The first step is to obtain the most recent decennial (10-year) demographic (Census) data for the 50-mile radius and surrounding communities. In the case of license renewal, the applicant's environmental report usually lists the affected counties in the 50-mile radius. The demographic data should consist of Census Bureau information on race, Hispanic, Latino or Spanish ethnicity, and individual and family poverty information.

In determining the aggregate minority population, individual(s) who identified themselves in the decennial census as members of the following racial and ethnic categories are considered minority individuals. In other words, everyone except persons who identified themselves as White, Not Hispanic or Latino are considered minority.

Race:

- Black or African American
- American Indian or Alaska Native
- Asian
- Native Hawaiian and Other Pacific Islander
- Some other race
- Two or more races (i.e., multiracial)

Ethnicity:

- Hispanic, Latino, or Spanish origin (may be of any race)

The 10-year Census provides the option of identifying oneself in more than one race categories or multiracial census category of "two or more races." People in this category are counted as part of the minority group they identified with in the census. Location specific - aggregate minority population data can be found in Census Summary File 1 (SF-1) Table P4 at the U.S. Census Bureau's American Fact Finder: <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml> .

Low-income population is defined as individuals or families living below the poverty level as defined by the U.S. Census Bureau (e.g., the U.S. Census Bureau's Current Population Reports, Series P-60 on Income and Poverty). For individual and family poverty data estimates see Census Bureau's American Community Survey (ACS) poverty tables.

The geographic scale should be commensurate with the potential impact area, and should include a sample of the surrounding population, (e.g., at least several block groups). The goal is to evaluate the "communities," neighborhoods, or areas that may be disproportionately impacted. One source for determining a 50-mile radius is the on-line web-based EJView computer software offered by the U.S. Environmental Protection Agency (EPA). Other sources of demographic information include the applicant, local governments, State agencies, or local universities. It is recommended that 10-year census data on minority and poverty should be used. Interim year census data is available from ACS, based on estimated projections and small sample sizes. The

reviewer should also use the best available State information. Minority and low-income population demographic data can be presented for counties and States in tables in the EIS or EA.

C. Determine the location of minority and low-income population in the impact area.

The next step is to compare the percentage of minority and/or low-income populations in the 50-mile geographic area to the percentage of minority and/or low-income populations in each "census block group" or "census tract" to determine which block group exceeds the percentage thereby identifying the location of these populations.

The recommended geographic area for determining the location of minority and/or low-income populations is the "census block group." The census block group was chosen because it provides race and ethnicity information as well as income and poverty information that is not collected for the smaller "census block." It is also not as large as the "census tract," which are generally too large for an adequate location and identification of minority or low-income communities. A minority and/or low-income community may be considered as either a population of individuals living in geographic proximity to one another or a dispersed/transient population of individuals (e.g., migrant workers) where either type of group experiences common conditions of environmental exposure.

"Minority and low-income populations" are identified when (1) the minority and/or low-income population of an impacted area exceeds 50 percent or (2) the minority and/or low-income population percentage of the impacted area is meaningfully greater than the minority and/or low-income population percentage in the general population or other appropriate unit of geographic analysis (e.g., 50-mile radius geographic area or county). All block groups with minority and/or low-income percentages higher than the geographic area should be identified on 50-mile radius maps.

It is possible that the geographic area could cross county and State lines and this should be considered when making comparisons. If it is determined that the percentage in the block groups significantly exceeds the geographic area percentage for either minority or low-income population, then the environmental justice impacts should be considered in greater detail. In general (and where appropriate), the staff may consider differences greater than 20 percentage points to be significant. Additionally, if either the minority or low-income population percentage exceeds 50 percent, the environmental justice impacts should be considered in greater detail.

The criteria listed above should only serve as a guideline for determining the presence of a minority or low-income populations because demographic data may overlook low-income and/or minority populations if they constitute a relatively small percentage of the total population in the block group. Therefore, the staff should seek to supplement the environmental justice analysis with any relevant additional information collected during the environmental scoping process to identify such low-income or minority populations. If it is apparent through interviews, public comment/interest, by investigation, or by other scoping activities, that there is a distinct minority or low-income population or community that may be adversely affected by the proposed action, then

the staff reviewer should proceed with the environmental justice review even if that population was not identified through the use of demographic data.

If no minority or low-income populations are identified in the geographic area or area of potential effect, then this determination should be documented and 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 flyers in local shopping centers, 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 populations and/or individuals are found during scoping or later on in the review, then the results should be documented and the environmental justice review is complete.

3. *Determine whether there are human health and environmental impacts on minority or low-income populations.*

Potential human health and environmental impacts are determined through the normal NEPA process during the development of the EIS or EA, including indirect and cumulative impacts, where appropriate. The impacts should be evaluated to determine which impacts may affect (or cause concern to) minority and/or low-income populations. Once it is determined that the proposed action could affect and/or cause environmental justice concerns for minority and/or low-income populations located near the plant site, it is then necessary to determine whether the impact(s) could have a “disproportionately high and adverse” effect on these populations.

Impacts that could potentially affect or cause concern to minority and/or low-income populations should be summarized in the environmental justice section of the EIS (or EA, if analyzed). The discussion should address the potential human health and environmental effect(s) on these populations. It is not necessary to discuss the technical aspects of the impact(s) at the same level of detail as other environmental consequences sections. It is acceptable to briefly describe the human health or environmental impact, its potential effect on minority and/or low-income populations, and to reference the appropriate section for a more detailed technical discussion of the impact.

In considering human health and environmental impacts to minority and/or low-income populations, different patterns of consumption of natural resources should also be considered (i.e., differences in rates and/or pattern of fish, vegetable, water, and/or wildlife consumption among groups defined by demographic factors such as socioeconomic status, race, ethnicity, and/or cultural attributes). Section 4-4 of Executive Order 12898 (Environmental Justice) directs

Federal agencies, whenever practical and appropriate, to collect and analyze information on the consumption patterns of populations who rely principally on fish and/or wildlife for subsistence and to communicate the risks of these consumption patterns to the public. NRR staff should consider whether there are any means for minority or low-income populations to be disproportionately affected by examining potential impacts to American Indian, Hispanic, and other traditional lifestyle special pathway receptors. Special pathways that account for the levels of contaminants in native vegetation, crops, soils and sediments, surface water, fish, and game animals on or near nuclear plant sites should be considered.

Each nuclear plant has a comprehensive Radiological Environmental Monitoring Program (REMP) that assesses the radiological impact of site operations on the environment. Radiological monitoring indicator and control samples are collected from the aquatic and terrestrial pathways applicable to each plant site. The aquatic pathways include fish, surface waters, and sediment. The terrestrial pathways include airborne particulates and radioiodine, milk, leafy vegetation, food products, soil, and direct radiation. It is recommended that NRR staff review the most recent *Annual Radiological Environmental Operating Report* from the plant for sampling information used to measure the direct radiation and the airborne and waterborne pathway activity in the vicinity of the nuclear plant site. Many State agencies and a few independent organizations conduct their own radiological monitoring programs separate from or in conjunction with the REMF at nuclear plants. Reports and studies conducted by these agencies and organizations should also be considered.

NRR staff should also focus the environmental justice review on human health or environmental impacts that are known to be significant or perceived as significant by minority and/or low-income persons. The severity of environmental impacts or concerns usually varies inversely with the distance from the nuclear plant; therefore, the review should be focused on areas closer to the plant site.

4. *Determine whether there are disproportionately high and adverse human health or environmental effects on minority and/or low-income populations.*

NRR staff first needs to assess if impact(s) would disproportionately affect minority or low-income populations. In other words:

- Would the impact(s) be greater for minority and low-income populations than the general population?
- Are there any unique effects experienced by minority and/or low-income populations that would not be experienced by the general population?

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

To effectively visualize potential disproportionate impacts, it may be helpful to display the location of minority and/or low-income populations on 50-mile radius maps. In cases where minority and/or low-income populations are located next to or in close proximity to the plant site, the impact(s) could disproportionately affect these populations more than the general population. For instance, potential exposure to effluents and emissions may have a greater

effect on minority and/or low-income populations living closest to the nuclear plant. Noise and traffic may disrupt these populations to a greater extent than the general population and those living far from the plant site. In addition, the potential risks associated with accidents may have a disproportionate effect on minority and/or low-income populations living closest to the plant.

If there are no disproportionate impacts, no further analysis is needed. The reviewer should document the finding in the environmental justice section.

After identifying human health and environmental impacts that could disproportionately affect minority and low-income populations, it is necessary to determine if the effect(s) would be high and adverse. For example, would the effect(s) on minority and/or low-income populations be above generally accepted norms such as regulatory limits or State and local statutes and ordinances? Each human health and environmental impact, and where appropriate, the cumulative and multiple effects of the impact(s), should be reviewed for significance.

If the determination can be made that the disproportionate human health and environmental impact(s) and/or combination of impacts would not be high and adverse, then no further analysis is needed. The reviewer needs to document this conclusion in the environmental justice section.

If there are disproportionately high and adverse impacts to minority and/or low-income populations, it is then necessary to consider mitigation measures that could be taken to reduce the impact(s). To the extent practicable, any mitigation measures discussed in the EA or EIS should reflect the needs and preferences of the affected minority and/or low-income populations and communities. 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 where there are disproportionate high and adverse impacts to minority or low-income populations.

5. Make a determination regarding impacts to minority and low-income populations and document the conclusion.

The results of an environmental justice review should be documented in the EIS or in the EA, if appropriate. NRR staff should clearly state the conclusion regarding whether or not the proposed action and any alternatives would have a disproportionately high and adverse environmental impact on a minority and/or low-income population. This statement should be supported by sufficient information to allow the public to understand the rationale for the conclusion and should be written in concise non-technical plain language that minimizes the use of acronyms or jargon.

The EIS or EA should contain a section titled "Environmental Justice" even if the demographics do not indicate a potential for an environmental justice concern. If a plant site has already received an environmental justice evaluation, it is acceptable to reference the previous evaluation and provide a summary of the findings and then add any new information that results from the proposed action. For instance, if an environmental justice review was included in a license renewal review, it would not need to be completely readdressed for a license

amendment. If a reference to another document is used, a summary of the review and its conclusions should be included in the environmental justice section.

PROCEDURES FOR RULEMAKING ACTIVITIES³

1. Staff responsible for rulemaking should address environmental justice in the preamble to any proposed and final rules that require an EIS, a supplement to an EIS, or generic EIS.
2. If it is known in advance that a particular rulemaking might disproportionately affect a minority and/or low-income population or community, NRC staff should ensure that the population and/or community knows about the rulemaking and are given the opportunity to participate. Such actions may include translating the *Federal Register* notice into a language other than English for publication in a local newspaper and holding public outreach meetings in the potentially affected community.
3. If an environmental justice review is performed for a rulemaking activity, then the staff should consider using the template provided in the NRC Regulations Handbook, NUREG/BR-0053, Revision 6, pp. 67-68, to seek and welcome public comments on environmental justice (the template would either be part of the proposed rule *Federal Register* notice or a draft FONSI issued pursuant to 10 CFR 51.33). The staff should follow the "Procedures for Licensing Actions," steps 2-5 above, to perform the environmental justice review.
4. Public comments on the environmental justice review should be addressed in the statements of consideration to the final rule when published in the *Federal Register*. Comments on the environmental justice review should be addressed at the same level of detail and in the same location as comments received on other parts of the rule.

³ See NUREG/BR-0053, Revision 6, p. 64 for a discussion of environmental justice issues in rulemaking activities.

Figure 3. Environmental Justice Review Flow Chart

