

August 6, 1979

SECY-79-473

COMMISSIONER ACTION

For: The Commissioners

From: Howard K. Shapar
Executive Legal Director

Thru: Executive Director for Operations *ES J LVI*

Subject: CEQ NEPA REGULATIONS - PROPOSED REVISION OF 10 CFR PART 51
AND RELATED CONFORMING AMENDMENTS

Purpose: To obtain Commission approval of a Federal Register
Notice of Proposed Rule Making; and
To request guidance on the appropriate NRC response to
the CEQ directive to agencies to designate a person to
be responsible for overall review of agency NEPA
compliance.

Background

Discussion: On May 31, 1979, following discussion of SECY-79-305, "NRC Compliance with CEQ NEPA Regulations," at a public Commission meeting held on May 11, 1979, the Chairman sent a letter to Chairman Charles H. Warren of the Council on Environmental Quality stating the Commission's conclusion that a sound accommodation can be reached between NRC's independent regulatory responsibilities and CEQ's objective of establishing uniform NEPA procedures. The letter also informed CEQ that the Commission plans to carry out its responsibilities under NEPA in a manner consistent with the procedures promulgated by the Council and that "the Commission would undertake to develop regulations to take account of CEQ's NEPA regulations voluntarily," subject to certain enumerated conditions.

On June 25, 1979, Gus Speth, Acting Chairman of the Council on Environmental Quality, replied. This letter stated in part:

"We share your view that a sound accommodation can be reached between the Commission's independent regulatory responsibilities and the Council's objective of establishing uniform NEPA procedures. In our judgment, the new regulations are sufficiently flexible to avoid any conflict between the NEPA regulations and the Commission's responsibilities as an independent regulatory agency."

The attached proposed revision of 10 CFR Part 51, with proposed conforming amendments, has been prepared in response to the Commission's directives. This paper briefly describes the organization and content of revised Part 51, highlights specific provisions of the proposed rule including those which reflect significant changes in the Commission's present NEPA process and those which modify procedures prescribed by CEQ, identifies matters not presently addressed in proposed Part 51, and describes the procedure to be followed in connection with the effective rule.

The paper also seeks Commission guidance on how NRC should respond to the CEQ directive to agencies to designate a person to be responsible for overall review of agency NEPA compliance (40 CFR § 1507.2(a).)

Scope and Organization of Proposed Revision of 10 CFR Part 51

As revised, proposed Part 51 has been restructured into several subparts. Subpart A contains proposed regulations implementing section 102(2) of NEPA. Other subparts will be added from time to time as regulations are promulgated to implement other environmental laws. Part 51 of the Commission's present regulations relates solely to NRC policy and procedures for the preparation and processing of environmental impact statements and related documents pursuant to section 102(2)(C) of NEPA. Both proposed Part 51 and proposed Subpart A will be significantly broader in scope.

Revised Part 51, including proposed Subpart A, only applies to the NRC's domestic licensing and related regulatory functions. The proposed regulations do not apply to export licensing matters within the scope of 10 CFR Part 110, which contains regulations on the export and import of nuclear facilities and materials, nor do they apply to any environmental effects which NRC's licensing and related regulatory functions may have upon the environment of foreign nations or the global commons. This approach is consistent with that adopted by CEQ and reflected in the preamble to its effective NEPA regulations, namely that CEQ's NEPA regulations did not purport to resolve the question of whether NEPA applies abroad.^{1/} It is also consistent with the overall structure of the Commission's regulations in 10 CFR Chapter 1, which separates the Commission's domestic licensing and related regulatory functions from those applicable to exports and imports. Part 51 as now in effect is silent on this point.

Scope and Organization of Proposed Subpart A

As previously explained, proposed Subpart A, which implements section 102(2) of NEPA, applies only to the Commission's domestic licensing and related regulatory functions (§ 51.10(a)).

^{1/} 43 FR 55978 at 55989 (Daily Ed.) November 29, 1978.

Section 51.10(b) of proposed Subpart A describes the Commission's policy with respect to particular matters of NEPA implementation not addressed by the regulations in proposed Subpart A. In accordance with that policy, the Commission will follow the regulations of the Council on Environmental Quality as published by the Council on November 29, 1978 (43 FR 55978-56007), except that the Commission will devote further study to 40 CFR § 1502.14(b), § 1502.22(a) and (b), and the portion of § 1508.18 which includes within the definition of major Federal action "the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action" before deciding to what extent these provisions may or should mandate a change in present Commission policy. The Commission will also:

(1) Examine any future interpretation or change to the Council's NEPA regulations;

(2) Prepare an independent environmental impact statement whenever the Commission has jurisdiction over an activity, even though the Commission has not been designated as lead agency for preparation of the statement; and

(3) Make a final decision on any matter within the Commission's regulatory authority even though another agency has made a predecisional referral of an NRC action to the Council under the procedures of 40 CFR Part 1504.

The scope of Subpart A is further limited by § 51.10(c), which states that Subpart A does not address any limitations on NRC's authority and responsibility pursuant to NEPA imposed by the Federal Water Pollution Control Act Amendments of 1972. Except for needed editorial revisions, § 51.10(c) parallels § 51.1(c) of the Commission's present regulations. In addition, Commission actions initiating or relating to administrative or judicial civil or criminal enforcement actions or proceedings, which are not considered major Federal actions within the scope of section 102(2) of NEPA,^{2/} are also excluded from the scope of Subpart A (§ 51.10(d)).

The provisions of proposed Subpart A are organized under several broad headings which reflect, in part, the procedural order of the NRC NEPA process. A description of each heading and its associated regulatory provisions is set out in the Statement of Considerations of the proposed rule (see Enclosure A, pp. 8-14).

^{2/} See 40 CFR § 1508.18(a).

Proposed Subpart A - Special Topics

The following features of proposed Subpart A should be noted:

1. Provisions of CEQ NEPA Regulations Not Implemented in Proposed Subpart A

Proposed Subpart A does not implement all the provisions of CEQ's NEPA regulations.

As indicated in the Commission's letter of May 31, 1979 to CEQ, several provisions of the CEQ regulations will require additional study before implementing regulations can be prepared. These provisions of the CEQ regulations, identified below, are not reflected in proposed Subpart A.

§ 1502.14(b) which provides that the environmental impact statement "[d]evote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits."
(Discussed in SECY-79-305, at p. 8).

§ 1502.22(a), which requires an agency to obtain information relevant to adverse impacts which is not known, and which is essential to a reasoned choice among alternatives if the overall costs are not exorbitant.
(Discussed in SECY-79-305 at p. 9.)

§ 1502.22(b), which requires an agency to perform a "worst case analysis" and indicate the probability or improbability of its occurrence whenever the agency is unable to obtain information relevant to adverse impacts important in making a reasoned choice among alternatives and the agency has decided, despite this uncertainty, to proceed with the action.
(Discussed in SECY-79-305 at pp. 9-11)

§ 1508.18, which includes within the definition of major Federal action, "the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action."
(Discussed in SECY-79-305 at pp. 11-12.)

Proposed Subpart A does not include implementing procedures for proposals for legislation. The accelerated procedures contained in CEQ's NEPA regulations (40 CFR §§ 1502.3, 1406.8, 1508.17, 1508.18(a)) seem adequate and do not appear to present any difficulties from the standpoint of the Commission's independent regulatory responsibilities. Since there appears to be no reason not to follow CEQ procedures with respect to legislative proposals, special NRC implementing regulations are not needed.

Consistent with condition 3 in the Commission's letter of May 31, 1979 to CEQ, proposed Subpart A does not include provisions implementing 40 CFR § 1501.5, which enumerates the responsibilities of lead agencies for the preparation of environmental impact statements and authorizes CEQ to designate a lead agency when Federal agencies are unable to agree on which agency should undertake the lead agency role, and § 1508.16, which defines lead agency. (§ 1501.5 is referred to in SECY-79-305 at p. 12.)

Consistent with condition 4. in the Commission's May 31, 1979 letter to CEQ, proposed Subpart A contains no provisions which reflect 40 CFR Part 1504. Part 1504 prescribes procedures for predecision referral to CEQ of Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. (Referred to in SECY-79-305 at p. 12.)

2. Major Decision Points

Section 1505.1(b) of the CEQ regulations directs agencies to ". . . [designate] the major decision points for the agency's principal programs likely to have a significant effect on the human environment and . . . [assure] that the NEPA process corresponds with them." This provision, as written, aptly describes and is most readily applicable to the activities of executive branch departments and agencies whose principal function is to develop and administer ongoing programs, not to engage in regulatory activities. Because of the basic differences between regulation and the development and administration of substantive programs, Subpart A reflects the intent rather than the letter of § 1505.1(b). Thus, although proposed Subpart A does not contain a section "[d]esignating the major decision points for the agency's principal programs . . .," every effort has been made in drafting Subpart A to structure the NRC NEPA process in such a way that the requisite environmental information will be available in the form prescribed by NEPA at the time NRC decisions on licensing and regulatory actions are being made. In the opinion of the staff, the proposed regulations as drafted are also broad enough to encompass any NRC activities of a programmatic nature undertaken in aid of the Commission's regulatory functions to which NEPA should apply.

3/ "3. NRC reserves the right to prepare an independent environmental impact statement whenever it has jurisdiction over a particular activity even though it has not been designated as lead agency for preparation of the statement."

4/ "4. NRC reserves the right to make a final decision on all matters within its regulatory authority despite the provisions of 40 CFR Part 1504 which provide procedures for predecision referrals to CEQ, should such procedures be employed by another agency with respect to an NRC action."

3. Categorical Exclusions

CEQ's NEPA regulations contain procedures for excluding categories of actions which do not individually or cumulatively have a significant effect on the human environment from the environmental review process.^{5/} These procedures are included in § 51.22 of proposed Subpart A. Section 51.22(a) describes what steps must be taken to designate a category of actions as a categorical exclusion. First, the Commission must make a formal finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Second, the Commission must establish the category by rule or regulation. Section 51.22(b) describes the function of the categorical exclusion, namely to exclude certain types of actions from the environmental review process. Section 51.22(c) lists specific categories of actions^{6/} which the Commission, after making the requisite findings, would propose to establish in the rule as categorical exclusions. Categorical exclusions nos. 8. to 10. were prepared with the assistance of the Office of Nuclear Reactor Regulation, which provided the justifications. Categorical exclusions nos. 11. to 14. were prepared with the assistance of the Office of Nuclear Material Safety and Safeguards, which provided the justifications for those categorical exclusions. A discussion of the reasons for establishing each category and the requisite formal findings are set out in the Statement of Considerations of the proposed rule. (Enclosure A, pp. 17-48.)

Some of the items included in Category 14, for example (xiii) - Research and development licenses involving less than ten curies of radioactive material, and Category 4 -

"Entrance into or amendment of an agreement with a State pursuant to section 274 of the Atomic Energy Act of 1954, as amended, providing for assumption by the State and discontinuance by the Commission of certain regulatory authority of the Commission,"

are likely to elicit controversial comment.

Under the proposed regulations, all Commission actions, except actions totally excluded from Subpart A (e.g., actions relating to exports and enforcement actions) and actions falling within classes of actions designated as categorical exclusions, will be subject to the NRC NEPA review process. After proposed Subpart A becomes effective, 10 CFR

^{5/} 40 CFR §§ 1500.4(p), 1500.5(k), 1501.4(a), 1507.3(b), and 1508.4.

^{6/} These categories of actions appear at § 51.22(c) of the proposed regulations. See Enclosure A at pp. 75-78.

§ 51.5(d)(4)^{7/} can no longer be used to exclude from NEPA review NRC actions relating to the issuance of numerous materials licenses, amendments and renewals, as well as other minor actions. If the majority of these actions previously excluded by § 51.5(d)(4) are not exempted through the proposed categorical exclusions, the impact on licensing actions by NMSS would be severe. The primary impact would be in the area of materials licensing where some 7,000 licensing actions per year (new licenses, amendments and renewals) would be subject to the preparation^{8/} of environmental assessments. Preliminary estimates of the approximate cost^{8/} to perform these environmental assessments are as follows:

Man-years per year	
Materials Licensing	50
Transportation Licensing	1
Fuel Cycle Licensing	4
Safeguards Licensing	1

To obtain relief from the prospective burden of preparing environmental assessments for these actions, appropriate categorical exclusions have been proposed.

4. Time Schedules

Section 1501.8 of CEQ's NEPA regulations encourages Federal agencies to set overall time limits or limits for each constituent part of the NEPA process. Federal agencies are required by 40 CFR § 1501.8(a) to set time limits whenever an applicant or petitioner requests them.

Time schedules are addressed in section 51.15 of proposed Subpart A. Section 51.15(a) authorizes the appropriate NRC staff director or his designee to establish time schedules for all or any constituent part of the NRC staff NEPA process and provides that the NRC staff will conduct its NEPA review, to the maximum extent practicable, in accordance with any time schedule so established. Whenever the NRC staff is unable to meet a time schedule established at an applicant's or petitioner's request, the applicant or petitioner will be informed in writing of the reason for the delay.

^{7/} 10 CFR § 51.5(d)(4) states: "(d) Unless otherwise determined by the Commission, an environmental impact statement, negative declaration, or environmental impact appraisal need not be prepared in connection with the following types of actions: ... (4) Issuance of a materials license or amendment to or renewal of a materials or facility license or permit or order other than those covered by paragraphs (a) and (b) of this section."

^{8/} Cost expressed in man-years per year at current (1979) rate of licensing activity.

Section 51.15(b) provides that any time schedules applicable to actions of Atomic Safety and Licensing Boards, Atomic Safety and Licensing Appeal Boards or the Commissioners acting as a collegial body will be established by the Boards and the Commission, respectively, in accordance with procedures in 10 CFR Part 2, Subpart G of the Commission's Rules of Practice.

5. Additional Types of Actions Requiring Environmental Impact Statements

Section 51.20(b) of proposed Subpart A adds several specific types of actions to the present list^{9/} of those for which environmental impact statements are required. These actions include:

Issuance of licenses pursuant to Parts 30 and 70 authorizing the receipt and possession for purpose of storage of spent commercial reactor fuel at a site not occupied by a nuclear power reactor;

Issuance of an authorization to construct a repository for the storage or disposal of high-level radioactive waste;

Issuance of a license to receive and possess high-level radioactive waste in a repository for the purpose of storage or disposal; and

Amendment of a license to authorize decommissioning of a repository which has been used for the storage or disposal of high-level radioactive waste.

6. Additional Types of Actions Requiring Environmental Assessments

Section 51.21(b) of proposed Subpart A broadens the present list^{10/} of types of actions requiring environmental assessments. Types of actions added include:

Issuance of a license pursuant to Parts 30 and 70 authorizing the receipt and possession for purpose of storage of spent commercial reactor fuel at an installation on the site of but separate from a nuclear power reactor.

Issuance of license amendments to authorize backfilling of a repository which has been used for the storage or disposal of high-level radioactive waste.

^{9/} Sec. 51.5(a)(1) - (10) of the Commission's present regulations.

^{10/} Sec. 51.5(b)(1) - (8) of the Commission's present regulations.

Issuance of amendments to or renewals of licenses that would authorize or result in a significant expansion of a site, a significant increase in occupational exposures, a significant increase in the potential for accidental releases, or a significant increase in spent fuel storage capacity, including amendments to or renewals of licenses authorizing the receipt and possession for purpose of storage of spent commercial reactor fuel both on and off the site occupied by a nuclear power reactor, and amendments to or renewals of licenses authorizing the receipt and possession of high-level radioactive waste in a repository for the purpose of storage or disposal.

Issuance of licenses pursuant to Parts 30, 40, or 70 for nuclear laundries, to authorize processing of byproduct, source, or special nuclear materials for distribution to other licensees, to authorize processing of source material for extraction of rare earth and other metals (except that uranium milling is treated separately), or for testing of depleted uranium military munitions.

Instead of environmental impact statements, environmental assessments are now required for amendments of Parts 30, 40, or 70 of this chapter concerning the exemption from licensing and regulatory requirements of any equipment, device, commodity, or other product containing byproduct material, source material, or special nuclear material. (See 10 CFR § 51.5(a)(9).) Environmental assessments are also required for similar amendments establishing general licenses.

7. Scoping

When the Council on Environmental Quality published its effective NEPA regulations, it stated that:

"The concept of scoping was one of the innovations in the proposed regulations most uniformly praised by members of the public ranging from business to environmentalists." (43 FR 55982, Daily Ed., November 29, 1978.)

Sections 51.26, 51.28 and 51.29 of proposed Subpart A implement the scoping concept. The proposed regulations track the parallel provisions of CEQ's NEPA regulations,^{11/} except in the following respects:

Section 51.29(b) provides that participation in a scoping process does not, by itself, entitle the participant to become a party to the proceeding as provided in 10 CFR § 2.714, to make a limited appearance in a proceeding as provided in 10 CFR § 2.715, or to participate in a rulemaking proceeding as provided in the notice of hearing.

11/ See, e.g., 40 CFR §§ 1501.7, 1501.4(d), see also § 1508.22(b).

§ 51.28(b) directs the appropriate NRC staff director or his designee, at the conclusion of a scoping process, to prepare a concise summary of the determinations and conclusions reached, including the significant issues identified, and to send a copy of the summary to each participant in the scoping process.

8. Public Hearings; Record of Decision; Final Finding of No Significant Impact

To accommodate the requirements of NRC's regulatory process which include adjudicatory proceedings with public hearings before an Atomic Safety and Licensing Board, with subsequent administrative review by an Atomic Safety and Licensing Appeal Board or by the Commission, proposed Subpart A provides (§ 51.102(c)) that if an action is subject to a hearing under the regulations in Subpart G of 10 CFR Part 2, or if the action can only be taken by the Commissioners acting as a collegial body, the appropriate NRC staff director or his designee will prepare a proposed record of decision. The proposed record of decision may be modified as a result of Commission review and decision as appropriate to the nature and scope of the proceeding, and will be issued as the record of decision by the presiding officer, the Atomic Safety and Licensing Appeal Board, or the Commissioners acting as a collegial body, as appropriate. Thus, under the proposed regulations, adjudicatory decisions that differ from the NRC staff impact statement will no longer be regarded as amendments to the staff statement, but rather will be regarded as changes to the proposed record of decision.

Parallel procedures (§ 51.34(b)) are provided for the preparation and issuance of a final finding of no significant impact when the action is subject to a hearing under the regulations in Subpart G of 10 CFR Part 2, or can only be taken by the Commissioners acting as a collegial body.

9. Appendix A - Format for Presentation of Material in Environmental Impact Statements

Appendix A of proposed Subpart A describes the format which the Commission will use in preparing environmental impact statements. Except for item (a)(7) - Environmental Consequences and Mitigating Actions, the topic headings listed in section 1 are the same as those listed in CEQ's NEPA regulations (see 40 CFR § 1502.10.) Sections 2.-9. describe the type of information to be supplied in connection with specific topics (those identified by an asterisk in section 1.) with a view to eliminating duplication in the presentation of information and discussion of issues.

10. Promulgation of Revised Part 51; Effective Date

Consistent with the procedures outlined by CEQ and with the Commission's customary practice, the proposed revision of Part 51 will be published for public comment. After expiration of the comment period (60 days) and review

and analysis of any comments, the proposed revision of Part 51, with any modifications that may be necessary, will be submitted to the Commission for consideration and promulgation as a final rule. Until a final rule is adopted, the Commission's present regulations will remain in effect.

CEQ is insistent that agency procedures implementing NEPA not be issued in final form without public review and comment and without prior review by the Council for conformity with NEPA and CEQ's regulations (40 CFR § 1507.3(a).) CEQ is also on record as opposing issuance of "interim effective" or "final" regulations prior to public review and comment.^{12/} CEQ is equally insistent that agencies have final regulations in effect by July 30, 1979, the effective date of CEQ's NEPA regulations. In addition, CEQ has stated that on July 30, 1979, CEQ's NEPA regulations are binding throughout the Federal government regardless of whether individual agencies have adopted implementing procedures.

Despite best efforts, it has not been possible to develop the proposed revision of Part 51 and complete the rulemaking process in time to have final regulations in place by July 30, 1979. On July 16, 1979, the Commission was so advised. The delay is not unique to NRC. Other Federal agencies appear to be experiencing similar difficulties.^{13/}

12/ Excerpt from Memorandum For NEPA Liaisons, "Deadline for Adoption of Agency Implementing Procedures, June 13, 1979. ". . . Some agencies which have fallen behind this schedule have suggested that they could meet the July 30 deadline by issuing proposed procedures that would become effective on an 'interim' basis on July 30. Other agencies have suggested issuing final procedures by July 30 (without public review) that would be subject to revision following public review and comment after July 30.

"These suggestions are unacceptable to the Council. It is the Council's view that agency procedures published as 'interim' or 'final,' without the benefit of public review and comment and formal Council review, would violate the requirements of Section 1507.3(a). The Council seriously doubts whether such 'interim' agency procedures will have legal effect. We therefore strongly urge agencies not to use that approach but instead make every effort to submit their draft procedures for public review and comment (as well as CEQ review) before final issuance by July 30th. The regulations were issued to provide a uniform approach to NEPA compliance for the entire government, to eliminate inconsistent agency practices under the statute, and to improve coordination among Federal agencies involved in the environmental review process. To ensure that these goals are met without unnecessary litigation, it is essential that all Federal agencies comply with the July 30 deadline and adopt, after public review and consultation with CEQ, implementing procedures which become finally effective by that date"

13/ See CEQ's "Second Progress Report on Agency Implementing Procedures Under the National Environmental Policy Act," 44 FR 43037-43038, July 23, 1979, attached as Enclosure B.

The simplest approach would be to follow the Commission's well-established rulemaking procedures which rest on the premise that existing regulations remain in effect until formally amended. This procedure is consistent with the Commission's undertaking to develop regulations to take account of CEQ's NEPA regulations voluntarily.^{14/}

This simple approach will create some litigative risk, since the issue of NRC compliance with CEQ NEPA regulations may arise with regard to NRC actions occurring between July 30, 1979 and the date NRC's final regulations go into effect. Another solution--making the proposed regulations effective now on an interim basis--would also conflict with CEQ's instructions and thereby give rise to a series of complicated questions regarding the expected impact of CEQ regulations on NRC that will cause confusion and delay. On balance, the staff prefers the first, simplest approach since it seems to have the least drawbacks.

Designation of person to be responsible for overall
review of NRC NEPA compliance

Section 1507.2(a) of CEQ's NEPA regulations states in part:

"Agencies shall designate a person to be responsible for overall review of agency NEPA compliance."

There are several possible ways in which this directive might be implemented. Since the review function is agency-wide, assignment of the function to a Commission office with agency-wide authority would seem most appropriate. Some possibilities include:

At the Commission level:

Office of Policy Evaluation
Office of the General Counsel

^{14/} One specific exception should be noted. Section 1506.12(a) of CEQ's NEPA regulations provides that:

"These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date [July 30, 1979] of these [CEQ's] regulations . . ." This provision is reflected in section 51.12(c) of proposed Subpart A. Since Section 51.12(c) only applies to environmental impact statements and other environmental documents prepared by the Commission, the July 30, 1979 date set by CEQ has been retained.

At the Staff level:

Executive Director for Operations

Commission guidance and instructions are requested.

Recommendation:

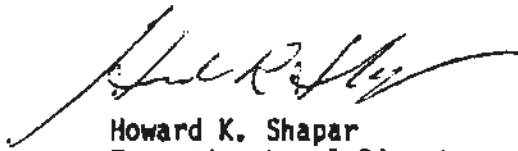
That the Commission:

1. Approve for publication in proposed form revised 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions" and related conforming amendments.
2. Note that the proposed revision of Part 51 would be published in the Federal Register for a comment period of 60 days.
3. Note that General Accounting Office clearance of the reporting requirements will be obtained prior to the effective date of the final rule.
4. Note that review of the proposed revision of Part 51 by the Council on Environmental Quality will be obtained prior to the effective date of the final rule.
5. Note that the appropriate Congressional Committees will be informed.
6. Note that a public announcement of this action will be issued.

Cost Estimate: As stated in SECY-79-305, revision of 10 CFR Part 51 is not the only task that must be undertaken to implement CEQ's NEPA regulations. Regulatory guides, environmental standard review plans and office procedures will need review and revision. NRC resources and personnel will have to be reevaluated to determine the availability of needed environmental expertise, and the person responsible for overall review of agency NEPA compliance will have to be designated. In anticipation of this work, NRC staff offices were again asked to review the preliminary cost estimate included in SECY-79-305

at p. 22.^{15/} The advice received indicates that it is not possible to prepare a more definitive cost estimate at this time, except for the approximations given on page 7. by NMSS if environmental assessments are required for the identified licensing actions.

Coordination: The Offices of Standards Development, Nuclear Material Safety and Safeguards, Nuclear Reactor Regulation, Nuclear Regulatory Research, and State Programs concur.



Howard K. Shapar
Executive Legal Director

Enclosures:

- A. Notice of Proposed Rule Making
- B. CEQ's "Second Progress Report on Agency Implementing Procedures Under the National Environmental Policy Act," 44 FR 43037-43038, July 23, 1979

^{15/} "Cost Estimate: According to preliminary estimates, the approximate cost of actions required to initiate implementation of CEQ's NEPA regulations, including, among others, revision of 10 CFR Part 51, development of a revised format for environmental impact statements, development of procedures for early scoping of environmental issues, initiating revision of NRC's present Environmental Standard Review Plans (ESRPs), is expected to be about 12 man-years. This estimate of "start-up" costs does not include costs of routine implementation of CEQ NEPA regulations over an extended period. It would be premature to develop estimates of the latter costs at this time." SECY-79-305, at p. 22.

ENCLOSURE "A"

NUCLEAR REGULATORY COMMISSION
[10 CFR Part 51]
[10 CFR Parts 2, 30, 40, 50 and 70]
ENVIRONMENTAL PROTECTION REGULATIONS FOR
DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS
AND
RELATED CONFORMING AMENDMENTS

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering revising Part 51 of its regulations to implement section 102(2) of the National Environmental Policy Act of 1969, as amended, (NEPA) in a manner which is consistent with the NRC's domestic licensing and related regulatory authority and which reflects the Commission's policy to take account voluntarily, subject to certain conditions, of the regulations of the Council on Environmental Quality implementing the procedural provisions of NEPA.

DATES: Comment period expires (date inserted will be 60 days after date notice of proposed rule making is published in the FEDERAL REGISTER).

ADDRESSES: All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed rule should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Oocketing and Service Branch.

Copies of all comments received may be examined in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On July 18, 1974 (39 FR 26279), the Atomic Energy Commission, the Nuclear Regulatory Commission's predecessor agency, published a new Part 51 in order to consolidate Commission policy and procedure for implementing section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA), in one place in the Commission's regulations. Part 51, which became effective August 19, 1974, was also intended to implement revised Guidelines of the Council on Environmental Quality which were published in the Federal Register on August 1, 1973 (38 FR 20550-20562) and pertained to preparation of environmental impact statements under NEPA. When the Nuclear Regulatory Commission was established on January 19, 1975, it retained 10 CFR Part 51 as part of its regulations.

On May 24, 1977, the President issued Executive Order 11991 (42 FR 26957-26958, May 25, 1977) which directed the Council on Environmental Quality (CEQ) to issue regulations to the Federal agencies to implement all the procedural provisions of NEPA. In this same Executive Order, the

President also directed Federal agencies to comply with regulations issued by CEQ "except where such compliance would be inconsistent with statutory requirements."

In response to the President's directive, and after an extensive period of study, consultation and review which included public hearings, issuance of draft regulations and a two month period for public review and comment, the Council on Environmental Quality published final regulations implementing the procedural provisions of NEPA and announced that these regulations would become effective July 30, 1979 (43 FR 55978-56007, November 29, 1978.) The regulations stated that the Council's current guidelines, as published in the FEDERAL REGISTER on August 1, 1973, would remain in effect until that date.

Following publication November 29, 1978, CEQ's NEPA regulations were closely studied by NRC staff. On May 1, 1979, NRC staff submitted a paper to the Commission (SECY-79-305) informing the Commission of the results of the staff's analysis of CEQ's NEPA regulations and requesting guidance. In response, the Commission prepared a letter for the signature of the Chairman which was sent to the Chairman of the Council on Environmental Quality on May 31, 1979 expressing the Commission's view "that a sound accommodation can be reached between NRC's independent regulatory responsibilities and CEQ's objective of establishing uniform NEPA procedures" and stating that

"the Commission would undertake to develop regulations to take account of CEQ's NEPA regulations voluntarily," subject to the following conditions:

"1. The Commission reserves the right to examine future interpretations or changes to the regulations on a case-by-case basis.

"2. The effect of some specific provisions of CEQ's NEPA regulations (e.g., 1502.14(b), 1502.22(b) and 1508.18) on the Commission's regulatory activities is unclear. [See SECY-79-305, available in the Commission's Public Document Room.] The Commission will devote additional study to these matters before developing implementing regulations.

"3. NRC reserves the right to prepare an independent environmental impact statement whenever it has jurisdiction over a particular activity even though it has not been designated as lead agency for preparation of the statement.

"4. NRC reserves the right to make a final decision on all matters within its regulatory authority despite the provisions of 40 CFR Part 1504 which provide procedures for predecision referrals to CEQ, should such procedures be employed by another agency with respect to an NRC action."

In the paper to the Commission (SECY-79-305 at p. 12), NRC staff also identified several specific provisions of the CEQ NEPA regulations (see

SECY-79-305, Enclosure D) which could present problems if NRC were not allowed flexibility in implementing them. In that paper, the NRC staff informed the Commission that CEQ had been consulted informally about these provisions and that based on CEQ's response to the NRC staff's concerns, it did not appear that implementation of these provisions would be difficult.

In the opinion of the Commission, the proposed revision of 10 CFR Part 51 published today for public comment provides a reasonable and sound accommodation between NRC's independent regulatory responsibilities and CEQ's objective of establishing uniform NEPA procedures. It also reflects a recognition of the Commission's role (in its licensing capacity as opposed to its enforcement capacity) as a licensing body whose principal function is to approve or disapprove, not to initiate, a proposal. After expiration of the comment period and review and analysis of any comments submitted, the Commission will decide whether to adopt the proposed revision of Part 51, with any modifications that may be necessary, as a final rule. Until a final rule is adopted, the Commission's present regulations will remain in effect.

The proposed revision would restructure 10 CFR Part 51 into several subparts. Proposed regulations implementing section 102(2) of NEPA are set out in Subpart A. It is the Commission's plan to add subparts as necessary to incorporate any additional regulations which may be required to implement provisions of other environmental laws.

Environmental protection regulations contained in proposed Part 51 only apply to the NRC's domestic licensing and related regulatory functions. The proposed regulations do not apply to export licensing matters within the scope of 10 CFR Part 110. (The proposed regulations do cover imports of nuclear equipment and materials.) Nor do the proposed regulations apply to any environmental effects which NRC's licensing and related regulatory functions may have upon the environment of foreign nations or the global commons. (The global commons comprises areas outside the jurisdiction of any nation, e.g., the oceans or Antarctica.^{1/}) This approach is consistent with that taken by the Council on Environmental Quality in the preamble to its effective NEPA regulations, namely that it was not the purpose of those regulations to resolve the question of whether NEPA applies abroad.^{2/}

In addition to these limitations, the regulations in proposed Subpart A also state that Commission actions initiating or relating to administrative or judicial civil or criminal enforcement actions or proceedings are not subject to section 102(2) of NEPA (§ 51.10(d)) and that Subpart A does not address any limitations on the NRC's authority and responsibility pursuant to NEPA imposed by the Federal Water Pollution Control Act Amendments of 1972 (§ 51.10(c)).

^{1/} Executive Order 12114, January 5, 1979, on "Environmental Effects Abroad of Major Federal Actions," Section 2-3(a).

^{2/} 43 FR 55978 at 55989, November 29, 1978. "Comments on the application of NEPA abroad. Several commenters urged that the question of whether NEPA applies abroad be resolved by these regulations. However, the President has publicly announced his intention to address this issue in an Executive Order. The Executive Order, when issued, will represent the position of the Administration on that issue." See footnote 1.

Section 51.10(b) of proposed Subpart A describes the Commission's policy with respect to a particular matter of NEPA implementation not addressed by the regulations in proposed Subpart A. In accordance with that policy, the Commission will follow the regulations of the Council on Environmental Quality as published by the Council on November 29, 1978 (43 FR 55978-56007), except that the Commission will devote further study to 40 CFR § 1502.14(b), § 1502.22(a) and (b), and the portion of § 1508.18 which includes within the definition of major Federal action "the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action." before deciding to what extent these provisions may or should mandate a change in present Commission policy. The Commission will also:

- (1) Examine any future interpretation or change to the Council's NEPA regulations;
- (2) Prepare an independent environmental impact statement whenever the Commission has jurisdiction over an activity, even though the Commission has not been designated as lead agency for preparation of the statement, and
- (3) Make a final decision on any matter within the Commission's regulatory authority even though another agency has made a predecisional referral of an NRC action to the Council under the procedures of 40 CFR Part 1504.

Unlike the present text of 10 CFR Part 51, which contains procedures implementing the provisions of section 102(2)(C) of NEPA relating to the preparation and use of environmental impact statements, proposed Subpart A contains procedures implementing all the provisions of section 102(2) of NEPA. In preparing the proposed revision of 10 CFR Part 51, the Commission has been mindful of, and has attempted to reflect in these proposed regulations, the fact that in exercising its licensing functions, the Commission is limited to approval or denial of applications. Except for its power to condition its approval of the proposed action, the Commission lacks authority to require other alternatives to that action to be pursued.

The provisions of proposed Subpart A are organized under several broad headings which reflect, in part, the procedural order of the NRC NEPA process. (In order to provide room for possible future expansion, certain section numbers have been intentionally omitted.)

Sections grouped under the heading "Preliminary Procedures" (§§ 51.20-51.35) include those identifying types of actions requiring environmental impact statements or environmental assessments or excluded from the NEPA process as categorical exclusions (§§ 51.20, 51.21 and 51.22). The requisite findings supporting the categorical exclusions listed in § 51.22(c) of the proposed rule are set out in the statement of considerations under the heading "Categorical Exclusions."

When proposed Subpart A becomes effective, all Commission actions, except actions totally excluded from Subpart A, and actions falling within classes of actions designated as categorical exclusions, will be subject to the NRC NEPA review process. As a consequence, many actions which were previously excluded from NEPA review (specifically those actions described in 10 CFR § 51.5(d)(4) of the Commission's present regulations)^{3/} will require environmental assessments. To limit the preparation of environmental assessments to those types of actions for which they are really needed, additional categorical exclusions might be established. Comments and suggestions on this matter are invited.

Also included under "Preliminary Procedures" are sections directing the NRC staff to determine what NEPA procedures are applicable to a particular proposed action, to publish a notice of intent and conduct a scoping process whenever the staff plans to prepare an environmental impact statement, and to publish any finding of no significant impact. Section 51.33 contains procedures which will enable the staff in difficult cases to prepare and obtain comments on a draft finding of no significant impact before deciding

^{3/} 10 CFR § 51.5(d)(4) states: "(d) Unless otherwise determined by the Commission, an environmental impact statement, negative declaration, or environmental impact appraisal need not be prepared in connection with the following types of actions: ... (4) Issuance of a materials license or amendment to or renewal of a materials or facility license or permit or order other than those covered by paragraphs (a) and (b) of this section."

whether to issue a final finding of no significant impact or to prepare an environmental impact statement.

Section 51.28, which describes the scoping process, directs the appropriate NRC staff director or his designee to prepare a concise summary of the determinations and conclusions reached and significant issues identified and to furnish copies of the summary to each participant. Section 51.28 also authorizes the appropriate NRC staff director or his designee at any time prior to issuance of the draft environmental impact statement to revise the determinations made in the scoping summary as appropriate, if substantial changes are made in the proposed action, or if significant new circumstances or information arise which bear on the proposed action or its impacts.

The provisions in Subpart A which describe how applicants and petitioners shall participate in the NRC NEPA process (§§ 51.40-51.66) are grouped together under the general heading "Environmental Reports and Information - Requirements Applicable to Applicants and Petitioners." General requirements applicable to all applicants and petitioners (§§ 51.40, 51.41 and 51.45) are followed by specific provisions which apply respectively to applicants seeking licenses for production or utilization facilities (§§ 51.50-51.55), applicants seeking materials licenses (§§ 51.60-51.61), and petitioners for rule making (§§ 51.65-51.66).

Provisions relating to the preparation and distribution of draft and final environmental impact statements and any supplements to those statements and provisions governing requests for comments on draft environmental impact statements and on supplements to both draft and final environmental impact statements (§§ 51.70-51.99) appear under the general heading "Environmental Impact Statements." Following the pattern established in the sections relating to environmental reports, general requirements applicable to all types of environmental impact statements (§§ 51.70-51.74, and §§ 51.90-51.94) precede additional specific requirements applicable respectively to statements prepared in connection with production and utilization facilities (§§ 51.75, 51.76, 51.77 and 51.95), materials licenses (§§ 51.80, 51.81 and 51.97), and rule making (§§ 51.85, 51.86 and 51.99).

The primary purpose of the NEPA process is to make environmental information available to public officials and citizens before decisions are made and actions taken. The process is intended to help public officials make decisions that are based on an understanding of environmental consequences and take actions that will protect, restore and enhance the environment. To achieve these goals CEQ's NEPA regulations contain provisions limiting agency actions. For example, under 40 CFR § 1506.10, a Federal agency may neither make nor record a decision on a proposed action requiring an environmental impact statement until the later of the following dates--90 days after publication of a notice of availability of a draft environmental impact statement or 30 days after publication of a notice of availability

of a final environmental impact statement. 40 CFR § 1506.1(a) prohibits a Federal agency, which has made a decision in connection with a proposed action for which an environmental impact statement is required, from acting on that decision until after a formal record of decision (see 40 CFR § 1505.2) has been issued. Proposed Subpart A contains parallel provisions (§§ 51.100, 51.101, 51.102) under the heading "NEPA Procedure and Administrative Action."

Subject to a modest exception^{4/} applicable only to rule making proceedings initiated for the purpose of protecting the public health and safety or the common defense and security, § 51.100 prohibits the Commission from making and recording a decision on any action for which an environmental impact statement is required until 90 days after publication of a notice of availability of a draft environmental impact statement or 30 days after publication of a notice of availability of a final environmental impact statement, whichever is later.

Section 51.101 prohibits the Commission from taking any action which might have an adverse environmental impact or limit the choice of reasonable alternatives concerning a proposed licensing or regulatory action for which either an environmental impact statement or an environmental assessment is required, until after a record of decision or a final finding of no significant impact has been issued. Section 51.101 also provides that similar

^{4/} Under this exception, the Commission may make and publish a decision on a final rule at the same time that the Environmental Protection Agency publishes the FEDERAL REGISTER notice of filing of the final environmental impact statement (§ 51.100(b)).

actions taken by applicants and petitioners in those circumstances may be grounds for the denial of a license or petition. In the case of certain types of licensing actions,^{5/} section 51.101 provides that the prohibitions against commencement of construction in 10 CFR §§ 30.33(a)(5), 40.32(e), 50.10(c), and 70.23(a)(7), will be used as benchmarks to determine whether particular actions by applicants or petitioners will, in fact, have an adverse environmental impact or limit the choice of reasonable alternatives.

Section 51.101(c) removes certain limited types of actions from the reach of these restrictions. Applicants for NRC licenses, permits, or other forms of permission may continue developing plans or designs necessary to support their applications. Subject to prior notice and consultation with the NRC staff, applicants may also continue to perform physical work necessary to support their applications or continue to perform any other physical work relating to the proposed action if the latter work has a de minimis adverse environmental impact.

Section 51.102 requires that a record of decision be prepared and specifies the NRC officials responsible for carrying out the task.

To accommodate the requirements of NRC's regulatory process, § 51.102 also provides that if an action is subject to a hearing under the regulations in Subpart G of 10 CFR Part 2, or if the action can only be taken by

^{5/} The types of licensing actions described in 10 CFR §§ 30.32(f), 40.31(f), 50.10(c) and 70.21(f).

the Commissioners acting as a collegial body, the appropriate NRC staff director or his designee will prepare a proposed record of decision. The proposed record of decision may be modified as a result of Commission review and decision as appropriate to the nature and scope of the proceeding and will be issued as the record of decision by the presiding officer, the Atomic Safety and Licensing Appeal Board, or the Commissioners acting as a collegial body, as appropriate. Section 51.34 provides parallel procedures for the preparation and issuance of a final finding of no significant impact in similar circumstances.

Procedures governing the consideration of environmental impact statements in public hearings are also included under the heading "NEPA Procedure and Administrative Action" (§ 51.104 - general procedures; § 51.105 - procedures applicable in public hearings in proceedings for issuance of construction permits or licenses to manufacture production or utilization facilities).

Proposed requirements relating to availability and public notice of environmental documents are set out under the heading "Public Notice of and Access to Environmental Documents" (§§ 51.116-51.123). Proposed Appendix A provides a format for environmental impact statements. Designed to eliminate duplication in the presentation of information and discussion of issues, the proposed format parallels that set out in 40 CFR § 1502.10 of CEQ's NEPA regulations.

Proposed Subpart A does not implement all the provisions of CEQ's regulations. As indicated in the Commission's letter of May 31, 1979 to CEQ, several provisions of the CEQ regulations will require additional study before the Commission can prepare implementing regulations. A brief summary of these provisions and their relationship to the Commission's present regulatory practices follows. Comments and suggestions on these matters are invited.

1. 40 CFR § 1502.14(b) provides that the environmental impact statement "[d]evote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits." The rationale for the Commission's policy on consideration of alternative sites, to cite one example, proceeds from the premise that major adverse environmental impacts can normally be identified using reconnaissance-level information.^{6/} The added costs of requiring detailed site-specific investigations and analyses on all candidate sites normally would not be justified by the resultant marginal improvement in environmental protection.

^{6/} Reconnaissance-level information is any information or analyses that can be retrieved or generated without the performance of new, comprehensive site-specific investigations. Reconnaissance-level information includes relevant scientific literature, reports of government or private research agencies, consultation with experts, short-term field investigations, and analyses performed using such information. The amount of reconnaissance-level information required and the extent of analyses should be matched to (1) the importance and magnitude of the potential impact and (2) whether the decision is one of identifying a region of interest, identifying candidate sites, or selecting a proposed site.

2. 40 CFR § 1502.22(a) requires an agency to obtain information relevant to adverse environmental impacts which is not known and which is essential to a reasoned choice among alternatives if the over-all costs are not exorbitant. This provision could have a significant impact in those circumstances where extensive information has been developed with respect to one alternative and information regarding other alternatives has not yet been developed. This provision could impact any NRC decision in this circumstance where the costs (in terms of both information-gathering costs and project delay costs) of obtaining the information needed for a reasoned choice among alternatives are large but fall short of being exorbitant.

3. 40 CFR § 1502.22(b) requires an agency to perform a "worst case analysis" and indicate the probability or improbability of its occurrence whenever the agency is unable to obtain information relevant to adverse impacts important in making a reasoned choice among alternatives and the agency has decided, despite this uncertainty, to proceed with the action. This requirement could have a substantial impact on the length of time and resources required to complete NRC licensing reviews. The provision would also make it necessary to perform worst case analyses for both radiological and non-radiological impacts in situations where such analyses are not normally conducted. One example would be a situation involving the evaluation of reactor aquatic impacts where a case can be made for extensive long-term time-dependent studies.

Section 1502.22(b) could also have a substantial impact on NRC's regulatory activities if interpreted to require in-depth analysis of the consequences of a "worst case" accident in addition to an analysis of the likelihood that such an accident would occur. Under NRC's current risk analysis practices, the consequences of accidents whose likelihood of occurrence is remote are not given detailed consideration except in unusual cases.

4. 40 CFR § 1508.18 includes within the definition of major Federal action, "the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action." It is unclear whether this provision would require NRC staff to prepare environmental impact statements for such actions as denials of petitions (e.g., petitions for rulemaking under 10 CFR § 2.802) which claim significant on-going environmental harm. It is equally unclear whether preparation of an environmental assessment would be required when the denial of a petition is based on a finding that there are no significant on-going adverse environmental effects. Under present NRC practice, it is not customary to prepare environmental assessments in connection with denials of petitions.

Categorical Exclusions

Section 51.22 sets out the procedures to be followed to establish categorical exclusions (§ 51.22(a)), describes the function of the categorical

exclusion to exclude certain types of actions from environmental review requirements (§ 51.22(b)) and lists those categories of actions which the Commission has declared to be categorical exclusions (§ 51.22(c)). Section 51.22(b) also provides that in special circumstances the Commission may prepare an environmental impact statement or an environmental assessment on an action covered by a categorical exclusion.

The Commission has identified fifteen categories of actions which meet the requirement for a categorical exclusion. A description of each of these categories, with the requisite finding, follows:

Category of Actions

1. Amendments to Parts 1, 2, 4, 7, 8, 9, 10, 14, 19, 21, 55, 140, 150 or 170 of this chapter.

Discussion and Finding

Except for Part 8, Interpretations, the regulations in the following parts relate to matters of Commission organization, administration and procedure.

Part 1 - Statement of Organization and General Information

Part 2 - Rules of Practice for Domestic Licensing Proceedings

Part 4 - Nondiscrimination in Federally Assisted Commission Programs

- Part 7 - Advisory Committees
- Part 8 - Interpretations
- Part 9 - Public Records
- Part 10 - Criteria and Procedures for Determining Eligibility for Access
to Restricted Data or National Security Information
- Part 14 - Administrative Claims under Federal Tort Claims Act
- Part 140 - Financial Protection Requirements and Indemnity Agreements
- Part 150 - Exemptions and Continued Regulatory Authority in Agreement
States under Section 274
- Part 170 - Fees for Facilities and Materials Licenses and Other Regulatory
Services under the Atomic Energy Act of 1954, as amended.

The regulations in these parts serve the dual purpose of making needed information readily available to the public and providing procedures for the orderly conduct of Commission business. These regulations in and of themselves will not affect the volume of that business.

In some instances, the regulations implement Federal laws which prescribe specific procedures for the conduct of government business. These laws include the Administrative Procedure Act (5 U.S.C. § 551 et seq.), the Freedom of Information Act (5 U.S.C. § 552), the Privacy Act of 1974 (Pub. L. 93-579), the Government in the Sunshine Act (5 U.S.C. § 552b), and the Federal Advisory Committee Act (86 Stat. 770).

In some instances, application of the regulations will have economic or social consequences. Examples include: Part 140 which contains regulations implementing the provisions of the Price-Anderson Act relating to financial protection and indemnity agreements; Part 170 which prescribes the schedule of Commission fees; and Part 4 which contains regulations on nondiscrimination which implement the provisions of Title VI of the Civil Rights Act of 1964 and Title IV of the Energy Reorganization Act of 1974.

Formal interpretations of the Commission's regulations authorized by the Commission and prepared by the General Counsel are codified in Part 8. Although these interpretations may address matters of substance as well as procedure, the issuance of a formal interpretation and its inclusion in Part 8 of the Commission's regulations is an action without environmental effect.

The regulations in the following parts impose requirements on licensees.

- Part 19 - Notices, Instructions, and Reports to Workers; Inspections
- Part 21 - Reporting of Defects and Noncompliance
- Part 55 - Operators' Licenses

The requirements in Parts 19 and 21 relate to such matters as inspections, reports, record-keeping and posting of documents and notices. Part 55 establishes procedures and criteria for the issuance of licenses to operators and senior operators of licensed facilities. These regulations include

procedures for filing and requirements for approval of applications, including requirements relating to written examinations, operating tests, and medical examinations.

Although the regulations in Parts 19, 21 and 55 address matters of substance and have a social and economic effect, they do not have a significant effect on the environment.

Accordingly, for the reasons stated, the Commission finds that amendments to Parts 1, 2, 4, 7, 8, 9, 10, 14, 19, 21, 55, 140, 150, or 170 of its regulations (Category 1) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 1. as a categorical exclusion, and directs that Category 1. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

2. Amendments to the regulations in this chapter which are corrective or of a minor or nonpolicy nature and do not substantially modify existing regulations.

Discussion and Finding

Minor amendments of this type are sometimes needed to update, clarify or eliminate an ambiguity in an existing regulation. Since these amendments

are usually editorial and do not change the substance of an existing regulation they can neither increase nor decrease any environmental impact which the existing regulation may have.

Accordingly, the Commission finds that amendments to its regulations which are corrective or of a minor or nonpolicy nature and do not substantially modify existing regulations (Category 2.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 2. as a categorical exclusion, and directs that Category 2. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

3. Amendments to Parts 20, 30, 31, 32, 33, 34, 35, 40, 50, 51, 70, 71, 73, 81, or 100 of this chapter which relate to (i) procedures for filing and reviewing applications for licenses or construction permits or other forms of permission or for amendments to or renewals of licenses or construction permits or other forms of permission; (ii) recordkeeping requirements; or (iii) reporting requirements.

Discussion and Finding

Although amendments of this type affect substantive parts of the Commission's regulations, the amendments themselves relate solely to matters of

procedure. Requirements to keep records and make reports and regulations providing specific instructions as to where applications should be filed, how they should be signed and executed, the number of copies to be furnished, and the procedural steps which will be followed in connection with their review, do not have an effect on the environment. Like the amendments in Category 1., their function is to facilitate the orderly conduct of Commission business. Accordingly, the Commission finds that amendments of this type (Category 3.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 3. as a categorical exclusion, and directs that Category 3. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

4. Entrance into or amendment of an agreement with a State pursuant to section 274 of the Atomic Energy Act of 1954, as amended, providing for assumption by the State and discontinuance by the Commission of certain regulatory authority of the Commission.

Discussion and Finding

Section 274 of the Atomic Energy Act of 1954, as amended, (42 U.S.C. § 2021(d)) provides a mechanism (a section 274b. Federal-State Agreement) which authorizes the Commission to relinquish and enables individual States

to assume, as they become ready and willing to do so, certain defined areas of regulatory authority over source, byproduct and special nuclear material. In order to make sure that the health and safety of the public will continue to be adequately protected, section 274d. prescribes certain conditions which must be met before an agreement can be entered into.

"d. The Commission shall enter into an agreement under subsection b. of this section with any State if--

"(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

"(2) the Commission finds that the State program is in accordance with the requirements of subsection o.* and in all other respects compatible with the Commission's program for regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement."

* Section 274o., which was added by Public Law 95-604 (92 Stat. 3037), contains certain requirements relating to the licensing and regulation of mill tailings.

These requirements provide assurance that following the transfer of functions under the § 274b. agreement, the State will administer the existing regulatory program in a manner similar to the way in which it was previously administered by the NRC.

The statute essentially preserves the status quo as far as substantive regulatory standards and practices for control of radiation hazards are concerned. Thus the action of entering into a § 274b. agreement should not occasion any substantive change in the regulatory program for radiation hazards. As a further consequence it also follows that there is little or no change in the effect of that program on the human environment. In addition, except for uranium mill tailings, the Commission has no control over specific State licensing and enforcement actions after an agreement becomes effective. In this respect, the action is similar to the distribution of general revenue sharing funds among the States where there is no Federal agency control over subsequent use of such funds by the States. This type of funding assistance is not considered a major Federal action (40 CFR § 1508.18(a).)

In order to implement the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, it will be necessary for the Commission and the twenty-five Agreement States to amend the provisions of the § 274b agreements

now in force. The purpose of these amendments is to bind the States, in accordance with the provisions of the Act, to carry out their responsibilities with respect to the regulation of mill tailings in a manner which will not only provide adequate protection of the public health and safety but which will also protect the environment from hazards associated with those materials. Among other things, the States will be required to prepare detailed environmental analyses before they license activities which result in the production of mill tailings.

Implementation of the amended agreements, as intended by the Congress, will have a significant and beneficial effect upon the environment. To acknowledge this, however, does not change the fact that the formal action of amending an agreement, in and of itself, is not only without any environmental impact, but given the nature of the statutory mandate, which requires that the terms of the agreements conform to the requirements of the Act, is essentially ministerial.

Accordingly, the Commission finds that entrance into or amendment of a Federal-State agreement under section 274b of the Atomic Energy Act of 1954, as amended, (Category 4.) comprises a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 4. as a categorical exclusion and directs that Category 4. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

5. Procurement of general equipment and supplies.

Discussion and Finding

Procurements of general equipment and supplies ensure that NRC personnel are able to efficiently perform their official responsibilities on a day to day basis. Although these procurements have an economic effect, they do not have a significant effect on the environment.

Accordingly, the Commission finds that procurements of general equipment and supplies (Category 5.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 5. as a categorical exclusion, and directs that Category 5. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

6. Procurement of technical assistance, confirmatory research and personal services relating to the safe operation and protection of commercial reactors, other facilities, and materials subject to NRC licensing and regulation.

Discussion and Finding

These actions involve scientific and engineering studies, assessments and analyses in areas relating to the safe operation and protection of commercial reactors, other facilities, and materials subject to regulation, licensing and inspection by the NRC. NRC technical assistance and research activities do not generate basic design data or develop new processes or construction procedures. The actions do not include confirmatory research programs which entail physical construction of plants and facilities.

Although these activities have an economic effect, no significant effect on the environment can be anticipated.

Accordingly, the Commission finds that procurement of technical assistance, confirmatory research and personal services relating to the safe operation and protection of commercial reactors, other facilities, and materials subject to NRC licensing and regulation (Category 6.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 6. as a categorical exclusion, and directs that Category 6. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

7. Personnel actions.

Discussion and Finding

Personnel actions refer to administrative actions affecting NRC employees or potential employees, including labor union activities and the hiring, promotion and separation of personnel. Although these activities have a social and economic effect, they do not have a significant effect on the environment.

Accordingly, the Commission finds that personnel actions (Category 7.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 7. as a categorical exclusion, and directs that Category 7. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

8. Issuance, amendment, or renewal of operators' licenses pursuant to Part 55 of this chapter.

Discussion and Finding

Part 55 of the Commission's regulations prohibits persons from performing the functions of an operator or a senior operator at a licensed facility unless authorized to do so by a license issued by the Commission. Although

issuance or denial of an operator's license may have a significant economic effect on the individual applicant, the action of the Commission in issuing, amending or renewing an operator's license in accordance with the procedures of 10 CFR Part 55 does not have an environmental effect. The environmental impact of the operation of a licensed facility by a licensed operator is fully considered in the environmental impact statement or environmental assessment prepared in connection with the licensing action authorizing operation of the facility. The formal action of certifying an operator does not authorize facility operation.

Accordingly, the Commission finds that issuance, amendment or renewal of operators' licenses pursuant to Part 55 of this chapter (Category 8.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 8. as a categorical exclusion, and directs that Category 8. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

9. Issuance of an amendment to a permit or license for a reactor pursuant to Part 50 of this chapter which changes 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 which changes an inspection or a surveillance requirement, provided that (i) the amendment does not

involve any significant hazards consideration, (ii) there is no change in the types or amounts of any effluents that may be released offsite, and (iii) there is no associated increase in individual or cumulative occupational radiation exposure.

Discussion and Finding

Experience has indicated that amendments in this category either have no environmental impact or have an environmental impact that is insignificant. Changes which relate to the installation or use of a facility component located within a restricted area and which do not involve significant hazards considerations, changes in offsite effluents, or increases in occupational doses do not result in offsite effects that could have a significant impact on the human environment. Associated effects, if any, would be minimal and would be confined to limited access areas on site. Experience has also shown that amendments that change an inspection or surveillance requirement are usually of a procedural nature. The purpose of these changes is to incorporate accepted improvements in the installation or use of facility components or in inspection and surveillance which will facilitate the conduct of the licensee's business and insure the adequacy and timeliness of information reported to the Commission. As a result, such amendments will not lead to significant environmental impacts on the human environment either individually or cumulatively.

Accordingly, the Commission finds that license amendments of this type (Category 9.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 9. as a categorical exclusion, and directs that Category 9. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

10. Issuance of an amendment to a permit or license pursuant to Parts 30, 40, 50, or 70 of this chapter which (i) changes insurance and/or indemnity requirements, or (ii) changes recordkeeping, reporting, or administrative procedures or requirements.

Discussion and Finding

Issuance of an amendment to a permit or license to change insurance and/or indemnity requirements or to change requirements relating to recordkeeping, reporting or other administrative procedures does not affect the scope or nature of the licensed activity. Although changes in insurance and/or indemnity requirements affect the financial arrangements of licensees and have economic and social consequences, they do not alter the environmental impact of the licensed activities. Similarly, changes in recordkeeping and reporting requirements and other administrative procedures relating to the licensee's organization and management do not change the nature and the

consequent environmental impact of the licensed activity. The function of these procedural and administrative changes is merely to facilitate the orderly conduct of the licensee's business and to insure that the information needed by the Commission to perform its regulatory functions is readily available. Accordingly, the Commission finds that license amendments of this type (Category 10.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 10. as a categorical exclusion, and directs that Category 10. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

11. Issuance of amendments to licenses for fuel cycle plants and radioactive waste disposal sites as identified in §§ 51.20(b) and 51.21(b) of this subpart which are administrative, organizational, or procedural in nature, or which result in a change in process operations or equipment, provided that (i) there is no increase in the types or amounts of effluents that may be released offsite, (ii) there is no associated increase in individual or cumulative occupational radiation exposure, (iii) there is no significant construction impact, and (iv) there is no increase in the potential for or consequences from radiological accidents.

Discussion and Finding

Paragraph 51.21(b)(5) identifies amendments to licenses for fuel cycle plants and radioactive waste disposal sites that require preparation of an environmental assessment to evaluate potential impacts to the environment. However, there are other requests for amendments to these types of licenses that are administrative, organizational or procedural in nature or which involve changes in process operation and equipment which do not result in any adverse incremental impacts to the environment from the licensed activity. Implementation of these minor and routine types of changes do not alter the previously evaluated environmental impacts associated with the licensed operation, taking into account construction impacts, types and amounts of effluents released by the operation, occupational exposure of employees, or potential accidents, nor do these amendments affect the scope or nature of the licensed activity.

Accordingly, the Commission finds that this class of amendments to licenses for fuel cycle plants and radioactive waste disposal sites (Category 11.) comprise a category of actions that do not individually or cumulatively have a significant effect on the human environment, designates Category 11. as a categorical exclusion, and directs that Category 11. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

12. Issuance of an amendment to a license pursuant to Parts 50 and 70 of this chapter relating solely to safeguards matters (i.e. protection against sabotage or loss or diversion of special nuclear material) or issuance of an approval of a safeguards plan submitted pursuant to Parts 50, 70, and 73 of this chapter, provided that the amendment or approval does not involve any significant construction impacts.

Discussion and Finding

Amendments and approvals of this nature relate to the protection of nuclear materials against theft or diversion or to the protection of nuclear materials, facilities, and transportation activities against radiological sabotage. They are needed (i) to implement new safeguards regulations through incorporation of provisions into licenses and (ii) to permit modifications to licensees' safeguards programs established under existing requirements. With the exception of amendments involving significant construction, they are confined to (i) organizational and procedural matters, (ii) modifications to systems used for security and/or materials accountability, (iii) administrative changes, and (iv) review and approval of transportation routes pursuant to 10 CFR § 73.37(a)(1). As such, the issuance of these amendments and approvals does not alter the environmental impacts of the licensed activity.

Route approvals (item iv) for spent fuel shipments are not based upon case-specific analyses of the comparative risks of sabotage along alternate routes because such risks are not considered serious regardless of the chosen route, provided the shipper adheres to specific requirements delineated in 10 CFR § 73.37 (which include provisions for additional protection measures in instances where heavily populated areas cannot be avoided). Nevertheless, the NRC considers it prudent to require such shipments to avoid, where practicable, heavily populated areas in order to reduce this risk to as low as reasonably achievable. With regard to radiological and nonradiological risks attributable to normal transportation and accidents, the Final Environmental Statement on the Transportation of Radioactive Materials by Air and Other Modes (NUREG-0170) concludes that such risks are small and does not support the need for changes to the existing NRC regulations which permit unrestricted use of alternate routes from the standpoint of safety-related impacts. This statement considered releases in extreme-population-density (urban) areas in the course of developing these risk estimates and efforts are underway to further refine the present assessment in this regard. The results obtained to date regarding the further study of transportation in urban environs (SAND-77-1927) do not conflict with the previous risk estimates. The number of such approvals is expected to be approximately twenty per year, involving a total of approximately 200 shipments annually. Thus, the nonradiological environmental impacts associated with routine traffic (as opposed to impacts associated with accidents) resulting from NRC route approvals is insignificant.

Accordingly, the Commission finds that license amendments and approvals of this type (Category 12.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 12. as a categorical exclusion, and directs that Category 12. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

13. Approval of package designs for the delivery of licensed materials to a carrier for transportation.

Discussion and Finding

Certificates of compliance approving packages for use in the transportation of radioactive materials do not authorize the actual transportation of those materials. The certificates are issued upon demonstration that the package designs meet applicable performance standards contained in Part 71 of the Commission's regulations. Information regarding prospective routes or points of origin or destination necessary for an environmental analysis of actual transportation is neither available nor germane to package design certification. For this reason, as a matter of policy, the Commission will address the impact of transportation of radioactive materials in the course of environmental evaluations of the specifically-licensed activities necessitating transportation of nuclear materials. Since certificates

of compliance merely permit licensees to use the approved package to transfer material to a carrier, on site, for transportation to an authorized receiver and do not authorize a particular transportation movement, there is no environmental impact associated with the action of issuing these approvals.

Accordingly, the Commission finds that approvals of package designs for the delivery of licensed material to a carrier for transportation (Category 13.) comprise a category of actions which do not individually or cumulatively have a significant effect the human environment, designates Category 13. as a categorical exclusion, and directs that Category 13. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

14. Issuance, amendment, or renewal of the following types of materials licenses issued pursuant to 10 CFR Parts 30, 40, or 70:

- (i) Distribution of devices and products containing radioactive material to general licensees and persons exempt from licensing
- (ii) Medical licenses
- (iii) Nuclear pharmacies
- (iv) Teletherapy licenses
- (v) Licenses to academic institutions for educational purposes
- (vi) Industrial radiography

- (vii) Acceptance of packaged radioactive wastes from others for transfer to licensed land burial facilities
- (viii) Irradiators (dry storage-- self-contained)
- (ix) Irradiators (wet storage-- panoramic)
- (x) Gauging devices, analytical instruments, and other devices utilizing sealed sources
- (xi) Source material licenses for fabrication of the products specified in 10 CFR § 40.13, fabrication of military munitions, and laboratory use for research and development
- (xii) Well logging
- (xiii) Research and development licenses involving less than ten curies of radioactive material

Discussion and Findings

Previously, the Commission's attention to environmental review requirements for materials licensing actions has focused largely on activities in the uranium fuel cycle. In this proposed revision to 10 CFR Part 51, other types of licenses which involve processing of radioactive materials for distribution to other licensees, nuclear laundries, testing of depleted uranium military munitions, and processing of source material are accorded additional attention. However, there remain additional types of licensing actions which have not been the subject of any in-depth environmental review by NRC or its predecessor agency, the Atomic Energy Commission. On the basis of over thirty years experience in licensing and inspection of such

materials licensees, the NRC believes that these activities, individually or cumulatively, have not resulted in any significant impact on the environment. Absolute confirmation that none of these licensing actions would ever have any significant environmental impact could be obtained only by in-depth reviews of each of thousands of licensing actions each year. NRC does not believe that the huge expenditure of resources that would be required would be justified and believes that the environment would be better protected if NRC's resources were devoted to the environmental analyses called for under §§ 51.20(b) and 51.21(b) of this subpart for the types of actions which experience suggests have real potential to cause significant environmental problems. As noted above, the proposed regulations have been drafted so that NRC will retain flexibility to do an environmental impact statement or an environmental assessment, as appropriate, for any licensing actions covered by a categorical exclusion should special circumstances come to its attention that would warrant such action.

- (f) Distribution of devices and products containing radioactive material to general licensees and persons exempt from licensing

These licenses authorize persons to distribute devices such as density gauges, level gauges, and other gauging devices to persons who are general licensees and to distribute products containing radioactive material such as watches, electron tubes, or smoke detectors to persons who are exempt from licensing. These licenses for distribution do not authorize processing or use of radioactive materials. There are no effluent releases or personnel

exposures associated with the licensed activities. These distribution licenses presuppose ultimate use or possession of the radioactive materials under a general license or exemption established by regulation, which regulation, under § 51.21(b)(13) will require an environmental assessment addressing the environmental impacts of the generally licensed or exempted activities of the recipients of the materials. The devices and products that may be distributed pursuant to these licenses must meet the specific standards and requirements in NRC regulations. At the time of issuance of the regulations authorizing distribution, the determination was made that subsequent exempt or generally licensed use or possession of the materials would not constitute a risk to the public health and safety.

(ii) Medical licenses

NRC issues licenses to hospitals and to physicians authorizing human use of byproduct material. These licensed activities may include receipt of radioactive material, preparation of radiopharmaceuticals from Mo-99/Tc-99m generators and reagent kits, administration of sealed radiopharmaceuticals to patients for diagnostic or therapeutic purposes, the use of sealed sources for brachytherapy (i.e., radiation delivered from a short distance) and the disposal of the authorized materials by holding for decay or by transfer to a licensed burial ground. The environmental impact of these licensed activities is insignificant. The only environmental impacts would be occupational exposures (averaging less than 10% of the applicable limits) and releases to air and water or to sanitary sewerage (through patient excreta) which are of small quantity or if of significant quantity, are short-lived.

(iii) Nuclear pharmacies

Nuclear pharmacies purchase prepared radiopharmaceuticals, radioisotope generators and reagent kits from manufacturers. They elute the generators and distribute the eluate as a prepared radiopharmaceutical or compound the eluate with reagent kits to make prepared radiopharmaceuticals. They dispense and distribute prepared radiopharmaceuticals to medical licensees in unit dose form. If the services of a nuclear pharmacy are not used, the medical licensee performs these functions in his own nuclear medicine laboratory. Due to the short half-life of medically useful isotopes, the radioactive wastes that nuclear pharmacies generate may be decayed to background levels in storage. Releases in effluents may be conservatively estimated at 5% of maximum permissible values. Due to the soft gamma emission of most medically useful isotopes and the use of personnel shielding devices, exposure to personnel may be conservatively estimated at 25% of the maximum permissible dose.

(iv) Teletherapy licenses

NRC issues licenses to hospitals and to physicians authorizing the use of cobalt-60 or cesium-137 sealed sources for teletherapy (i.e. radiation therapy at a distance from the patient) treatment of patients. The sealed sources containing of the order of 6,000 curies of cobalt-60 or 2,000 curies of cesium-137 are doubly encapsulated and their design has been approved by

NRC or an Agreement State. The sources are used in a teletherapy unit, a device that provides collimation and shielding and whose design has been approved by NRC or an Agreement State. Teletherapy sources are located in facilities that have been reviewed for compliance with NRC regulations before a license is issued. Personnel exposures at teletherapy licensees' facilities are, on the average, about 5% of the applicable limits. There are no releases of licensed materials to air or water from licensed teletherapy activities.

(v) Licenses to academic institutions for educational purposes

NRC issues licenses to academic institutions for educational purposes. The licensed activities may include receipt of radioactive material, classroom demonstrations by qualified instructors, supervised laboratory research by students, the use of plutonium-beryllium neutron sources, the use of source material in subcritical assemblies, and the disposal of the authorized material by holding for decay or by transfer to authorized recipients. An average academic institution releases less than 5% of the maximum permissible concentration listed in 10 CFR Part 20 for both air and water and the personnel exposure for radiation workers is less than 5% of the limits specified in 10 CFR § 20.202.

(vi) Industrial radiography

Gamma radiation sources (primarily iridium-192 and cobalt-60) are used for non-destructive testing of materials throughout the United States. The sources used are metallic and are encapsulated in a stainless steel capsule. Therefore, during ordinary use it is not expected that there will be releases of radioactive material to the environment. The radiation exposure during routine use of sources in industrial radiography is well within NRC limits for occupational exposure. The average exposure per individual radiographer is less than 0.4 rem per year, which is less than 1% of the permissible exposure.

(vii) Acceptance of packaged radioactive wastes from others for transfer to licensed land burial facilities

These licenses provide for the acceptance of prepackaged radioactive wastes from licensees that generate the wastes. Persons engaged in these operations may accept only packages that meet all governmental standards and regulations for transport of radioactive materials. Licensees engaged in the acceptance of prepackaged wastes are not permitted to open the packages. Therefore, there are no effluent releases. Since all packages must meet the established governmental standards, radiation exposures to personnel are a small fraction of the exposures permitted under NRC regulations. The activities engaged in by such licensees are analogous to those engaged in by common carriers, which are exempt from licensing requirements.

(viii) Irradiators (dry storage--self-contained)

These devices contain from a few millicuries of licensed material (usually cesium-137 or cobalt-60) to several hundred curies. The sealed sources are never exposed during normal use--the sources remain shielded in a self-contained apparatus at all times. Materials for irradiation are placed in chambers which are rotated in such a manner that the materials are exposed to the sealed sources but the operator is shielded from the radiation beam at all times. Personnel exposures during use of these devices are less than 5% of the limits in 10 CFR Part 20. There are no effluent releases.

(ix) Irradiators (wet storage--panoramic)

These devices usually contain from a few hundred curies to megacuries of sealed source materials, usually cobalt-60. The facility surrounding the water pool is equipped with interlock warning devices (warning lights and horns) and radiation alarms. Materials for exposure are either lowered into the pool or placed at specified locations above the pool and the sealed sources are then raised to the exposed position. Personnel are not present when the source is in the exposed position. Should personnel attempt to open an entrance door during source exposures, warning lights and horns are activated at the entrance doors and the sealed sources automatically return to the shielded position.

Personnel exposures are less than 5% of 10 CFR Part 20 limits. There are no effluent releases resulting from operation of such irradiators.

- (x) Gauging devices, analytical instruments, and other devices utilizing sealed sources

The NRC issues licenses for possession and use of gauging devices to measure thickness, density, and level of materials. These devices contain sealed sources, usually cesium-137 and strontium-90, which are encapsulated so that there is no leakage during use. The devices provide shielding such that radiation levels external to the devices are on the order of a few milliroentgen per hour. Other devices include gas chromatographs with millicurie quantities of nickel-63 or hydrogen-3, analytical devices such as x-ray fluorescence analyzers with sealed sources containing a variety of radioisotopes, instrument calibration devices containing millicurie to curie quantities of cesium-137 and cobalt-60, and soil-density gauges which contain millicurie quantities of cesium-137 and americium-241 ventron sources.

Personnel exposure from use of these devices is less than 5% of the limits in 10 CFR Part 20. There are no effluents associated with the use of devices containing sealed sources.

- (xi) Source material licenses for fabrication of the products specified in 10 CFR § 40.13, fabrication of military munitions, and laboratory use for research and development

These licenses for possession and use of source material are for fabrication of products specified in 10 CFR § 40.13, including such products as

welding rods, gas mantles, airplane counterweights, shielding for medical therapy devices, devices utilizing sealed sources of radioactive materials, and shipping containers. Other such licenses involve fabrication of military munitions and laboratory use of source material for research and development. The quantities involved in fabrication of products range from a few kilograms in welding rods and gas mantles to several hundred kilograms for shielding and counterweights. Most products are made from thorium and depleted uranium which have low specific activity. The source materials are used for non-nuclear properties. Fabrication operations which involve grinding, shaping, and milling are carried out under carefully controlled conditions including ventilation, personnel protective clothing, and monitoring for contamination and effluent releases. Laboratory activities involve processing of gram to low kilogram quantities of source material. Effluent releases resulting from use of source material is 10% or less and personnel exposures are 5% of the limits in NRC regulations.

(xii) Well logging

Radioactive materials are used extensively in oil and gas well drilling operations as analytical tools for determining composition of strata and tracing oil and gas flow. For tracer work, millicurie quantities of gamma-emitting radioisotopes such as iodine-131 and iridium-192 are injected directly into the wells. Sealed sources are either 2-3 curies of cobalt-60 or cesium-137 or 1-3 curies of americium-beryllium or plutonium-beryllium.

Both gamma mapping and neutron mapping are performed. The tracer materials are in liquid form and their use does not result in effluent releases to the environment. There are no effluent releases as a result of use of sealed sources. Personnel exposures are 0.1 or less of the limits provided for in NRC regulations.

Occasionally, a sealed source may be lost in a well. Such losses occur at depths of thousands of feet. Loss of a source must be reported to the NRC. If the source is irretrievable as determined by NRC, it must be immobilized by being cemented in place, the well must be placarded to note the presence of the source down-hole, and a notation must be placed in public records. The loss of sources does not result in any release of radioactive material to the environment.

(xiii) Research and development licenses involving less than ten curies of radioactive material

These licenses involve less than ten curies of source, byproduct or special nuclear material for research and development involving product development, animal tracer studies, tracer studies of materials and compounds, and basic research. A typical research and development facility is designed to minimize release of effluents to the environment. Remote handling equipment, personnel protective clothing, and shielding materials

are standard equipment to minimize personnel exposures. A day-to-day radiation safety program provides for constant monitoring of personnel exposures, contamination levels, radiation levels, and effluent releases. Personnel exposures and effluent releases are less than 10 per cent of the limits of 10 CFR Part 20.

Accordingly, the Commission finds that issuance, amendment, and renewal of licenses described above (Category 14.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 14. as a categorical exclusion, and directs that Category 14. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

15. Issuance, amendment or renewal of licenses for import of nuclear equipment and materials pursuant to Part 110 of this chapter, except where the subsequent possession or use of the materials or equipment is beyond the scope of any NRC licensed activity.

Discussion and Finding

Import licenses issued pursuant to 10 CFR Part 110 merely authorize import into the United States and do not authorize any person to possess, use, or transfer the equipment or materials within the United States. The

Justification for this categorical exclusion is similar to the justification for approval of package designs. The Commission will address the impact of transportation of materials and equipment in connection with the environmental evaluations of the licensed activities in the United States.

Accordingly, the Commission finds that issuance, amendment or renewal of licenses for import of nuclear equipment and materials pursuant to Part 110 of this chapter (Category 15.) comprises a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 15. as a categorical exclusion and directs that Category 15. be listed in § 51.22(c) as a categorical exclusion.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the National Environmental Policy Act of 1969, as amended, and 5 U.S.C. § 553, notice is hereby given that adoption of the following proposed revision of 10 CFR Part 51 and of related proposed conforming amendments to 10 CFR Parts 2, 30, 40, 50, and 70 is contemplated:

10 CFR Chapter I

PART 51 - LICENSING AND REGULATORY POLICY AND PROCEDURES FOR ENVIRONMENTAL PROTECTION

1. 10 CFR Part 51 is revised to read as follows:

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

- § 51.1 Scope
- § 51.2 Subparts
- § 51.3 Resolution of conflict
- § 51.4 Definitions
 - (a) (1) Act
 - (2) Commission
 - (3) NRC
 - (4) NRC staff
 - (5) NRC staff director
- § 51.5 Interpretations
- § 51.6 Specific exemptions

SUBPART A - NATIONAL ENVIRONMENTAL POLICY ACT - REGULATIONS IMPLEMENTING
SECTION 102(2)

- § 51.10 Purpose and scope of subpart; Application of regulations of Council
on Environmental Quality
- § 51.11 Relationship to other subparts
- § 51.12 Application of subpart to proceedings
- § 51.13 Emergencies

§ 51.14 Definitions

- (a) (1) Categorical exclusion
- (2) Cooperating agency
- (3) Council
- (4) Environmental assessment
- (5) Environmental document
- (6) Environmental impact statement
- (7) Environmental report
- (8) Finding of no significant impact
- (9) NEPA
- (10) Notice of intent

§ 51.15 Time schedules.

PRELIMINARY PROCEDURES

CLASSIFICATION OF LICENSING AND REGULATORY ACTIONS

§ 51.20 Criteria for and identification of licensing and regulatory actions requiring environmental impact statements.

- (a) Criteria
- (b) Types of actions

§ 51.21 Criteria for and identification of licensing and regulatory actions requiring environmental assessments.

- (a) Criteria
- (b) Types of actions

§ 51.22 Criterion for and identification of licensing and regulatory actions eligible for categorical exclusion.

- (a) Criterion

(b) Exemption from environmental impact statement and environmental assessment requirements.

(c) List of categorical exclusions.

DETERMINATIONS TO PREPARE ENVIRONMENTAL IMPACT STATEMENTS,
ENVIRONMENTAL ASSESSMENTS OR FINDINGS OF NO SIGNIFICANT IMPACT,
AND RELATED PROCEDURES

§ 51.25 Determination to prepare environmental impact statement or environmental assessment; eligibility for categorical exclusion.

§ 51.26 Requirement to publish notice of intent and conduct scoping process.

§ 51.27 Notice of intent.

Scoping

§ 51.28 Scoping - Environmental impact statement.

§ 51.29 Scoping - Participants.

Environmental Assessment

§ 51.30 Environmental assessment.

§ 51.31 Determinations based on environmental assessment.

Finding of No Significant Impact

§ 51.32 Finding of no significant impact.

§ 51.33 Draft finding of no significant impact.

§ 51.34 Preparation of finding of no significant impact.

§ 51.35 Requirement to publish finding of no significant impact; limitation on Commission action.

ENVIRONMENTAL REPORTS AND INFORMATION - REQUIREMENTS

APPLICABLE TO APPLICANTS AND PETITIONERS

General

- § 51.40 Consultation with NRC staff.
- § 51.41 Requirement to submit environmental information.

Environmental Reports - General Requirements

- § 51.45 Environmental report.

Environmental Reports - Production and Utilization Facilities

- § 51.50 Environmental report - Construction permit stage.
- § 51.51 Environmental effects of uranium fuel cycle. (Table S-3)
- § 51.52 Environmental effects of transportation of fuel and waste. (Table S-4)
- § 51.53 Supplement to environmental report - Operating license stage.
- § 51.54 Environmental report - Manufacturing license.
- § 51.55 Environmental report - Number of copies; distribution.

Environmental Reports - Materials Licenses

- § 51.60 Environmental report - Materials licenses.
- § 51.61 Environmental report - Number of copies; distribution.

Environmental Reports - Rule Making

- § 51.65 Environmental report - Rule making.
- § 51.66 Environmental report - Number of copies.

ENVIRONMENTAL IMPACT STATEMENTS

Draft Environmental Impact Statements - General Requirements

- § 51.70 Draft environmental impact statement - General.

- § 51.71 Draft environmental impact statement - Contents.
- § 51.72 Supplement to draft environmental impact statement.
- § 51.73 Request for comments on draft environmental impact statement.
- § 51.74 Distribution of draft environmental impact statement and supplement to draft environmental impact statement; news releases.

Draft Environmental Impact Statements - Production
and Utilization Facilities

- § 51.75 Draft environmental impact statement - Construction permit.
- § 51.76 Draft environmental impact statement - Manufacturing license.
- § 51.77 Distribution of draft environmental impact statement.

Draft Environmental Impact Statements - Materials Licenses

- § 51.80 Draft environmental impact statement - Materials license.
- § 51.81 Distribution of draft environmental impact statement.

Draft Environmental Impact Statements - Rule Making

- § 51.85 Draft environmental impact statement - Rule making.
- § 51.86 Distribution of draft environmental impact statement.

Final Environmental Impact Statements - General Requirements

- § 51.90 Final environmental impact statement - General.
- § 51.91 Final environmental impact statement - Contents.
- § 51.92 Supplement to final environmental impact statement.
- § 51.93 Distribution of final environmental impact statement and supplement to final environmental impact statement; news releases.
- § 51.94 Requirement to consider final environmental impact statement.

Final Environmental Impact Statements - Production
and Utilization Facilities

- § 51.95 Supplement to final environmental impact statement - Operating license.

Final Environmental Impact Statements - Materials Licenses

- § 51.97 [Reserved]

Final Environmental Impact Statements - Rule Making

- § 51.99 [Reserved]

NEPA PROCEDURE AND ADMINISTRATIVE ACTION

General

- § 51.100 Timing of Commission action.
- § 51.101 Limitations on actions.
- § 51.102 Requirement to provide a record of decision; preparation.
- § 51.103 Record of decision - General.
- § 51.104 NRC proceedings using public hearings; consideration of environmental impact statements; record of decision.

Production and Utilization Facilities

- § 51.105 Public hearings in proceedings for issuance of construction permits or licenses to manufacture.

Materials Licenses

- § 51.108 [Reserved]

Rule Making

- § 51.110 [Reserved]

PUBLIC NOTICE OF AND ACCESS TO ENVIRONMENTAL DOCUMENTS

- § 51.116 Notice of intent.
- § 51.117 Draft environmental impact statement - Notice of availability.

§ 51.118 Final environmental impact statement - Notice of availability.

§ 51.119 Publication of finding of no significant impact.

§ 51.120 Availability of environmental documents for public inspection.

§ 51.121 Status of NEPA actions.

§ 51.122 List of interested organizations and groups.

§ 51.123 Cost of materials distributed to public.

APPENDIX A

Format for Presentation of Material in Environmental Impact Statements

1. General
2. Cover sheet
3. Summary
4. Purpose of and need for action
5. Alternatives including the proposed action
6. Affected environment
7. Environmental consequences and mitigating actions
8. List of preparers
9. Appendices

AUTHORITY: Sec. 161b, i, and o, Pub. L. 83-703, 68 Stat. 948, 949, and 950, as amended (42 U.S.C. § 2201(b), (f), and (o)); secs. 201, 202, Pub. L. 93-438, 88 Stat. 1242-1244, as amended (42 U.S.C. §§ 5841, 5842). Subpart A also issued under secs. 102(2), 104 and 105, Pub. L. 91-190, 83 Stat. 853-854, as amended (42 U.S.C. §§ 4332, 4334, 4335); and Title II, Pub. L. 95-604, 92 Stat.

3033-3041. Section 51.20 also issued under sec. 3, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. § 2077(d)). Section 51.22 also issued under sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended by Pub. L. 95-604, 92 Stat. 3037 (42 U.S.C. § 2021).

§ 51.1 Scope.

This part contains environmental protection regulations applicable to NRC's domestic licensing and related regulatory functions. These regulations do not apply to export licensing matters within the scope of Part 110 of this chapter or to any environmental effects which NRC's licensing and related regulatory functions may have upon the environment of foreign nations or the global commons. Subject to these limitations, the regulations in this part implement:

(a) Section 102(2) of the National Environmental Policy Act of 1969, as amended.

(b) [Reserved]

§ 51.2 Subparts.

(a) The regulations in Subpart A of this part implement section 102(2) of the National Environmental Policy Act of 1969, as amended.

(b) [Reserved]

§ 51.3 Resolution of Conflict.

In any conflict between a general rule in Subpart A of this part and a special rule in another subpart of this part or another part of this chapter applicable to a particular type of proceeding, the special rule governs.

§ 51.4 Definitions.

(a) As used in this part:

(1) "Act" means the Atomic Energy Act of 1954 (68 Stat. 919) including any amendments thereto.

(2) "Commission" means the Nuclear Regulatory Commission or its authorized representatives.

(3) "NRC" means the Nuclear Regulatory Commission, the agency established by Title II of the Energy Reorganization Act of 1974, as amended.

(4) "NRC staff" means any NRC officer or employee or his/her authorized representative, except a Commissioner, a member of a Commissioner's immediate staff, an Atomic Safety and Licensing Board, an Atomic Safety and Licensing Appeal Board, a presiding officer, or an administrative law judge.

- (5) "NRC staff director" means:
- (i) Executive Director for Operations;
 - (ii) Director, Office of Nuclear Reactor Regulation;
 - (iii) Director, Office of Nuclear Material Safety and Safeguards;
 - (iv) Director, Office of Standards Development;
 - (v) Director, Office of Nuclear Regulatory Research;
 - (vi) Director, Office of Inspection and Enforcement;
 - (vii) Director, Office of State Programs; or
 - (viii) Executive Legal Director.

§ 51.5 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 51.6 Specific exemptions

The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and are otherwise in the public interest.

SUBPART A - NATIONAL ENVIRONMENTAL POLICY ACT - REGULATIONS IMPLEMENTING SECTION 102(2)

§ 51.10 Purpose and scope of subpart; Application of regulations of Council on Environmental Quality.

(a) The National Environmental Policy Act of 1969, as amended (NEPA) directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in NEPA, and (2) all agencies of the Federal Government shall comply with the procedures in section 102(2) of NEPA except where compliance would be inconsistent with other statutory requirements. The regulations in this subpart implement section 102(2) of NEPA in a manner which is consistent with the NRC's domestic licensing and related regulatory authority under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and the Uranium Mill Tailings Radiation Control Act of 1978, and which reflects the Commission's announced policy to take account voluntarily, subject to certain conditions, of the regulations of the Council on Environmental Quality published November 29, 1978 (43 FR 55978-56007). This subpart does not apply to export licensing matters within the scope of Part 110 of this chapter nor does it apply to any environmental effects which NRC's licensing and related regulatory functions may have upon the environment of foreign nations or the global commons.

(b) Insofar as a particular matter of NEPA implementation is not addressed by the regulations in Subpart A of this part, it will be the Commission's policy to follow the regulations of the Council on Environmental Quality as published by the Council on November 29, 1978 (43 FR 55978-56007), except that the Commission will devote further study to 40 CFR § 1502.14(b), § 1502.22(a) and (b), and the portion of § 1508.18 which includes within the definition of major Federal action "the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action...." before deciding to what extent these provisions may or should mandate a change in present Commission policy. The Commission will also:

(1) Examine any future interpretation or change to the Council's NEPA regulations;

(2) Prepare an independent environmental impact statement whenever the Commission has jurisdiction over an activity, even though the Commission has not been designated as lead agency for preparation of the statement; and

(3) Make a final decision on any matter within the Commission's regulatory authority even though another agency has made a predecisional referral of an NRC action to the Council under the procedures of 40 CFR Part 1504.

(c) This subpart does not address any limitations on the NRC's authority and responsibility pursuant to the National Environmental Policy

Act of 1969, as amended, imposed by the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500, 86 Stat. 816 et seq. (33 U.S.C. § 1251 et seq.). This matter is addressed in part in a "Policy Statement on Implementation of Section 511 of the Federal Water Pollution Control Act (FWPCA)" attached as Appendix A to the "Second Memorandum of Understanding Regarding Implementation of Certain NRC and EPA Responsibilities" published in the FEDERAL REGISTER on December 31, 1975 (40 FR 60115) and effective January 30, 1976.

(d) Commission actions initiating or relating to administrative or judicial civil or criminal enforcement actions or proceedings are not subject to section 102(2) of NEPA. These actions include issuance of notices and orders pursuant to Subpart B of Part 2 of this chapter, and matters covered by Part 160 of this chapter.

§ 51.11 Relationship to other subparts. [Reserved]

§ 51.12 Application of subpart to proceedings.

(a) Except as otherwise provided in this section, the regulations in this subpart shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before [Effective date of NRC regs to be inserted.]

(b) No environmental document completed on or before [insert effective date of NRC regs] need be redone and no notice of intent to prepare or notice of availability of an environmental document published on or before [insert effective date of NRC regs] need be republished by reason of these regulations.

(c) The regulations in this subpart are not applicable to any supplement to a draft environmental impact statement, any final environmental impact statement or any supplement to a final environmental impact statement filed with the Environmental Protection Agency on or after July 30, 1979, if the draft environmental impact statement on the action to which the document relates was filed with the Environmental Protection Agency on or before July 29, 1979.

§ 51.13 Emergencies.

Whenever emergency circumstances make it necessary, the Commission may take an action with significant environmental impact without observing the provisions of these regulations. This exemption only applies to actions necessary to control the immediate impacts of the emergency. When an emergency action covered by this section is taken, the Commission will consult with the Council concerning appropriate alternative NEPA arrangements.

§ 51.14 Definitions.

(a) As used in this subpart:

(1) "Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which the Commission has found to have no such effect in accordance with procedures set out in §51.22 of this subpart, and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

(2) "Cooperating Agency" means any Federal agency other than the NRC which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. By agreement with the Commission, a State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may become a cooperating agency.

(3) "Council" means the Council on Environmental Quality established by Title II of NEPA.

(4) "Environmental Assessment" means a concise public document for which the Commission is responsible that serves to:

(i) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(ii) Aid the Commission's compliance with NEPA when no environmental impact statement is necessary.

(iii) Facilitate preparation of an environmental impact statement when one is necessary.

(5) "Environmental document" includes the documents specified in §51.14(a)(4) (environmental assessment), §51.14(a)(6) (environmental impact statement), §51.14(a)(8) (finding of no significant impact), §51.14(a)(7) (environmental report) and any supplements to or comments upon those documents, and §51.14(a)(10) (notice of intent).

(6) "Environmental Impact Statement" means a detailed written statement as required by section 102(2)(C) of NEPA.

(7) "Environmental report" means a document submitted to the Commission by an applicant for a permit, license, or other form of permission, or an amendment to or renewal of a permit, license or other form of permission, or by a petitioner for rulemaking, in order to aid the Commission in complying with section 102(2) of NEPA.

(8) "Finding of No Significant Impact" means a concise public document for which the Commission is responsible that briefly states the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which therefore an environmental impact statement will not be prepared.

(9) "NEPA" means the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 83 Stat. 852, 856, as amended by Pub. L. 94-83, 89 Stat. 424, 42 U.S.C. § 4321, et seq.).

(10) "Notice of Intent" means a notice that an environmental impact statement will be prepared and considered.

§ 51.15 Time schedules.

Consistent with the purposes of NEPA, the Administrative Procedure Act, §§ 51.100 and 51.101 of this subpart, and with other essential considerations of national policy:

(a) The appropriate NRC staff director or his designee may, and upon the request of an applicant for a proposed action or a petitioner for rule-making shall, establish a time schedule for all or any constituent part of the NRC staff NEPA process. To the maximum extent practicable, the NRC staff will conduct its NEPA review in accordance with any time schedule established under this section. Whenever the NRC staff is unable to meet a time schedule established at an applicant's or petitioner's request, the appropriate NRC staff director or his designee will inform the applicant or petitioner in writing of the reason for the delay.

(b) The presiding officer, the Atomic Safety and Licensing Appeal Board or the Commissioners acting as a collegial body may establish a time schedule for all or any part of its actions pursuant to Subpart G of Part 2 of this Chapter.

PRELIMINARY PROCEDURES

CLASSIFICATION OF LICENSING AND REGULATORY ACTIONS

§ 51.20 Criteria for and identification of licensing and regulatory actions requiring environmental impact statements.

(a) Licensing and regulatory actions requiring an environmental impact statement shall meet at least one of the following criteria:

(1) The proposed action is a major Federal action significantly affecting the quality of the human environment.

(2) The proposed action involves a matter which the Commission, in the exercise of its discretion, has determined should be covered by an environmental impact statement.

(b) The following types of actions require an environmental impact statement or a supplement to an environmental impact statement:

(1) Issuance of a permit to construct a nuclear power reactor, testing facility or fuel reprocessing plant pursuant to Part 50 of this chapter.

(2) Issuance of a full power or design capacity license to operate a nuclear power reactor, testing facility, or fuel reprocessing plant pursuant to Part 50 of this chapter.

(3) Issuance of a permit to construct or a design capacity license to operate an isotopic enrichment plant pursuant to § 50.22 of this chapter.

(4) Conversion of a provisional operating license for a nuclear power reactor, testing facility or fuel reprocessing plant to a full term or design capacity license pursuant to Part 50 of this chapter if a final environmental impact statement covering full term or design capacity operation has not been previously prepared.

(5) Issuance of a license to manufacture pursuant to Appendix M of Part 50 of this chapter.

(6) Issuance of a license to possess and use special nuclear material for processing, fuel fabrication, scrap recovery, or conversion of uranium hexafluoride pursuant to Part 70 of this chapter.

(7) Issuance of a license to possess and use source material for uranium milling or production of uranium hexafluoride pursuant to Part 40 of this chapter.

(8) Issuance of a license pursuant to Parts 30 and 70 of this chapter authorizing the receipt and possession for purpose of storage of spent commercial reactor fuel at a site not occupied by a nuclear power reactor.

(9) Issuance of an authorization to construct a repository for the storage or disposal of high-level radioactive waste.

(10) Issuance of a license to receive and possess high-level radioactive waste in a repository for the purpose of storage or disposal.

(11) Amendment of license to authorize decommissioning of a repository which has been used for the storage or disposal of high-level radioactive waste.

(12) Issuance of a license authorizing commercial low-level radioactive waste disposal pursuant to Parts 30, 40, and/or 70 of this chapter.

(13) Any other action which the Commission determines is a major Commission action significantly affecting the quality of the human environment. As provided in § 51.22(b) of this subpart, the Commission may, in special circumstances, prepare an environmental impact statement on an action covered by a categorical exclusion.

§ 51.21 Criteria for and identification of licensing and regulatory actions requiring environmental assessments.

(a) Licensing and regulatory actions requiring an environmental assessment shall meet at least one of the following criteria:

(1) The proposed action does not meet the criteria in §51.20 for an action requiring an environmental impact statement or is not of the type listed in § 51.22(c) as a categorical exclusion.

(2) The proposed action involves unresolved conflicts concerning alternative uses of available resources.

(3) The proposed action requires preliminary analysis to enable the Commission to decide whether to prepare an environmental impact statement or a finding of no significant impact.

(4) The proposed action involves a matter which the Commission, in the exercise of its discretion, has determined should be covered by an environmental assessment.

(b) The following types of actions require an environmental assessment:

(1) Issuance of a permit to construct, or a full power or design capacity license to operate, a production or utilization facility other than a nuclear power reactor, testing facility, fuel reprocessing plant, or isotopic enrichment plant of the type specified in § 51.20.

(2) Issuance of an amendment to a construction permit or full power or design capacity operating license for a nuclear power reactor, testing

facility, fuel reprocessing plant, isotopic enrichment plant licensed pursuant to § 50.22 of this chapter or to a license to manufacture that would authorize or result in: (i) a significant expansion of a site; (ii) a significant change in the types of effluents; (iii) a significant increase in the amounts of effluents; (iv) a significant increase in occupational exposures; (v) a significant increase in the potential for accidental releases; (vi) a significant increase in the authorized power level; or (vii) a significant increase in spent fuel storage capacity.

(3) Issuance of a license to operate a nuclear power reactor, testing facility, fuel reprocessing plant or isotopic enrichment plant at less than full power or at less than the design capacity.

(4) Issuance of a license pursuant to Parts 30 and 70 of this chapter authorizing the receipt and possession for purpose of storage of spent commercial reactor fuel at an installation on the site of but separate from a nuclear power reactor.

(5) Issuance of an amendment that would authorize or result in (i) a significant expansion of a site, (ii) a significant change in the types of effluents, (iii) a significant increase in the amounts of effluents, (iv) a significant increase in occupational exposures, (v) a significant increase in the potential for accidental releases, or (vi) a significant increase in spent fuel storage capacity, in a license for:

(A) Possession and use of special nuclear material for processing, fuel fabrication, scrap recovery, or conversion of uranium hexafluoride pursuant to Part 70 of this chapter.

(B) Possession and use of source material for uranium milling or production of uranium hexafluoride pursuant to Part 40 of this chapter.

(C) Receipt and possession of spent commercial reactor fuel at any site for purpose of storage pursuant to Parts 30 and 70 of this chapter.

(D) Receipt and possession of high-level radioactive waste in a repository for the purpose of storage or disposal.

(E) Commercial low-level radioactive waste disposal pursuant to Parts 30, 40, and/or 70 of this chapter.

(6) Renewal of licenses to conduct activities listed in paragraph (b)(5) of this section.

(7) Amendment of a license to authorize backfilling of a repository which has been used for the storage or disposal of high-level radioactive waste.

(8) License amendments or orders authorizing the dismantling or decommissioning of nuclear power reactors, testing facilities, fuel reprocessing plants and isotopic enrichment plants.

(9) Termination of a license for the possession and use of source material for uranium milling.

(10) Issuance of licenses pursuant to Parts 30, 40 or 70 of this chapter (i) for nuclear laundries, (ii) authorizing processing of byproduct, source and special nuclear materials for distribution to other licensees, (iii) authorizing processing of source material for extraction of rare earth and other metals,^{7/} or (iv) testing of depleted uranium military munitions.

(11) Substantive and significant amendments from the standpoint of environmental impact of Parts 20, 30, 31, 32, 33, 34, 35, 40, 50, 51, 70, 71, 73, 81, or 100 of this chapter.

(12) Any action which the Commission determines involves unresolved conflicts concerning alternative uses of available resources.

(13) Amendments of Parts 30, 40 or 70 of this chapter concerning the exemption from licensing and regulatory requirements of or authorizing

^{7/} Except for uranium milling which is specifically identified in §§ 51.20(b)(7) and 51.21(b)(5)(B) of this subpart.

general licenses for any equipment, device, commodity or other product containing byproduct material, source material or special nuclear material.

(14) Any other action within the scope of this subpart not included in the types of actions listed in §§ 51.20(b) or 51.22(c). As provided in § 51.22(b) of this subpart, the Commission may, in special circumstances, prepare an environmental assessment on an action covered by a categorical exclusion.

§ 51.22 Criterion for and identification of licensing and regulatory actions eligible for categorical exclusion.

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

(b) Except in special circumstances as determined by the Commission, upon its own initiative or upon request by any interested person, an environmental assessment or an environmental impact statement is not required for any action within a category of actions included in the list of categorical exclusions set out in paragraph (c) of this section.

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

(1) Amendments to Parts 1, 2, 4, 7, 8, 9, 10, 14, 19, 21, 55, 140, 150, or 170 of this chapter.

(2) Amendments to the regulations in this chapter which are corrective or of a minor or nonpolicy nature and do not substantially modify existing regulations.

(3) Amendments to Parts 20, 30, 31, 32, 33, 34, 35, 40, 50, 51, 70, 71, 73, 81, or 100 of this chapter which relate to (i) procedures for filing and reviewing applications for licenses or construction permits or other forms of permission or for amendments to or renewals of licenses or construction permits or other forms of permission; (ii) recordkeeping requirements; or (iii) reporting requirements.

(4) Entrance into or amendment of an agreement with a State pursuant to section 274 of the Atomic Energy Act of 1954, as amended, providing for assumption by the State and discontinuance by the Commission of certain regulatory authority of the Commission.

(5) Procurement of general equipment and supplies.

(6) Procurement of technical assistance, confirmatory research, and personal services relating to the safe operation and protection of commercial reactors, other facilities, and materials subject to NRC licensing and regulation.

(7) Personnel actions.

(8) Issuance, amendment, or renewal of operators' licenses pursuant to Part 55 of this chapter.

(9) Issuance of an amendment to a permit or license for a reactor pursuant to Part 50 of this chapter, which changes 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 which changes an inspection or a surveillance requirement, provided that (i) the amendment does not involve any significant hazards consideration, (ii) there is no change in the types or amounts of any effluents that may be released offsite, and (iii) there is no associated increase in individual or cumulative occupational radiation exposure.

(10) Issuance of an amendment to a permit or license pursuant to Parts 30, 40, 50, or 70 of this chapter which (i) changes insurance and/or indemnity requirements, or (ii) changes recordkeeping, reporting, or administrative procedures or requirements.

(11) Issuance of amendments to licenses for fuel cycle plants and radioactive waste disposal sites as identified in §§ 51.20(b) or 51.21(b) of this subpart which are administrative, organizational, or procedural in nature; or which result in a change in process operations or equipment, provided that (i) there is no increase in the types or amounts of effluents that may be released offsite, (ii) there is no associated increase in individual or cumulative occupational radiation exposure, (iii) there is no significant construction impact, and (iv) there is no increase in the potential for or consequences from radiological accidents.

(12) Issuance of an amendment to a license pursuant to Parts 50 and 70 of this chapter relating solely to safeguards matters (i.e., protection against sabotage or loss or diversion of special nuclear material) or issuance of an approval of a safeguards plan submitted pursuant to Parts 50, 70, and 73 of this chapter, provided that the amendment or approval does not involve any significant construction impacts.

(13) Approval of package designs for the delivery of licensed materials to a carrier for transportation.

(14) Issuance, amendment, or renewal of the following types of materials licenses issued pursuant to 10 CFR Parts 30, 40, or 70:

- (i) Distribution of devices and products containing radioactive material to general licensees and persons exempt from licensing
- (ii) Medical licenses
- (iii) Nuclear pharmacies
- (iv) Teletherapy licenses
- (v) Licenses to academic institutions for educational purposes
- (vi) Industrial radiography
- (vii) Acceptance of packaged radioactive wastes from others for transfer to licensed land burial facilities
- (viii) Irradiators (dry storage--self-contained)
- (ix) Irradiators (wet storage--panoramic)
- (x) Gauging devices, analytical instruments, and other devices utilizing sealed sources
- (xi) Source material licenses for fabrication of the products specified in 10 CFR § 40.13, fabrication of military munitions, and laboratory use for research and development
- (xii) Well logging
- (xiii) Research and development licenses involving less than ten curies of radioactive material

(15) Issuance, amendment or renewal of licenses for import of nuclear equipment and materials pursuant to Part 110 of this chapter, except where the subsequent possession or use of the materials or equipment is beyond the scope of any NRC licensed activity.

DETERMINATIONS TO PREPARE ENVIRONMENTAL IMPACT STATEMENTS,
ENVIRONMENTAL ASSESSMENTS OR FINDINGS OF NO
SIGNIFICANT IMPACT, AND RELATED PROCEDURES

§ 51.25 Determination to prepare environmental impact statement or environmental assessment; Eligibility for categorical exclusion.

Before taking a proposed action subject to the provisions of this subpart, the appropriate NRC staff director or his designee will determine on the basis of the criteria and classifications of types of actions in §§ 51.20, 51.21 and 51.22 of this subpart whether the proposed action is of the type listed in § 51.22(c) as a categorical exclusion or whether an environmental impact statement or an environmental assessment should be prepared.

§ 51.26 Requirement to publish notice of intent and conduct scoping process.

(a) Whenever the appropriate NRC staff director or his designee determines that an environmental impact statement will be prepared in connection with a proposed action, a notice of intent will be published and an appropriate scoping process will be conducted.

(b) The scoping process may include a public scoping meeting.

§ 51.27 Notice of intent.

(a) The notice of intent required by § 51.26 of this subpart shall:

(1) State that an environmental impact statement will be prepared;

(2) Describe the proposed action and possible alternatives;

(3) State whether the applicant or petitioner has filed an environmental report, and where copies are available for public inspection;

(4) Describe the proposed scoping process, including the role of participants, whether written comments will be accepted, the last date for submitting comments and where comments should be sent, whether a public scoping meeting will be held, the time and place of any scoping meeting or when the time and place of the meeting will be announced; and

(5) State the name, address and telephone number of an individual in NRC who can provide information about the proposed action, the scoping process, and the environmental impact statement.

Scoping

§ 51.28 Scoping - Environmental impact statement.

(a) The scoping process for an environmental impact statement shall begin as soon as practicable after publication of the notice of intent and shall:

(1) Determine the scope and identify the significant issues to be analyzed in depth.

(2) Identify and eliminate from detailed study issues which are peripheral or are not significant or which have been covered by prior environmental review. Discussion of these issues in the statement will be limited to a brief presentation of why they are peripheral or will not have a significant effect on the quality of the human environment or a reference to their coverage elsewhere.

(3) Identify any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the statement under consideration.

(4) Identify other environmental review and consultation requirements related to the proposed action so that other required analyses and studies may be prepared concurrently and integrated with the environmental impact statement.

(5) Indicate the relationship between the timing of the preparation of environmental analyses and the Commission's tentative planning and decision-making schedule.

(6) Identify any cooperating agencies, and as appropriate, allocate assignments for preparation and schedules for completion of the statement to the NRC and any cooperating agencies.

(7) Describe the means by which the environmental impact statement will be prepared, including any contractor assistance to be used.

(b) At the conclusion of the scoping process, the appropriate NRC staff director or his designee will prepare a concise summary of the determinations and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process.

(c) At any time prior to issuance of the draft environmental impact statement, the appropriate NRC staff director or his designee may revise the determinations made under paragraph (b) of this section, as appropriate, if substantial changes are made in the proposed action, or if significant new circumstances or information arise which bear on the proposed action or its impacts.

§ 51.29 Scoping - Participants

(a) The appropriate NRC staff director or his designee shall invite the following persons to participate in the scoping process:

(1) The applicant or the petitioner;

(2) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce relevant environmental standards;

(3) Affected State and local agencies, including those authorized to develop and enforce relevant environmental standards;

(4) Any affected Indian tribe; and

(5) Any person who requests an opportunity to participate in the scoping process.

(b) Participation in a scoping process does not, by itself, entitle the participant to become a party to the proceeding as provided in 10 CFR § 2.714, or in the case of rule making as provided in the notice of hearing, or to make a limited appearance as provided in 10 CFR § 2.715.

Environmental Assessment

§ 51.30 Environmental assessment.

(a) An environmental assessment shall identify the proposed action and include:

(1) A brief discussion of

(i) the need for the proposed action;

(ii) alternatives as required by sec. 102(2)(E) of NEPA;

(iii) the environmental impacts of the proposed action and alternatives;

and

(2) A list of agencies and persons consulted, and identification of sources used.

§ 51.31 Determinations based on environmental assessment.

Upon completion of an environmental assessment, the appropriate NRC staff director or his designee will determine whether to prepare an environmental

impact statement or a finding of no significant impact on the proposed action. As provided in § 51.33 of this subpart, a determination to prepare a draft finding of no significant impact may also be made.

Finding of No Significant Impact

§ 51.32 Finding of no significant impact.

(a) A finding of no significant impact will:

- (1) Identify the proposed action;
- (2) State that the Commission has determined not to prepare an environmental impact statement for the proposed action;
- (3) Briefly present the reasons why the proposed action will not have a significant effect on the quality of the human environment;
- (4) Include the environmental assessment or a summary of the environmental assessment. If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference;

(5) Note any other related environmental documents; and

(6) State that the finding and any related environmental documents are available for public inspection and list the location or locations where the documents may be inspected.

§ 51.33 Draft finding of no significant impact.

(a) As provided in paragraph (b) of this section, the appropriate NRC staff director or his designee may make a determination to prepare and issue a draft finding of no significant impact for public review and comment before making a final determination whether to prepare an environmental impact statement or a final finding of no significant impact on the proposed action.

(b) A draft finding of no significant impact may be prepared whenever a proposed action (1) is, or is closely similar to, one which normally requires the preparation of an environmental impact statement, or (2) is without precedent.

(c) A draft finding of no significant impact will (1) be marked "Draft", (2) contain the information specified in § 51.32 of this subpart, and (3) be accompanied by or include a request for comments on the proposed action and

on the draft finding within thirty (30) days, or such longer period as may be specified in the notice of the draft finding.

(d) When a draft finding of no significant impact is issued for a proposed action, a final determination to prepare an environmental impact statement or a final finding of no significant impact for that action shall not be made until the last day of the public comment period has expired.

§ 51.34 Preparation of finding of no significant impact.

(a) Except as provided in paragraph (b) of this section, the finding of no significant impact will be prepared by the NRC staff director authorized to take the action, or his designee.

(b) If the action is subject to a hearing under the regulations in Subpart G of Part 2 of this chapter or if the action can only be taken by the Commissioners acting as a collegial body, the appropriate NRC staff director or his designee will prepare a proposed finding of no significant impact which may be subject to modification as a result of Commission review and decision as appropriate to the nature and scope of the proceeding. In such cases, the presiding officer, the Atomic Safety and Licensing Appeal Board, or the Commission acting as a collegial body, as appropriate, will issue the final finding of no significant impact.

§ 51.35 Requirement to publish finding of no significant impact; limitation on Commission action.

(a) Whenever the Commission makes a draft or final finding of no significant impact on a proposed action, the finding will be published as provided in § 51.119.

(b) Unless the Commission is required to take emergency action, the Commission shall not take any action for which a draft finding of no significant impact has been made until after the final finding has been published in the FEDERAL REGISTER.

ENVIRONMENTAL REPORTS AND INFORMATION - REQUIREMENTS
APPLICABLE TO APPLICANTS AND PETITIONERS

General

§ 51.40 Consultation with NRC Staff.

(a) A prospective applicant or petitioner is encouraged to confer with NRC staff as early as possible in its planning process before submitting environmental information or filing an environmental report.

(b) Requests for guidance or information on environmental matters may include inquiries relating to:

(1) Applicable NRC rules and regulations;

(2) Format, content and procedures for filing environmental reports and other environmental information;

(3) Availability of relevant environmental studies and environmental information;

(4) Need for, appropriate level and scope of any environmental studies or information which the Commission may require to be submitted in connection with an application or petition;

(5) Public meetings with NRC staff.

(c) Questions concerning environmental matters should be addressed to the following NRC staff offices as appropriate:

Utilization facilities: Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: (301) 492-7691.

Production facilities: Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: (301) 427-4063.

Materials licenses: Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: (301) 427-4063.

Rule making: Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: (301) 492-7511.

§ 51.41 Requirement to submit environmental information.

The Commission may require an applicant for a permit, license, or other form of permission, or amendment to or renewal of a permit, license or other

form of permission, or a petitioner for rulemaking to submit such information to the Commission as may be useful in aiding the Commission in complying with section 102(2) of NEPA. The Commission will independently evaluate the information submitted and will be responsible for the reliability of any information which it uses.

Environmental Reports - General Requirements

§ 51.45 Environmental Report.

(a) General. As required by §§ 51.50, 51.53, 51.54, 51.60 or 51.65 each applicant or petitioner shall submit with its application or petition a separate document entitled "Applicant's" or "Petitioner's Environmental Report," as appropriate, in the number of copies specified in §§ 51.55, 51.61 or 51.66. An applicant or petitioner may submit a supplement to an environmental report at any time.

(b) Environmental considerations. The environmental report shall contain a description of the proposed action, a statement of its purposes, a description of the environment affected, and discuss the following considerations:

(1) The impact of the proposed action on the environment. Impacts shall be discussed in proportion to their significance;

(2) Any adverse environmental effects which cannot be avoided should the proposal be implemented;

(3) Alternatives to the proposed action. The discussion of alternatives shall be sufficiently complete to aid the Commission in developing and exploring, pursuant to section 102(2)(E) of NEPA, "appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." To the extent practicable, the environmental impacts of the proposal and the alternatives should be presented in comparative form;

(4) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(5) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

(c) Analysis. The environmental report shall include an analysis which considers and balances the environmental effects of the proposed action and the alternatives available for reducing or avoiding adverse environmental effects, as well as the environmental, economic, technical and other benefits of the proposed action. The analysis shall, to the fullest extent practicable, quantify the various factors considered. To the extent that there are important qualitative considerations or these factors cannot

be quantified, they shall be discussed in qualitative terms. The environmental report should contain sufficient data to aid the Commission in its development of an independent analysis.

(d) Status of compliance. The environmental report shall list all Federal permits, licenses, approvals and other entitlements which must be obtained in connection with the proposed action and shall describe the status of compliance with these requirements. The environmental report shall also include a discussion of the status of compliance with applicable environmental quality standards and requirements (including, but not limited to, applicable zoning and land-use regulations, and thermal and other water pollution limitations or requirements promulgated or imposed pursuant to the Federal Water Pollution Control Act) which have been imposed by Federal, State, regional, and local agencies having responsibility for environmental protection. The discussion of alternatives in the report shall include a discussion whether the alternatives will comply with such applicable environmental quality standards and requirements.

(e) Adverse information. The information submitted pursuant to paragraphs (b)-(d) of this section should not be confined to information supporting the proposed action but should also include adverse information.

Environmental Reports - Production and Utilization Facilities

§ 51.50 Environmental Report - Construction permit stage.

Each applicant for a permit to construct a production or utilization facility covered by § 51.20 shall submit with its application the number of copies, as specified in § 51.55, of a separate document, entitled "Applicant's Environmental Report - Construction Permit Stage," which shall contain the information specified in §§ 51.45, 51.51 and 51.52 of this subpart.

§ 51.51 Environmental effects of uranium fuel cycle - Table S-3.

[Reserved.]

NOTE: On July 27, 1979, the Commission promulgated a final rule to be effective September 4, 1979. When proposed Part 51 is promulgated in final form, this section will incorporate the text of the effective rule.

§ 51.52 Environmental effects of transportation of fuel and waste.

Every environmental report prepared for the construction permit stage of a light-water-cooled nuclear power reactor, and submitted after February 4, 1975, shall contain a statement concerning transportation of fuel and radioactive wastes to and from the reactor. That statement shall indicate that the reactor and this transportation either meet all of the

conditions in paragraph (a) of this section or all of the conditions in paragraph (b) of this section.

(a) (1) The reactor has a core thermal power level not exceeding 3,800 megawatts;

(2) The reactor fuel is in the form of sintered uranium dioxide pellets having a uranium-235 enrichment not exceeding 4% by weight, and the pellets are encapsulated in zircaloy rods;

(3) The average level of irradiation of the irradiated fuel from the reactor does not exceed 33,000 megawatt-days per metric ton, and no irradiated fuel assembly is shipped until at least 90 days after it is discharged from the reactor;

(4) With the exception of irradiated fuel, all radioactive waste shipped from the reactor is packaged and in a solid form;

(5) Unirradiated fuel is shipped to the reactor by truck; irradiated fuel is shipped from the reactor by truck, rail, or barge; and radioactive waste other than irradiated fuel is shipped from the reactor by truck or rail; and

(6) The environmental impacts of transportation of fuel and waste to and from the reactor, with respect to normal conditions of transport and possible accidents in transport, are as set forth in Summary Table S-4 in

paragraph (c) of this section; and the values in the table represent the contribution of the transportation to the environmental costs of licensing the reactor.

(b) For reactors not meeting the conditions of paragraph (a) of this section, the statement shall contain a full description and detailed analysis of the environmental effects of transportation of fuel and wastes to and from the reactor, including values for the environmental impact under normal conditions of transport and for the environmental risk from accidents in transport. The statement shall indicate that the values determined by the analysis represent the contribution of such effects to the environmental costs of licensing the reactor.

(c)

SUMMARY TABLE 2-4-- ENVIRONMENTAL IMPACT OF TRANSPORTATION OF FUEL AND WASTE TO AND FROM ONE LIGHT-WATER-COOLED NUCLEAR POWER REACTOR¹

NORMAL CONDITIONS OF TRANSPORT			
		Environmental impact	
Weight (per irradiated fuel cask in transit).....	250,000 lbs./hr.		
Weight (governed by Federal or State restrictions).....	75,000 lbs. per truck; 100 tons per cask per rail car.		
Traffic density:			
Truck.....		Less than 1 per day.	
Rail.....		Less than 3 per month.	
Exposed population	Estimated number of persons exposed	Range of doses to exposed individuals ² (per reactor year)	Cumulative dose to exposed population (per reactor year) ³
Transportation workers.....	300	0.01 to 300 millirem.....	1 man-rem.
General public			
Onlookers.....	1,100	0.002 to 1.3 millirem.....	3 man-rem.
Along Route.....	600,000	0.0001 to 0.06 millirem.....	
ACCIDENTS IN TRANSPORT			
		Environmental risk	
Radiological effects.....		Small ⁴ .	
Common (nonradiological) causes.....		1 fatal injury in 100 reactor years; 1 nonfatal injury in 10 reactor years; 2473 property damage per reactor year.	

¹Data supporting this table are given in the Commission's "Environmental Survey of Transportation of Radioactive Materials to and from Nuclear Power Plants," WASH-1238, December 1972, and Supp. I, NUREG-73/038 April 1975. Both documents are available for inspection and copying at the Commission's Public Document Room, 1717 H St., NW., Washington, D.C., and may be obtained from National Technical Information Service, Springfield, Va. 22161. WASH-1238 is available from NTIS at a cost of 13.45 (microfilm, \$2.25) and NUREG-73/038 is available at a cost of \$3.25 (microfilm, \$2.25).

²The Federal Radiation Council has recommended that the radiation doses from all sources of radiation other than natural background and medical exposures should be limited to 5,000 millirem per year for individuals as a result of occupational exposure and should be limited to 500 millirem per year for individuals in the general population. The dose to individuals due to average natural background radiation is about 150 millirem per year.

³Man-rem is an expression for the summation of whole body doses to individuals in a group. Thus, if each member of a population group of 1,000 people were to receive a dose of 0.001 rem (1 millirem), or if 2 people were to receive a dose of 0.5 rem (500 millirem) each, the total man-rem dose in each case would be 1 MAN-REM.

⁴Although the environmental risk of radiological effects stemming from transportation accidents is currently incapable of being numerically quantified, the risk remains small regardless of whether it is being applied to a single reactor or a multireactor site.

§ 51.53 Supplement to Environmental Report - Operating license stage.

Each applicant for a license to operate a production or utilization facility covered by § 51.20 shall submit with its application the number of copies, as specified in § 51.55, of a separate document, entitled "Supplement to Applicant's Environmental Report - Operating License Stage." Unless otherwise required by the Commission, the applicant for an operating license for a nuclear power reactor shall submit this report only in connection with the first licensing action authorizing full power operation. In this report, the applicant shall discuss the same matters described in §§ 51.45, 51.51 and 51.52 of this subpart, but only to the extent that they differ from those discussed or reflect new information in addition to that discussed in the final environmental impact statement prepared by the Commission in connection with the construction permit.

§ 51.54 Environmental Report - Manufacturing license.

Each applicant for a license to manufacture a nuclear power reactor, or for an amendment to a license to manufacture seeking approval of the final design of the nuclear power reactor, pursuant to Appendix M of Part 50 of this chapter shall submit with its application to the Director of Nuclear Reactor Regulation the number of copies, as specified in § 51.55, of a separate document, entitled "Applicant's Environmental Report - Manufacturing License," or "Supplement to Applicant's Environmental Report - Manufacturing

License." The environmental report shall address the environmental matters specified in Appendix M of Part 50 of this chapter, and shall contain the information specified in § 51.45 of this subpart, as appropriate.

§ 51.55 Environmental Report - Number of copies; Distribution.

(a) Each applicant for a license to construct and operate a production or utilization facility covered by paragraphs (b)(1), (b)(2), (b)(3) or (b)(4) of § 51.20 shall submit to the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, in accordance with § 50.30(c)(1)(iv) of Part 50 of this chapter, forty-one (41) copies of an environmental report, or any supplement to an environmental report. The applicant shall retain an additional 109 copies of the environmental report or any supplement to the environmental report for distribution to parties and Boards in the NRC proceeding, Federal, State, and local officials and any affected Indian tribes, in accordance with written instructions issued by the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards or their designees, as appropriate.

(b) Each applicant for a license to manufacture a nuclear power reactor, or for an amendment to a license to manufacture seeking approval of the final design of the nuclear power reactor, pursuant to Appendix M of Part 50 of this chapter shall submit forty-one (41) copies of an environmental report or any supplement to an environmental report to the Director of Nuclear Reactor

Regulation. The applicant shall retain an additional 109 copies of the environmental report or any supplement to the environmental report for distribution to parties and Boards in the NRC proceeding, Federal, State, and local officials and any affected Indian tribes, in accordance with written instructions issued by the Director of Nuclear Reactor Regulation or his designee, as appropriate.

Environmental Reports - Materials Licenses

§ 51.60 Environmental Report - Materials licenses.

Each applicant for a license or other form of permission, or an amendment to or renewal of a license or other form of permission issued pursuant to Parts 30, 40, and/or 70 of this chapter, covered by paragraphs (b)(6), (b)(7), (b)(8), (b)(9), (b)(10), (b)(11), or (b)(12) of § 51.20, or (b)(4), (b)(5), (b)(6), (b)(7), (b)(8), (b)(9), or (b)(10) of § 51.21 shall submit with its application to the Director of Nuclear Material Safety and Safeguards the number of copies, as specified in § 51.61, of a separate document, entitled "Applicant's Environmental Report." The "Applicant's Environmental Report" shall contain the information specified in § 51.45 of this subpart.

§ 51.61 Environmental Report - Number of copies; Distribution.

Each applicant for a license or other form of permission, or an amendment to or renewal of a license or other form of permission issued pursuant

to Parts 30, 40, and/or 70 of this chapter, covered by paragraphs (b)(6), (b)(7), (b)(8), (b)(9), (b)(10), (b)(11), or (b)(12) of § 51.20, or (b)(4), (b)(5), (b)(6), (b)(7), (b)(8), (b)(9), or (b)(10) of § 51.21, shall submit to the Director of Nuclear Material Safety and Safeguards an environmental report in the number of copies specified. The applicant shall retain additional copies of the environmental report in the number of copies specified for distribution to Federal, State, and local officials and any affected Indian tribes in accordance with written instructions issued by the Director of Nuclear Material Safety and Safeguards, or his designee.

Environmental Report

<u>Type of Licensing Action</u>	<u>Number of Copies To Be Submitted With Application</u>	<u>Number of Copies To Be Retained by Applicant For Subsequent Distribution</u>
Licensing actions requiring environmental impact statements pursuant to § 51.20(b) of this subpart	25 copies	125 copies
Licensing actions requiring environmental assessments pursuant to § 51.21(b) of this subpart	15 copies	None

Environmental Reports - Rule Making

§ 51.65 Environmental Report - Rule making.

Petitioners for rule making covered by § 51.21(b)(13) shall submit with the petition the number of copies, as specified in § 51.66, of a separate document entitled "Petitioner's Environmental Report," which shall contain the information specified in § 51.45 of this subpart.

§ 51.66 Environmental Report - Number of copies.

Petitioners for rule making covered by § 51.65 shall submit fifty (50) copies of an environmental report or any supplement to an environmental report.

ENVIRONMENTAL IMPACT STATEMENTS

Draft Environmental Impact Statements - General Requirements

§ 51.70 Draft Environmental Impact Statement - General.

(a) The NRC staff will prepare a draft environmental impact statement as soon as practicable after publication of the notice of intent to prepare an environmental impact statement and completion of the scoping process.

(b) The draft environmental impact statement will be concise, clear and analytic, state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of NEPA and other environmental laws and policies, and be supported by evidence that the necessary environmental analyses have been made. The format provided in Appendix A of this subpart should be used. The NRC staff will independently evaluate information submitted by the applicant or petitioner or others and will be responsible for the reliability of all information used in the draft environmental impact statement.

§ 51.71 Draft Environmental Impact Statement - Contents.

(a) Scope. The draft environmental impact statement will be prepared in accordance with the scope decided upon in the scoping process required by §§ 51.26 and 51.28 of this subpart. As appropriate and to the extent required by the scope, the draft statement will address the topics in paragraphs (b), (c), (d) and (e) of this section and the matters specified in §§ 51.45, 51.51, 51.52 and 51.53 of this subpart.

(b) Analysis of major points of view. The draft environmental impact statement will include consideration of major points of view expressed on the environmental impacts of the proposed action and the alternatives, and contain an analysis of significant problems and objections raised by other Federal, State, and local agencies, by any affected Indian tribes, and by other interested persons.

(c) Status of compliance. The draft environmental impact statement will list all Federal permits, licenses, approvals, and other entitlements which must be obtained in implementing the proposed action and will describe the status of compliance with those requirements. If it is uncertain whether a Federal permit, license, approval, or other entitlement is necessary, the draft environmental impact statement will so indicate.

(d) Analysis. The draft environmental impact statement will include a preliminary analysis which considers and balances the environmental and other effects of the proposed action and the alternatives available for reducing or avoiding adverse environmental and other effects, as well as the environmental, economic, technical and other benefits of the proposed action. The analysis will, to the fullest extent practicable, quantify the various factors considered. To the extent that there are important qualitative considerations or these factors cannot be quantified, they will be discussed in qualitative terms. The analysis will indicate what other interests and considerations of Federal policy, including factors not related to environmental quality, are thought to offset any adverse environmental effects of the proposed action identified pursuant to paragraph (a). Due consideration will be given to compliance with environmental quality standards and requirements which have been imposed by Federal, State, regional, and local agencies having responsibility for environmental protection, including applicable zoning and land-use regulations and water pollution limitations or requirements promulgated or imposed pursuant to the Federal Water Pollution Control Act.

(e) Preliminary recommendation. The draft environmental impact statement normally will include a preliminary recommendation by the NRC staff respecting the proposed action. This preliminary recommendation will be based on the information and analysis described in paragraphs (a) - (d) of this section and §§ 51.75, 51.76, 51.80 and 51.85, as appropriate, and will

be reached after weighing the costs and benefits of the proposed action and considering reasonable alternatives. In lieu of a preliminary recommendation, the NRC staff may indicate in the draft statement that two or more alternatives remain under consideration.

§ 51.72 Supplement to draft environmental impact statement.

(a) The NRC staff will prepare a supplement to a draft environmental impact statement for which a notice of availability has been published if:

- (1) There are substantial changes in the proposed action that are relevant to environmental concerns; or
- (2) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(b) The NRC staff may prepare a supplement to a draft environmental impact statement when, in their opinion, preparation of a supplement will further the purposes of NEPA.

(c) The supplement to a draft environmental impact statement will be prepared and noticed in the same manner as the draft environmental impact statement except that a scoping process need not be used.

§ 51.73 Request for comments on draft environmental impact statement.

Each draft environmental impact statement and each supplement to a draft environmental impact statement distributed in accordance with § 51.74, and each news release provided pursuant to § 51.74(d) will be accompanied by or include a request for comments on the proposed action and on the draft environmental impact statement or any supplement to the draft environmental impact statement and will state where comments should be submitted and the date on which the comment period closes. A minimum comment period of 45 days will be provided. The comment period will be calculated from the date on which the Environmental Protection Agency notice announcing the availability of the draft statement or the supplement to the draft statement is published in the FEDERAL REGISTER. If no comments are provided within the time specified, it will be presumed, unless the agency or person requests an extension of time, that the agency or person has no comment to make. To the extent practicable, NRC staff will grant reasonable requests for extensions of time of up to fifteen (15) days.

§ 51.74 Distribution of draft environmental impact statement and supplement to draft environmental impact statement; News releases.

(a) A copy of the draft environmental impact statement will be distributed to:

- (1) The Environmental Protection Agency
- (2) Any other Federal agency which has special expertise or jurisdiction by law with respect to any environmental impact involved or which is authorized to develop and enforce relevant environmental standards
- (3) The applicant or petitioner and any other party to the proceeding
- (4) Appropriate State and local agencies authorized to develop and enforce relevant environmental standards
- (5) Appropriate State, regional and metropolitan clearinghouses
- (6) Appropriate Indian tribes when the proposed action may have an environmental impact on a reservation
- (7) Upon request, any organization or group included in the list of interested organizations and groups maintained under § 51.122
- (8) Upon request, any other person to the extent available

(b) Additional copies will be provided upon request to the extent available.

(c) A supplement to a draft environmental impact statement will be distributed in the same manner as the draft environmental impact statement to which it relates.

(d) News releases stating the availability for comment and place for obtaining or inspecting a draft environmental statement or supplement will be provided to local newspapers and other appropriate media.

(e) A notice will be published in the FEDERAL REGISTER in accordance with § 51.117.

Draft Environmental Impact Statements -
Production and Utilization Facilities

§ 51.75 Draft environmental impact statement - Construction permit.

A draft environmental impact statement relating to issuance of a construction permit for a production or utilization facility will be prepared in accordance with the procedures and measures described in §§ 51.70, 51.71, 51.72 and 51.73.

§ 51.76 Draft environmental impact statement - Manufacturing license.

A draft environmental impact statement relating to issuance of a license to manufacture a nuclear power reactor will address the environmental matters specified in Appendix M of Part 50 of this chapter. The draft environmental impact statement will include a request for comments as provided in § 51.73 of this subpart.

§ 51.77 Distribution of draft environmental impact statement.

(a) In addition to the distribution authorized by § 51.74 of this subpart, a copy of a draft environmental statement for a licensing action for

a production or utilization facility, except an action authorizing issuance, amendment or renewal of a license to manufacture a nuclear power reactor pursuant to 10 CFR Part 50, Appendix M will also be distributed to:

- (1) The chief executive of the municipality or county identified in the draft environmental impact statement as the preferred site for the proposed facility or activity
- (2) Upon request, the chief executive of each municipality or county identified in the draft environmental impact statement as an alternative site.

(b) Additional copies will be provided upon request to the extent available.

Draft Environmental Impact Statements -
Materials Licenses

§ 51.80 Draft environmental impact statement - Materials license.

Except as the context may otherwise require, procedures and measures similar to those described in §§ 51.70, 51.71, 51.72 and 51.73 of this subpart will be followed in proceedings for the issuance of materials licenses covered by § 51.20(b)(6)-(12) of this subpart.

§ 51.81 Distribution of draft environmental impact statement.

Copies of the draft environmental impact statement and any supplement to the draft environmental impact statement will be distributed in accordance with the provisions of § 51.74 of this subpart.

Draft Environmental Impact Statements -

Rule Making

§ 51.85 Draft environmental impact statement - Rule making.

Except as the context may otherwise require, procedures and measures similar to those described in §§ 51.70, 51.71, 51.72 and 51.73 of this subpart will be followed in proceedings for rulemaking for which the Commission has determined to prepare an environmental impact statement.

§ 51.86 Distribution of draft environmental impact statement.

Copies of the draft environmental impact statement and any supplement to the draft environmental impact statement will be distributed in accordance with the provisions of § 51.74 of this subpart.

Final Environmental Impact Statements - General Requirements

§ 51.90 Final environmental impact statement - General.

After receipt and consideration of comments requested by §§ 51.73 and 51.117, the NRC staff will prepare a final environmental impact statement in accordance with the requirements in §§ 51.70(b) and 51.71 for a draft environmental impact statement. The format provided in Appendix A of this subpart should be used.

§ 51.91 Final environmental impact statement - Contents.

(a)(1) The final environmental impact statement will include responses to any comments on the draft environmental impact statement or on any supplement to the draft environmental impact statement. Responses to comments may include:

- (i) Modification of alternatives, including the proposed action;
- (ii) Development and evaluation of alternatives not previously given serious consideration;
- (iii) Supplementation or modification of analyses;

(iv) Factual corrections;

(v) Explanation of why comments do not warrant further response, citing sources, authorities or reasons which support this conclusion.

(2) All substantive comments received on the draft environmental impact statement or any supplement to the draft environmental impact statement (or summaries thereof where the response has been exceptionally voluminous) will be attached to the final statement, whether or not each comment is discussed individually in the text of the statement.

(3) If changes in the draft environmental impact statement in response to comments are minor and are confined either to factual corrections or to explanations of why the comments do not warrant further response, the changes may be made by attaching errata sheets to the draft statement. The entire document with a new cover may then be issued as the final environmental impact statement.

(b) The final environmental impact statement will discuss any responsible opposing view not adequately discussed in the draft environmental impact statement or in any supplement to the draft environmental impact statement, and respond to the issues raised.

(c) The final environmental impact statement will state how the alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 101(2) of NEPA and of any other relevant environmental laws.

(d) The final environmental impact statement will include a final analysis and a final recommendation as to the action called for.

§ 51.92 Supplement to final environmental impact statement.

(a) The NRC staff may prepare a supplement to a final environmental impact statement when, in their opinion, preparation of a supplement will further the purposes of NEPA.

(b) A supplement to a final environmental impact statement will be prepared and noticed in the same manner as the final environmental impact statement except that a scoping process need not be used.

(c) A supplement to a final environmental impact statement will be accompanied by or will include a request for comments as provided in § 51.73 of this subpart if the conditions described in § 51.72(a)(1) or (2) of this subpart apply.

§ 51.93 Distribution of final environmental impact statement and supplement to final environmental impact statement; News releases.

(a) A copy of the final environmental impact statement will be distributed to:

- (1) The Environmental Protection Agency
- (2) The applicant or petitioner and any other party to the proceeding
- (3) Appropriate State, regional and metropolitan clearinghouses
- (4) Each commenter
- (5) Upon request, any other person to the extent available

(b) Additional copies will be provided upon request to the extent available.

(c) If the final environmental impact statement is unusually long or there are so many comments on a draft environmental impact statement or any supplement to a draft environmental impact statement that distribution of the entire final statement to all commenters is impracticable, a summary of the final statement and the substantive comments will be distributed. When the final environmental impact statement has been prepared by adding errata sheets to the draft environmental impact statement as provided in § 51.91(a)(3)

of this subpart, only the comments, the responses to the comments and the changes to the environmental impact statement will be distributed.

(d) A supplement to a final environmental impact statement will be distributed in the same manner as the final environmental impact statement to which it relates.

(e) News releases stating the availability and place for obtaining or inspecting a final environmental impact statement or supplement will be provided to local newspapers and other appropriate media.

(f) A notice will be published in the FEDERAL REGISTER in accordance with § 51.118 of this subpart.

§ 51.94 Requirement to consider final environmental impact statement.

(a) The final environmental impact statement, together with any comments and any supplement, will accompany the application or petition through, and be considered in, the Commission's decisionmaking process.

(b) The final environmental impact statement, together with any comments and any supplement, will be made a part of the record of any rule-making or adjudicatory proceeding.

Final Environmental Impact Statements -
Production and Utilization Facilities

§ 51.95 Supplement to final environmental impact statement - Operating license.

In connection with the issuance of an operating license for a production or utilization facility, the NRC staff will prepare a supplement to the final environmental impact statement on the construction permit for that facility. The supplement will include a request for comments as provided in § 51.73 of this subpart. The supplement will cover only matters which differ from or which reflect significant new information in addition to those matters discussed in the final environmental impact statement. Unless otherwise determined by the Commission, a supplement on the operation of a nuclear power reactor will only be prepared in connection with the first licensing action authorizing full power operation.

Final Environmental Impact Statements -
Materials Licenses

§ 51.97 [Reserved.]

Final Environmental Impact Statements -

Rule Making

§ 51.99 [Reserved.]

NEPA PROCEDURE AND ADMINISTRATIVE ACTION

General

§ 51.100 Timing of Commission action.

(a)(1) Except as provided in paragraph (b) of this section, no decision on a proposed action, including the issuance of a permit, license, or other form of permission, or amendment to or renewal of a permit, license, or other form of permission, or the issuance of an effective regulation, for which an environmental impact statement is required, will be made and no record of decision will be issued until the later of the following dates:

(f) Ninety (90) days after publication by the Environmental Protection Agency of a FEDERAL REGISTER notice of filing of the draft environmental impact statement.

(ii) Thirty (30) days after publication by the Environmental Protection Agency of a FEDERAL REGISTER notice of filing of the final environmental impact statement.

(2) If a notice of filing of a final Environmental Impact Statement is published by the Environmental Protection Agency within ninety (90) days after a notice of filing of a draft environmental statement has been published by EPA, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently to the extent they overlap.

(b) In any rulemaking proceeding for the purpose of protecting the public health or safety or the common defense and security, the Commission may make and publish the decision on the final rule at the same time that the Environmental Protection Agency publishes the FEDERAL REGISTER notice of filing of the final environmental impact statement.

§ 51.101 Limitations on actions.

(a) Until a record of decision is issued in connection with a proposed licensing or regulatory action for which an environmental impact statement

is required as provided in § 51.20, or until a final finding of no significant impact is issued in connection with a proposed licensing or regulatory action for which an environmental assessment is required as provided in § 51.21:

(1) No action concerning the proposal may be taken by the Commission which would (i) have an adverse environmental impact, or (ii) limit the choice of reasonable alternatives.

(2) Any action concerning the proposal taken by an applicant or petitioner which would (i) have an adverse environmental impact, or (ii) limit the choice of reasonable alternatives may be grounds for denial of the license or petition. In the case of an application covered by §§ 30.32(f), 40.31(f), 50.10(c), or 70.21(f) of this chapter, the provisions of paragraph (a)(2) of this section will be implemented as provided in §§ 30.33(a)(5), 40.32(e), 50.10(c) or 70.23(a)(7) of this chapter, as appropriate.

(b) While work on a required program environmental impact statement is in progress, the Commission will not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Absent any satisfactory explanation to the contrary, interim action which tends to determine subsequent development or limit reasonable alternatives, will be considered prejudicial.

(c) This section does not preclude any applicant for an NRC permit, license, or other form of permission, or amendment to or renewal of an NRC permit, license, or other form of permission, (1) from developing any plans or designs necessary to support an application; or (2) after prior notice and consultation with NRC staff, (i) from performing any physical work necessary to support an application, or (ii) from performing any other physical work relating to the proposed action if the adverse environmental impact of that work is de minimis.

§ 51.102 Requirement to provide a record of decision; preparation.

(a) A Commission decision on any action for which a final environmental impact statement has been prepared shall be accompanied by or include a concise public record of decision.

(b) Except as provided in paragraph (c) of this section, the record of decision will be prepared by the NRC staff director authorized to take the action, or his designee.

(c) If the action is subject to a hearing under the regulations in Subpart G of Part 2 of this chapter or if the action can only be taken by the Commissioners acting as a collegial body, the appropriate NRC staff director or his designee will prepare a proposed record of decision, which may be subject to modification as a result of Commission review and decision as appropriate to the nature and scope of the proceeding. In such cases, the presiding officer, the Atomic Safety and Licensing Appeal Board, or the Commissioners acting as a collegial body, as appropriate, will issue the record of decision.

§ 51.103 Record of decision - General.

(a) The record of decision required by § 51.102 of this subpart shall be clearly identified and shall:

(1) State the decision.

(2) Identify all alternatives considered by the Commission in reaching the decision, state that these alternatives were included in the range of alternatives discussed in the environmental impact statement,

and specify the alternative or alternatives which were considered to be environmentally preferable.

(3) Discuss preferences among alternatives based on relevant factors, including economic and technical considerations, the Commission's statutory mission, and any essential considerations of national policy, which were balanced by the Commission in making the decision and state how these considerations entered into the decision.

(4) State whether the Commission has taken all practicable measures within its jurisdiction to avoid or minimize environmental harm from the alternative selected, and if not, to explain why those measures were not adopted. Summarize any license conditions and monitoring program adopted in connection with mitigation measures.

(b) The record of decision may be integrated into any other record prepared by the Commission in connection with the action. The record of decision may incorporate by reference material contained in a final environmental impact statement.

§ 51.104 NRC proceedings using public hearings; Consideration of environmental impact statements; Record of decision.

(a) In any proceeding in which a draft environmental impact statement is prepared pursuant to this subpart, the draft environmental impact statement

will be made available to the public at least fifteen (15) days before any relevant hearing. At the hearing, the position of the NRC staff on matters covered by this subpart will not be presented until the final environmental impact statement is furnished to the Environmental Protection Agency and commenting agencies and made available to the public. Any other party to the proceeding may present its case on NEPA matters as well as on radiological health and safety matters before the end of the fifteen (15) day period.

(b)(1) The NRC staff will offer the final environmental impact statement in evidence in a proceeding in which

(i) a hearing is held on the issuance of a permit or license, or amendment to or renewal of a permit or license;

(ii) a final environmental impact statement has been prepared in connection with the proposed action; and

(iii) matters covered by this subpart are in issue.

(2) Any party to the proceeding may take a position and offer evidence on the aspects of the proposed action covered by NEPA and this subpart in accordance with the provisions of Subpart G of Part 2 of this chapter.

(3) In the proceeding the presiding officer will decide those matters in controversy among the parties within the scope of NEPA and this subpart.

(4) In the proceeding, the initial decision of the presiding officer or the final decision of the Commissioners acting as a collegial body or the Atomic Safety and Licensing Appeal Board will incorporate the record of decision required by §§ 51.102 and 51.103 of this subpart and may include findings and conclusions which affirm or modify the content of the proposed record of decision prepared by the appropriate NRC staff director or his designee as provided in § 51.102(c) of this subpart. The initial or final decision incorporating the record of decision will be distributed as provided in § 51.93.

(c) In any proceeding in which a hearing is held for the issuance of a permit or license, or amendment to or renewal of a permit or license, where the NRC staff has determined that no environmental impact statement need be prepared for the proposed action, any party to the proceeding may take a position and offer evidence on the aspects of the proposed action covered by NEPA and the regulations in this subpart in accordance with the provisions of Subpart G of Part 2 of this chapter. In the proceeding, the presiding officer will decide any such matters in controversy among the parties.

Production and Utilization Facilities

§ 51.105 Public hearings in proceedings for issuance of construction permits or licenses to manufacture.

(a) In addition to complying with applicable requirements of § 51.104 of this subpart, in a proceeding for the issuance of a construction permit for a nuclear power reactor, testing facility, fuel reprocessing plant or isotopic enrichment plant, or for the issuance of a license to manufacture, the presiding officer will:

(1) Determine whether the requirements of section 102(2) (A), (C), and (E) of NEPA and the regulations in this subpart have been met;

(2) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken;

(3) Determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the construction permit or license to manufacture should be issued, denied, or appropriately conditioned to protect environmental values;

(4) Determine, in an uncontested proceeding, whether the NEPA review conducted by the NRC staff has been adequate; and

(5) Determine, in a contested proceeding, whether in accordance with the regulations in this subpart, the construction permit or license to manufacture should be issued as proposed.

Materials Licenses

§ 51.108 [Reserved]

Rule Making

§ 51.110 [Reserved]

PUBLIC NOTICE OF AND ACCESS TO ENVIRONMENTAL DOCUMENTS

§ 51.116 Notice of Intent.

(a) In accordance with § 51.26, the appropriate NRC staff director or his designee will cause to be published in the FEDERAL REGISTER a notice of intent stating that an environmental impact statement will be prepared. The notice will contain the information specified in § 51.27 of this subpart.

(b) Copies of the notice will be sent to appropriate Federal, State, and local agencies, and Indian tribes, appropriate State, regional, and metropolitan clearinghouses and to interested persons upon request. A public announcement of the notice of intent will also be made.

§ 51.117 Draft Environmental Impact Statement - Notice of Availability.

(a) Upon completion of a draft environmental impact statement or any supplement to a draft environmental impact statement, the appropriate NRC staff director or his designee will cause to be published in the FEDERAL REGISTER a notice of availability of the statement.

(b) The notice will request comments on the proposed action and on the draft statement or any supplement to the draft statement and will specify where comments should be submitted and when the comment period expires.

(c) The notice will (1) state that copies of the draft statement or any supplement to the draft statement are available for public inspection; (2) list the location or locations where inspection may be made, and (3) state that any comments of Federal, State, and local agencies, Indian tribes or other interested persons will be made available for public inspection when received.

(d) Copies of the notice will be sent to appropriate Federal, State, and local agencies, and Indian tribes, appropriate State, regional, and metropolitan clearinghouses, and to interested persons upon request.

§ 51.118 Final Environmental Impact Statement - Notice of Availability

Upon completion of a final environmental impact statement or any supplement to a final environmental impact statement, the appropriate NRC staff director or his designee will cause to be published in the FEDERAL REGISTER a notice of availability of the statement. The notice will state that copies of the final statement or any supplement to the final statement are available for public inspection and list the location or locations where inspection may be made. Copies of the notice will be sent to appropriate Federal, State, and local agencies, and Indian tribes, appropriate State, regional, and metropolitan clearinghouses and to interested persons upon request.

§ 51.119 Publication of Finding of No Significant Impact.

(a) The appropriate NRC staff director or his designee will cause the finding of no significant impact required by § 51.35 to be published in the FEDERAL REGISTER. The finding of no significant impact will be identified as a draft or final finding, and will contain the information specified in §§ 51.32 or 51.33, as appropriate. A draft finding of no significant impact

will include a request for comments which specifies where comments should be submitted and when the comment period expires.

(b) The finding will include a statement that copies of the finding, the environmental assessment setting forth the basis for the finding and any related environmental documents are available for public inspection and will list the location or locations where inspection may be made.

(c) Copies of the finding will be sent to appropriate Federal, State, and local agencies, and Indian tribes, appropriate State, regional, and metropolitan clearinghouses and to interested persons upon request.

§ 51.120 Availability of environmental documents for public inspection.

Copies of environmental reports, draft and final environmental impact statements, environmental assessments, and findings of no significant impact, together with any related comments and environmental documents, will be placed in the Commission's Public Document Room at 1717 H Street, N. W., Washington, D. C., and in any public document room established by the Commission in the vicinity of the site of the proposed facility or licensed activity where a file of documents pertaining to such proposed facility or activity is maintained.

§ 51.121 Status of NEPA actions.

Individuals or organizations desiring information on the Commission's NEPA process or on the status of specific NEPA actions should address inquiries to:

Utilization facilities: Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492-7691.

Production facilities: Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 427-4063.

Materials licenses: Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 427-4063.

Rule making: Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492-7511.

§ 51.122 List of interested organizations and groups.

The appropriate NRC staff director or his designee will maintain a list of organizations and groups, including relevant conservation commissions,

known to be interested in the Commission's licensing and regulatory activities and will promptly notify such organizations and groups of the availability of a draft environmental impact statement or a draft finding of no significant impact.

§ 51.123 Cost of materials distributed to public.

Copies of draft and final environmental impact statements, findings of no significant impact and environmental assessments will be made available to the public upon request without charge to the extent practicable notwithstanding the provisions of Part 9 of this chapter, or at a fee not exceeding the actual reproduction cost.

APPENDIX A

Format for Presentation of Material in Environmental
Impact Statements

1. General.

(a) The Commission will use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless there is a compelling reason to do otherwise:

- (1) Cover sheet*
- (2) Summary*
- (3) Table of Contents
- (4) Purpose of and Need for Action*
- (5) Alternatives including the proposed action*
- (6) Affected Environment*
- (7) Environmental Consequences and Mitigating Actions*
- (8) List of Preparers*
- (9) List of Agencies, Organizations and Persons to Whom Copies
of the Statement are Sent
- (10) Index
- (11) Appendices (if any)*

If a different format is used, it shall include paragraphs (1), (2), (3), (8), (9), and (10), of this section and shall include the substance of paragraphs (4), (5), (6), (7), and (11) of this section, in any appropriate format.

Additional guidance on the presentation of material under the format headings identified by an asterisk is set out in sections 2.-9 of this appendix.

(b) The techniques of tiering and incorporation by reference described respectively in 40 CFR §§ 1502.20 and 1508.28 and 40 CFR § 1502.21^{1/} of CEQ's NEPA regulations may be used as appropriate to aid in the presentation of issues, eliminate repetition or reduce the size of an environmental impact statement. In appropriate circumstances, draft or final environmental impact statements prepared by other Federal agencies may be adopted in whole or in part in accordance with the procedures outlined in 40 CFR § 1506.3^{2/} of CEQ's NEPA regulations. In final environmental impact statements, material under the following format headings will normally be presented in less than 150 pages: Purpose of and Need for Action, Alternatives Including the

- 1/ Tiering
40 CFR § 1502.20 (For text see p. 139.)
40 CFR § 1508.28 (For text see p. 139.)
Incorporation by reference
40 CFR § 1502.21 (For text see p. 140.)
- 2/ Adoption
40 CFR § 1506.3 (For text see p. 140.)

Proposed Action, Affected Environment, and Environmental Consequences and Mitigating Actions. For proposals of unusual scope or complexity, the material presented under these format headings may extend to 300 pages.

2. Cover sheet.

The cover sheet will not exceed one page. It will include:

(a) The name of the NRC office responsible for preparing the statement and a list of any cooperating agencies.

(b) The title of the proposed action that is the subject of the statement with a list of the states, counties or municipalities where the action is located, as appropriate.

(c) The name, address, and telephone number of the individual in NRC who can supply further information.

(d) A designation of the statement as a draft or final statement, or a draft or final supplement.

(e) A one paragraph abstract of the statement.

(f) For draft environmental impact statements, the date by which comments must be received.

3. Summary.

Each environmental impact statement will contain a summary which adequately and accurately summarizes the statement. The summary will stress the major issues considered. The summary will discuss the areas of controversy, will identify any remaining issues to be resolved, and will present the major conclusions and recommendations. The summary will normally not exceed 15 pages.

4. Purpose of and need for action.

The statement will briefly describe and specify the purpose of and need for the proposed action. The alternative of no action will be discussed. In the case of nuclear power plants, consideration will be given to the potential impact of conservation measures in determining the demand and consequent need for additional generating capacity.

5. Alternatives including the proposed action.

This section is the heart of the environmental impact statement. It will present the environmental impacts of the proposal and the alternatives in comparative form. All reasonable alternatives will be identified. The range of alternatives discussed will encompass those proposed to be considered by the ultimate decisionmaker. An otherwise reasonable alternative

will not be excluded from discussion solely on the ground that it is not within the jurisdiction of the Commission.^{3/} The discussion of alternatives will take into account, without duplicating, the environmental information and analyses included in sections 4., 6. and 7. of this Appendix. Alternatives eliminated from detailed study will be identified and a discussion of those alternatives will be confined to a brief statement of the reasons why the alternatives were eliminated. The level of information for each alternative considered in detail will reflect the depth of analysis required for sound decisionmaking. Where important to the comparative evaluation of alternatives, appropriate mitigating measures for the alternatives will be discussed.

In the draft environmental impact statement, this section will either include a preliminary recommendation as to the action called for, or identify the alternatives under consideration.

In the final environmental impact statement, this section will include a final recommendation as to the action called for.

^{3/} With respect to limitations on NRC's NEPA authority and responsibility imposed by the Federal Water Pollution Control Act Amendments of 1972, see documents identified in § 51.10(c) of Subpart A of this part.

6. Affected environment.

The environmental impact statement will succinctly describe the environment to be affected by the proposed action. Data and analyses in the statement will be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Effort and attention will be concentrated on important issues; useless bulk will be eliminated.

7. Environmental consequences and mitigating actions.

This section discusses the environmental consequences of the proposed action and any mitigating action which may be taken. The discussion will include any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section will include discussions of:

- (a) Direct effects and their significance.
- (b) Indirect effects and their significance.

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned.

(d) Means to mitigate adverse environmental impacts.

8. List of preparers.

The environmental impact statement will list the names and qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers. Persons responsible for making an independent evaluation of information submitted by the applicant or petitioner or others will be included in the list. Where possible, the persons who are responsible for a particular analysis, including analyses in background papers, will be identified.

9. Appendices.

An appendix to an environmental impact statement will:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (§ 1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement. Discussion of methodology used may be placed in an appendix.

(c) Normally be analytic.

(d) Be relevant to the decision to be made.

(e) Be circulated with the environmental impact statement or be readily available on request.

Footnotes

1/ Tiering.

40 CFR § 1502.20 states:

"Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§ 1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Sec. 1508.28)."

40 CFR § 1508.28 states:

"Tiering' refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

"(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

"(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe."

Incorporation by reference.

40 CFR § 1502.21 states:

"Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference."

2/ Adoption.

40 CFR § 1506.3 states:

"(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

"(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

"(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

"(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify."

CONFORMING AMENDMENTS

PART 2 - RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

10 CFR Part 2 is amended as follows:

2. In § 2.101(a)(3), the phrase "pursuant to Part 51 of this chapter, a part thereof" is changed to read "pursuant to subpart A of Part 51 of this chapter".
3. In § 2.101(a)(3)(i), the phrase "in Parts 50 and 51" is changed to read "in Part 50 and subpart A of Part 51".
4. In § 2.101(a)(5), "§ 51.5(a)" is replaced by "§ 51.20(b)" in both places it appears.
5. In § 2.101(a-1), "§ 51.5(a)" is replaced by "§ 51.20(b)".
6. In §§ 2.104(b)(1)(v), 2.104(b)(3) and 2.104(C)(7), insert "subpart A of" immediately before "Part 51" wherever it appears.
7. In § 2.501(b), insert "subpart A of " immediately before "Part 51" wherever it appears.

8. In § 2.600, "§ 51.5(a)" is replaced by "§ 51.20(b)".
9. In § 2.603(b)(1), "§ 51.5(a)" is replaced by "§51.20(b)".
10. In § 2.605(b)(1), insert "subpart A of" immediately before "Part 51".
11. In § 2.606(a), insert "subpart A of" immediately before "Part 51".
12. In § 2.743(g), the phrase "Detailed Statement on environmental considerations" is replaced by "environmental impact statement", and the phrase "subpart A of" is inserted before "Part 51".
13. In § 2.761a, "§ 51.5(a)" is replaced by "§ 51.20(b)", and the phrase "subpart A of" is inserted before "Part 51" wherever it appears.
14. In § I(a) and (d) of Appendix A to Part 2, the phrase "detailed statement on environmental considerations" is replaced by "environmental impact statement".
15. In § I(c)(2) of Appendix A to Part 2, insert "subpart A of" immediately before "Part 51".
16. In § V(d)(2) of Appendix A to Part 2, the phrase "final detailed environmental statement" is replaced by "final environmental impact statement".

17. In § V(f)(1) and (3) of Appendix A to Part 2, insert "subpart A of" immediately before "Part 51" wherever it appears.
18. In § VI(c)(3) of Appendix A to Part 2, insert "subpart A of" immediately before "Part 51" wherever it appears.
19. In § VII(b)(7) of Appendix A to Part 2, insert "subpart A of" immediately before "Part 51".

PART 30 - RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF
BYPRODUCT MATERIAL

10 CFR Part 30 is amended as follows:

20. In § 30.32(f), insert "subpart A of" immediately before "Part 51".
21. In § 30.33(a)(5), insert "subpart A of" immediately before "Part 51".

PART 40 - DOMESTIC LICENSING OF SOURCE MATERIAL

10 CFR Part 40 is amended as follows:

22. In § 40.31(f) and § 40.32(e), insert "subpart A of" immediately before "Part 51".

PART 50 - DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

10 CFR Part 50 is amended as follows:

23. In § 50.10(c), "51.5(a)" is replaced by "§ 51.20(b)".
24. In § 50.10(e)(1), "§ 51.5(a)" is replaced by "51.20(b)" and the phrase "subpart A of" is inserted before "Part 51".
25. In § 50.10(e)(2), "§ 51.52(b) and (c)" is replaced by "§§ 51.104(b) and § 51.105".
26. In § 50.10(e)(3)(i), "§ 51.5(a)" is replaced by "§ 51.20(b)".
27. In § 50.30(f), insert "subpart A of" immediately before "Part 51".
28. § 50.40(d) is revised to read:

"(d) Any applicable requirements of subpart A of Part 51 have been satisfied".
29. In §§ 3., 5.(g) and 11. of Appendix M to Part 50, insert "subpart A of" immediately before "Part 51".

30. In § 2 of Appendix N to Part 50, "§ 51.20" is replaced by "§ 51.50".

31. In § 3 of Appendix N to Part 50, "§ 51.21" is replaced by "§ 51.53".

32. In § 7 of Appendix O to Part 50, "§ 51.5" is replaced by "§ 51.20(b)(14)".

33. In the introductory paragraph and in § 5. of Appendix Q to Part 50, "§ 51.5(a)" is replaced by "§ 51.20(b)".

34. In § 7 of Appendix Q to Part 50, insert "subpart A of" immediately before "Part 51" wherever it appears.

PART 70 - DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

10 CFR Part 70 is amended as follows:

35. In § 70.21(f), insert "subpart A of" immediately before "Part 51".

36. In § 70.23(a)(7), insert "subpart A of" immediately before "Part 51".

Dated at Washington, D.C. this day of 1979.

For the U.S. Nuclear Regulatory Commission.

Samuel J. Chilk
Secretary of the Commission

ENCLOSURE "B"

- the Transient Thermal Lens Effect: filed January 31, 1979.
- Patent application 8,008,212: Method of Mitigating Titanium Impurities Effects in p-Type Silicon Material for Solar Cells: filed January 31, 1979.
- Patent application 869,757: A Method and Technique for Installing Light-Weight Fragile, High-Temperature Fiber Insulation: filed December 15, 1978.
- Patent 4,133,697: Solar Array Strip and a Method for Forming the Same: filed June 24, 1977; patented January 9, 1979; not available NTIS.
- Patent 4,133,941: Formulated Plastic Separators for Soluble Electrode Cells: filed March 10, 1977; patented January 9, 1979; not available NTIS.
- Patent 4,134,447: Thermal Compensator for Closed-Cycle Helium Refrigerator: filed September 30, 1977; patented January 16, 1979; not available NTIS.
- Patent 4,134,744: Fine Particulate Capture Device: filed November 8, 1978; patented January 16, 1979; not available NTIS.
- Patent 4,134,786: Process for Purification of Waste Water Produced by a Kraft Process Pulp and Paper Mill: filed December 15, 1978; patented January 16, 1979; not available NTIS.
- U.S. Department of the Interior, Branch of Patents, 18th and C Streets, N.W., Washington, D.C. 20240.
- Patent application 950,781: Backwashing Reverse-Osmosis and Ultrafiltration Membranes: filed October 12, 1978.
- Patent application 950,782: Method of and Apparatus for Detecting Escaping Leach Solvents: filed October 12, 1978.
- Patent 4,179,592: Method of and Apparatus for Feeding and Inserting Bolts in a Mine Roof: filed March 4, 1977; patented March 21, 1979; not available NTIS.
- Patent 4,179,609: Muffler for Pneumatic Drill: filed July 13, 1977; patented March 21, 1978; not available NTIS.
- Patent 4,185,017: Recovery of Copper and Nickel from Alloys: filed September 6, 1977; patented April 18, 1978; not available NTIS.
- Patent 4,133,967: Two-Stage Electric Arc-Electroslag Process and Apparatus for Continuous Steelmaking: filed June 24, 1977; patented January 9, 1979; not available NTIS.

[FR Doc. 79-1326 Filed 7-20-79; 8:45 am]
 BILLING CODE 3510-04-M

COUNCIL ON ENVIRONMENTAL QUALITY

Second Progress Report on Agency Implementing Procedures Under the National Environmental Policy Act July 18, 1979

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Information Only: Publication of Second Progress Report on Agency Implementing Procedures Under The National Environmental Policy Act.

SUMMARY: In response to President Carter's Executive Order 11991, on November 29, 1978, the Council on Environmental Quality issued regulations implementing the procedural provisions of the National Environmental Policy Act ("NEPA"). (43 FR 55978-56007; 40 CFR 1500-08) Section 1507.3 of the regulations provides that each agency of the Federal Government shall adopt procedures to supplement the regulations by July 30, 1979. The Council has indicated to Federal agencies its intention to publish progress reports on agency efforts to develop implementing procedures under the NEPA regulations. The purpose of these progress reports, the second of which appears below, is to provide an update on where agencies stand in this process and to inform interested persons of when to expect the publication of proposed procedures for their review and comment.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Yost, General Counsel, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C. 20006; 202-395-5750.

Progress Report on Agency Implementing Procedures Under the National Environmental Policy Act

At the direction of President Carter (Executive Order 11991), on November 29, 1978, the Council on Environmental Quality issued regulations implementing the procedural provisions of the National Environmental Policy Act ("NEPA"). These regulations appear at Volume 43 of the Federal Register, pages 55978-56007 and Volume 40 of the Code of Federal Regulations, Sections 1500-1508. Their purpose is to reduce paperwork and delay associated with the environmental review process and to foster environmental quality through better decisions under NEPA.

Section 1507.3 of the NEPA regulations provides that each agency of the Federal government shall adopt procedures to supplement the regulations. The purpose of agency "implementing procedures," as they are called, is to translate the broad standards of the Council's regulations into practical action in Federal planning and decisionmaking. Agency procedures will provide government personnel with additional, more specific direction for implementing the procedural provisions of NEPA, and will inform the public and State and local officials of how the NEPA regulations will be applied to individual Federal programs and activities.

In the course of developing implementing procedures, agencies are

required to consult with the Council and to publish proposed procedures in the Federal Register for public review and comment. Proposed procedures must be revised as necessary to respond to the ideas and suggestions made during the comment period. Thereafter, agencies are required to submit the proposed final version of their procedures for 30 days review by the Council for conformity with the Act and the NEPA regulations. After making such changes as are indicated by the Council's review, agencies are required to promulgate their final procedures by July 30.

It is apparent that a number of Federal agencies will not meet this deadline. The Council has advised Federal agencies that failure to do so would represent a violation of § 1507.3 of the NEPA regulations. Substantial delays in adopting procedures beyond this deadline would also raise more general concerns about the adequacy of an agency's compliance with NEPA.

On May 7, 1979 the Council published its first progress report on agency implementing procedures, 44 Federal Register 26781-82. Its second progress report appears below. The Council hopes that concerned members of the public will review and comment upon agency procedures to insure that the reforms required by President Carter and by the Council's regulations are implemented. Agencies preparing implementing procedures are listed under one of the following three categories:

Category #1: Proposed Procedures Have Been Published

This category includes agencies whose proposed procedures have either appeared in the Federal Register or been transmitted to the Federal Register for publication.

- Advisory Council on Historic Preservation, 44 FR 40653 (July 12)
- Central Intelligence Agency, 44 FR 23103 (April 18)
- Department of Agriculture, 44 FR 25808 (May 1)
- Animal and Plant Health Inspection Service, 44 FR 38345 (July 3)
- Forest Service, 44 FR 23891 (April 23)
- Rural Electrification Administration, 44 FR 28383 (May 15)
- Soil Conservation Service, 44 FR 25788 (May 2)
- Department of Defense, 44 FR 28338 (May 15)
- Department of the Air Force, (At the Federal Register)
- Army Corps of Engineers, 44 FR 38292 (June 29)
- Department of Energy, 44 FR 42136 (July 18)
- Department of the Interior, 44 FR 40437 (July 10)
- Department of Justice, (At the Federal Register)

Department of Transportation, 44 FR 31341 (May 31)
 Coast Guard, 44 FR 37098 (June 25)
 Federal Aviation Administration, 44 FR 32094 (June 4)
 Federal Railroad Administration, 44 FR 40174 (July 9)
 Department of the Treasury, 44 FR 39882 (July 6)
 Environmental Protection Agency, 44 FR 35158 (June 18)
 Export-Import Bank, 44 FR 28823 (May 17)
 Federal Communications Commission, 44 FR 38913 (July 3)
 Federal Maritime Commission, 44 FR 29122 (May 18)
 Federal Trade Commission, (At the Federal Register)
 General Services Administration, Agency Wide Procedures, 44 FR 33485 (June 11)
 Public Buildings, 44 FR 27473 (May 10)
 Marine Mammal Commission (At the Federal Register)
 National Aeronautics & Space Administration, 44 FR 27101 (May 9)
 National Capital Planning Commission, 44 FR 33185 (June 8)
 Postal Service, 44 FR 36991 (June 25)
 Tennessee Valley Authority, 44 FR 39879 (July 6)

Category #2. Anticipate Publication of Proposed Procedures by July 30

This category includes agencies which have developed a draft of implementing procedures as a basis for consultation with the Council and are expected to publish proposed procedures in the Federal Register by July 30, 1979.

Department of Agriculture*
 Soil Conservation Service
 Department of Defense*
 Department of the Navy
 Department of Housing and Urban Development
 Department of Health, Education and Welfare**
 Food and Drug Administration
 Department of the Interior*
 Bureau of Mines
 Bureau of Reclamation
 Fish and Wildlife Service
 Geological Survey
 Heritage Conservation and Recreation Service
 National Park Service
 Office of Surface Mining Control and Reclamation
 Department of Labor
 Department of Transportation*
 Federal Highway Administration
 Urban Mass Transportation Administration
 Department of State
 Federal Energy Regulatory Commission
 National Science Foundation
 Pennsylvania Avenue Development Corporation
 Veterans Administration
 Water Resources Council and River Basin Commissions

* Departmental Procedures Already Published.

** Departmental Procedures in Category #3.

Category #3: Publication of Proposed Procedures Delayed Beyond July 30.

This category includes agencies which are *not* expected to publish proposed procedures in the Federal Register by July 30, 1979.

Action

Civil Aeronautics Board
 Community Services Administration
 Consumer Product Safety Commission
 Department of Agriculture*
 Farmers Home Administration
 Science and Education Administration
 Department of Commerce
 Economic Development Administration
 National Oceanic and Atmospheric Administration
 Department of Defense*
 Department of the Army
 Department of Health, Education and Welfare
 Department of the Interior*
 Bureau of Indian Affairs
 Bureau of Land Management
 Department of Transportation*
 National Highway Traffic Safety Administration
 Farm Credit Administration
 Federal Deposit Insurance Corporation
 Federal Home Loan Bank Board
 Federal Reserve System
 Interstate Commerce Commission
 National Credit Union Administration
 Nuclear Regulatory Commission
 Securities and Exchange Commission
 Small Business Administration
 Smithsonian Institution

The development of agency implementing procedures is a critical stage in Federal efforts to reform the NEPA process. These procedures must, of course, be consistent with the Council's regulations and provide the means for reducing paperwork and delay and producing better decisions in agency planning and decisionmaking.

Interested persons will have the opportunity to make their suggestions for improving agency procedures when they are published in the Federal Register in proposed form. Broad public participation at this crucial juncture could go a long way toward ensuring that the goals of the NEPA regulations are widely implemented in the day-to-day activities of government.

Nicholas C. Yost,

General Counsel.

(FR Doc. 79-3272) Filed 7-23-79; 8:46 am]

BILLING CODE 5725-01-01

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Maalaea Small Boat Harbor Project, Maalaea, Maui

July 11, 1979.

AGENCY: U.S. Army Corps of Engineers, DoD, Honolulu District.

ACTION: Notice of Intent to Prepare a DEIS.

SUMMARY: 1. Brief Description of the Proposed Action. The proposed action is a harbor improvement project, the major objectives of which are to reduce surge within the harbor, reduce the navigational hazard in the entrance channel and provide for additional berthing spaces.

2. Brief Description of the Reasonable Alternatives. Preliminary alternative plans are based on input from the public as well as oceanographic information obtained from computer wave refraction analysis, theoretical wave diffraction analysis, aerial photographs, an underwater reconnaissance investigation and an examination of offshore subsurface borings. The authorized plan and four preliminary alternative plans all include realignment of the entrance channel. The authorized plan and one alternative plan propose extension of the existing south breakwater. Another alternative proposes construction of an offshore breakwater, and the fourth alternative includes construction of a new breakwater approximately 250 feet seaward (south) of the existing south breakwater which would substantially increase berthing space in the harbor.

3. Brief Description of the Corps Scoping Process Which is Reasonably Foreseeable for the DEIS.

a. Proposed Public Involvement Program. The program will involve coordination with the sponsoring agencies, other governmental agencies, community organizations, and the general public. Activities include informal meetings, workshops, formal public meetings, issuance of public notices and letter responses. All pertinent agencies have been notified of study initiation. An initial public meeting was held with interested agencies and the public in January 1979 and two workshops have been conducted subsequently in April and June of 1979.

b. Identification of Significant Environmental Issues to be Analyzed in Depth in the DEIS.