



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 11, 2010

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-09-0189

TITLE: FINAL RULE: 10 CFR 51.22, "CRITERION FOR CATEGORICAL EXCLUSION; IDENTIFICATION OF LICENSING AND REGULATORY ACTIONS ELIGIBLE FOR CATEGORICAL EXCLUSION OR OTHERWISE NOT REQUIRING ENVIRONMENTAL REVIEW" (RIN 3150-AI27)

The Commission (with all Commissioners agreeing) approved the final rule as noted in an Affirmation Session and recorded in the Staff Requirements Memorandum (SRM) of March 11, 2010.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in black ink, appearing to read "Annette L. Vietti-Cook", written over a horizontal line.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Jaczko
Commissioner Klein
Commissioner Svinicki
OGC
EDO
PDR

VOTING SUMMARY - SECY-09-0189

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACZKO	X				X	1/26/10
COMR. KLEIN	X					2/19/10
COMR. SVINICKI	X				X	2/17/10

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the final rule as noted in an Affirmation Session and reflected in the SRM issued on March 11, 2010.

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Chairman Jaczko

SUBJECT: SECY-09-0189 – FINAL RULE: 10 CFR 51.22,
“CRITERION FOR CATEGORICAL EXCLUSION;
IDENTIFICATION OF LICENSING AND REGULATORY
ACTIONS ELIGIBLE FOR CATEGORICAL EXCLUSION
OR OTHERWISE NOT REQUIRING ENVIRONMENTAL
REVIEW” (RIN 3150-A127)

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below X Attached _____ None _____

I approve the staff's recommendation to publish, in the Federal Register, the final rulemaking for 10 CFR 51.22. The agency's reviews under the National Environmental Policy Act are an important part of our activities, and I commend the staff for the comprehensive review and update of the list of categorical exclusions in 10 CFR 51.22, consistent with the recommendation of the Council on Environmental Quality. The staff should continue to carefully consider the circumstances concerning the application of each categorical exclusion in order to determine whether, notwithstanding the inclusion of that general activity in 10 CFR 51.22, there could potentially be an effect on the human environment warranting the preparation of an Environmental Assessment or Environmental Impact Statement.



SIGNATURE

1/26/10

DATE

Entered on "STARS" Yes x No _____

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Klein

SUBJECT: SECY-09-0189 – FINAL RULE: 10 CFR 51.22,
“CRITERION FOR CATEGORICAL EXCLUSION;
IDENTIFICATION OF LICENSING AND REGULATORY
ACTIONS ELIGIBLE FOR CATEGORICAL EXCLUSION
OR OTHERWISE NOT REQUIRING ENVIRONMENTAL
REVIEW” (RIN 3150-A127)

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached ___ None X



SIGNATURE

2/19/2010
DATE

Entered on “STARS” Yes X No _____

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: SECY-09-0189 – FINAL RULE: 10 CFR 51.22,
“CRITERION FOR CATEGORICAL EXCLUSION;
IDENTIFICATION OF LICENSING AND REGULATORY
ACTIONS ELIGIBLE FOR CATEGORICAL EXCLUSION
OR OTHERWISE NOT REQUIRING ENVIRONMENTAL
REVIEW” (RIN 3150-A127)

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below XX Attached XX None _____

I approve the staff's recommendation to publish, in the *Federal Register*, the final rulemaking for 10 CFR 51.22. The amendments to categories of actions eligible for categorical exclusion are appropriately minor, administrative, or procedural in nature.



SIGNATURE

02/2/10

DATE

Entered on "STARS" Yes XX No _____

within the restricted area, as defined by 10 CFR Part 20. The land covered by the restricted area is typically improved or otherwise previously disturbed and restricted to plant personnel or other screened individuals.

X Given the 10 CFR 51.22(c)(9)(i)-(iii) criteria and the nature of the restricted area, it is extremely unlikely that ~~the~~² granting any such exemption request would create any significant X impact on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Steven's Act. Similarly, it is extremely unlikely that there will be any impacts to socioeconomic, or historical and cultural resources. Thus, the NRC concludes that the amendment to 10 CFR 51.22(c)(9) is not overly broad, has sufficient X protections, and is supported by an adequate administrative record.

X The commenter further asserts that the public will be deprived of an opportunity to comment on an exemption from one or more of the enumerated requirements that potentially X impact public health, safety, or welfare. In response, the NRC has concluded that broadening the categorical exclusion to include exemption requests will not have a significant effect on the human environment and will reduce unnecessary agency work. The NRC has further concluded that this amendment will not adversely impact public health and safety. This conclusion is based on the NRC's administrative record and the findings that must be made before the exemption can be approved, as required by 10 CFR 51.22(c)(9)(i)-(iii).

The commenter also asserts that important technical reviews will be foregone because a permit or license holder's request for exemption is erroneously considered insignificant. The application of the categorical exclusion to any exemption request, however, is separate and distinct from the safety analysis of the exemption request that will be conducted by the NRC

staff. Absent the EA, the staff will still review the plant's procedures and technical specifications as well as evaluate the exemption request against the significance criteria in 10 CFR 51.22(c)(9)(i)-(iii).

X 5. Comment: The commenter, a State Department of Environmental Conservation, raised a concern about one of the new categorical exclusions, 10 CFR 51.22(c)(25), which covers exemption requests from administrative, managerial, or organizational requirements. Specifically, the commenter stated that the activities addressed in subparagraphs (C), (D), and (F) of 10 CFR 51.22(c)(vi)(25)⁷ appear to be more safety-related than administrative, or that the requirements were more than administrative. Subparagraph (C) covered exemption requests from inspection or surveillance requirements; subparagraph (D) covered exemption requests from equipment servicing or maintenance requirements; and subparagraph (F) covered exemption requests from safeguards plans, including materials control, accounting, or other inventory requirements. The commenter urged the NRC to remove these exemption requests from the list of activities eligible for listing as a categorical exclusion.

X Response: The NRC makes a distinction between conducting a safety analysis and conducting an environmental analysis. The NRC has determined that granting exemption requests from the types of requirements described in subparagraphs (C), (D), and (F) will not have a significant effect on the human environment. The commenter asserts that these requirements are more safety-related than administrative. The NRC will conduct a safety review and must make findings similar to those required by 10 CFR 51.22(c)(9). The proposed rule listed four findings, namely, that granting the exemption request would not result in a:

- (i) significant change in the types or significant increase in the amounts of any effluents that may be released offsite;
- (ii) significant increase in individual or cumulative public or occupational

⁷ The paragraph in question was designated as 10 CFR 51.22(c)(25)(v) in the proposed rule.

radiation exposure; (iii) significant construction impact; or (iv) there is no significant increase the potential for or consequences from radiological accidents.

In response to this comment, the final rule adds a fifth required finding that there will be no significant hazards consideration, set forth in this final rule as 10 CFR 51.22(c)(25)(i). In addition, the term "procedural" will be deleted from 10 CFR 51.22(c)(25)(vi)(I) (formerly subparagraph (c)(25)(v)(J) in the proposed rule) as the term "procedural" could be misconstrued in this context to include the requirement for licensees to implement procedures for substantive requirements. Thus, ~~along~~ with these changes, the NRC concludes that the requirement to make these findings as part of its safety analysis provides adequate protection of public health and safety and as such, the revised categorical exclusion is appropriate.

IV. Discussion of Amendments by Section

A. *Why Revise the Description of Categorical Exclusions in 10 CFR 51.22(a)?*

This rule amends § 51.22(a) to clarify that the types of actions eligible for a categorical exclusion include "administrative" actions in addition to "licensing" and "regulatory" actions.

B. *Why Revise the Categorical Exclusion in 10 CFR 51.22(c)(1) which Addresses Amendments to 10 CFR Parts that Pertain Solely to Organizational, Administrative or Procedural Matters?*

This rule amends § 51.22(c)(1) to include references to 10 CFR Parts that were inadvertently omitted. The 10 CFR Parts referenced in this section relate to matters regarding Commission organization, administration, or procedure. They serve the dual purpose of making information readily available to the public and of establishing administrative procedures for the orderly conduct of Commission business. The NRC has established that these types of

Part 26 – Fitness for Duty Programs. This part prescribes requirements and standards for the establishment and maintenance of certain aspects of fitness-for-duty programs and procedures.

Part 160 – Trespassing on Commission Property. This part provides for the protection and security of NRC facilities, installations, and properties from unauthorized entry and from unauthorized weapons or dangerous materials.

X
C. Why ~~the Commission~~ ^{g either} ~~(Has)~~ Chosen Not to Revise the Categorical Exclusion in 10 CFR 51.22(c)(2) ~~to~~ ^{delete} " " ?

The proposed rule proposed broadening the scope of 10 CFR 51.22(c)(2) to include regulatory amendments that updated references, and to make other modifications to the language. Subsequent to the publication of the proposed rule, the NRC staff re-evaluated this proposed amendment and determined the proposed changes were overly broad, particularly regarding those amendments to the NRC regulations that incorporated by reference updates to American Society of Mechanical Engineers (ASME) or similar codes. For example, it was determined that certain code cases for Section II of the ASME Boiler and Pressure Vessel code, "Materials," could result in an alloy being altered to include a new material. Such new material, if in contact with the reactor coolant system, could become radioactively activated and could ultimately be released to the environment. Thus, the NRC staff concluded that such reference updates should be subject to an environmental review. The final rule will not amend 10 CFR 51.22(c)(2).

D. Why Revise the Categorical Exclusion in 10 CFR 51.22(c)(3) which Addresses Amendments to Administrative, Organizational or Procedural Requirements within Other 10 CFR Parts?

The final rule amends 10 CFR 51.22(c)(3) to delete the specific listing of 10 CFR Parts and to

add a generic reference to reflect any part of CFR Chapter 10. This revision eliminates the need for changes due to new parts being added or deleted. As a result, efficiencies will be gained in the rulemaking process.

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

E. Why Revise Categorical Exclusion in 10 CFR 51.22(c)(9) which Addresses Amendments to a Permit or License for a Reactor under Parts 50 or 52?

The final rule amends 10 CFR 51.22(c)(9) to broaden the scope of the categorical exclusion to include the granting of a power reactor licensee exemption request from a requirement pertaining to the installation or use of a facility component located within the restricted area, as defined in 10 CFR Part 20. Under the previous provision, the granting of such an exemption request would not be covered by this categorical exclusion and therefore, would have required the preparation of an EA. The Commission has now determined that there is ample data in the form of EA and FONSIs to justify the categorical exclusion of the granting of these exemptions, provided that for each exemption request, the NRC first finds that the safety ^{are} criteria set forth in 10 CFR 51.22(c)(9) ~~is~~ met (i.e., the exemption involves no significant hazards ~~is~~ consideration, there is no significant change in the types of, or significant increase in the amounts of any effluents that may be released offsite, and there is no significant increase in individual or cumulative occupational radiation exposure). During the period 2003 through 2007, at least 50 EA/FONSIs resulted from licensee requests for such exemptions.

Sections 31.b.(2) and 243 of the Atomic Energy Act of 1954, as amended, constitute the statutory basis of this grants program. Section 243 authorizes the creation of a scholarship and fellowship program to fund scholarships, fellowships, and stipends for the study of science, engineering, or another field of study that the NRC determines is a critical skill area related to its regulatory mission, to support faculty and curricular development in such fields, and to support other domestic educational, technical assistance, or training programs (including those of trade schools) in such fields. Section 31.b.(2) authorizes the NRC to provide grants, loans, cooperative agreements, contracts, and equipment to institutions of higher education to support courses, studies, training, curricula, and disciplines pertaining to nuclear safety, security, or environmental protection, or any other field that the NRC determines to be critical to its regulatory mission.

This new categorical exclusion covers actions that the NRC has determined to be administrative in nature. The categorical exclusion contains prescriptive language (10 CFR 51.22(c)(24)(i)-(iv)) that ⁵limit its application to only those grants that will not have a significant effect on the human environment. In this regard, the categorical exclusion does not apply to those grants that may be used to directly support the construction of facilities, field work (except field work which only involves noninvasive or non-harmful techniques), or the testing and release of radioactive material. Furthermore, the categorical exclusion would not apply to those grants that would directly support any action that would lead to a major disturbance of the environment brought about by blasting, drilling, excavating, ⁶or other means.

I. Why Add a Categorical Exclusion in 10 CFR 51.22(c)(25) which Addresses the Granting of Exemptions from Regulatory Requirements?

Federal agencies. This final rule will not have any impact on Agreement States' regulations.

Therefore, Agreement States will not need to make conforming changes to their regulations.

X → space VI. Voluntary Consensus Standards b

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. The NRC is amending 10 CFR 51.22, the NRC's list of categories of actions that the NRC has determined to have no significant effect on the human environment. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

VII. Finding of No Significant Environmental Impact: Availability

Under NEPA and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an EIS is not required. The NRC prepared an EA and, on the basis of this EA, has made a FONSI. These amendments are based upon NRC review of environmental assessments conducted during the period 2003-2007 that have consistently resulted in FONSIs. The amendments to the categorical exclusions are administrative, procedural, or otherwise minor in nature (e.g., no significant increases in the amounts of any effluents that may be released offsite).

The NRC sent a copy of the EA and the proposed rule to every State Liaison Officer and requested their comments on the EA. Two State comment submissions were received. The States' comments and the NRC responses thereto are described in the Analysis of Public