

RULEMAKING ISSUE
(Affirmation)

December 31, 2009

SECY-09-0189

FOR: The Commissioners

FROM: R. W. Borchardt
Executive Director for Operations

SUBJECT: 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)

PURPOSE:

To request Commission approval to publish in the *Federal Register* a final rule that amends the categorical exclusions in Section 51.22 of Title 10 of the *Code of Federal Regulations* (CFR). This paper does not address any new commitments.

BACKGROUND:

The Commission approved the publication of the proposed rule in the Staff Requirements Memorandum (SRM), SECY-08-0115, ["Proposed 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,"] dated September 11, 2008. The proposed rule was published on October 9, 2008 (73 FR 59540) with a 75-day comment period, which ended on December 23, 2008. Four comment letters were received. The commenters included a member of the public, two State organizations, and one industry organization. The comments are discussed in detail in the *Federal Register* notice (Enclosure 1).

CONTACT: Cardelia H. Maupin, FSME/DILR
(301) 415-2312

DISCUSSION:

The final rule amends the 10 CFR 51.22 list of categories of actions which do not require an environmental review under the requirements of the National Environmental Policy Act of 1969 (NEPA) because they have no significant effect on the human environment, either individually or cumulatively. The rule clarifies the scope of the existing categories of actions and adds new categories of actions that have consistently resulted in a finding of no significant impact (FONSI). The amendment will minimize inefficiencies and inconsistencies in the implementation of U.S. Nuclear Regulatory Commission's (NRC's) regulatory program. Specifically, these revisions would obviate the need to prepare environmental assessments (EAs) for NRC actions that are minor, administrative, or procedural in nature (e.g., no increases in releases/uses of radioactive or chemical materials), and for which the NRC has consistently determined a FONSI.

The final rule reflects regulatory experience gained since the development of this regulation in March 1984. Prior to this amendment, there had been no comprehensive review and update of § 51.22 since its initial development. In addition, the amendments are based, in part, on the Council on Environmental Quality (CEQ) September 2003 NEPA Task Force Report (Task Force Report) "Modernizing NEPA Implementation," <http://www.nepa.gov/ntf/report/pdftoc.html>. The Task Force Report notes that the development and updating of categorical exclusions by Federal agencies occurs infrequently and recommends that Federal agencies examine their categorical exclusion regulations to identify potential revisions that would eliminate unnecessary EAs.

The Task Force Report recommends that agencies evaluate past EA/FONSIs for particular categories of actions to develop new or broaden existing categorical exclusions. To comply with this recommendation, an NRC search of files for EA/FONSIs completed during the 20-year period from 1987 to 2007 was conducted. The search revealed that more than 1,500 actions resulted in EA/FONSIs. The staff conducted an in-depth review of the EA/FONSIs issued during the period 2003-2007. That review identified several recurring categories of regulatory actions that are not addressed in 10 CFR 51.22, and have no significant effect on the human environment, either individually or cumulatively. These categories of actions are included in the final rule.

The final rule was assessed against the NRC's strategic performance goals. The rule will not adversely impact the agency's goals to ensure: (1) adequate protection of public health and safety, security, and the environment, and (2) secure use and management of radioactive materials. Categorical exclusions only apply to actions with no potential significant effect on the human environment. By eliminating the preparation of unnecessary EAs, which delay regulatory actions, the proposed revisions will support the NRC's goal of ensuring that its actions are effective, efficient, realistic, and timely.

AGREEMENT STATE ISSUES:

NEPA applies only to Federal agencies. This rule will not have any impact on Agreement States' regulations. Therefore, Agreement States will not need to make conforming changes to their regulations.

RECOMMENDATIONS:

That the Commission:

1. Approve for publication in the *Federal Register* the enclosed notice of final rulemaking (Enclosure 1). To satisfy the requirement of the Regulatory Flexibility Act, 5 U.S.C. 605 (b), certify that this rule, if promulgated, will not have significant impact on a substantial number of small entities. This certification is included in the enclosed *Federal Register* notice.
2. Note:
 - a. That the Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification and the reasons for it, as required by the Regulatory Flexibility Act, 5 U.S.C. 605(b);
 - b. A final EA has been prepared for this rulemaking (Enclosure 2);
 - c. The staff has determined that this action is not a "major rule," as defined in the Congressional Review Act of 1996 [5 U.S.C 804(2)] and has confirmed this determination with the Office of Management and Budget. The appropriate Congressional and Government Accountability Office contacts will be informed;
 - d. The appropriate Congressional committees will be informed; and
 - e. A press release will be issued by the Office of Public Affairs when the final rulemaking is filed with the Office of the Federal Register.

RESOURCES:

The fiscal year (FY) 2010 resources required to complete and implement the rulemaking are 0.88 full-time equivalent (FTE) and are budgeted. The estimated resources of 0.88 FTE for FY 2010 are included in the respective budget requests.

The Commissioners

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COORDINATION:

The Office of the General Counsel has no legal objection to the proposed rulemaking. The Office of the Chief Financial Officer has reviewed this Commission Paper for resource implications and has no objections.

/RA Martin J. Virgilio for/

R. W. Borchardt
Executive Director
for Operations

Enclosures:

1. *Federal Register* Notice
2. Environmental Assessment

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

RIN 3150-AI27

[NRC -2009-0269]

Categorical Exclusions from Environmental Review

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations that describe the categories of actions which do not require an environmental review under the requirements of the National Environmental Policy Act of 1969 (NEPA) as the NRC has determined that such actions do not individually or cumulatively have a significant effect on the human environment. The amended regulations eliminate the need for the preparation of environmental assessments for NRC actions that are minor, administrative, or procedural in nature. The amendments do not change any requirements for licensees, but may provide for more time for NRC action on more substantial issues and/or speed up the process for review of the amendments.

DATES: This final rule is effective on **[insert date of publication in the Federal Register]**.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

Federal e-Rulemaking Portal: Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2008-0269. Address questions about NRC dockets to Carol Gallagher at 301-492-3668; e-mail Carol.Gallagher@nrc.gov.

NRC's Public Document Room (PDR): The public may examine and may have copied for a fee publicly available document at the NRC's PDR, Public File Area O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-899-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Cardelia H. Maupin, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-2312, e-mail, Cardelia.Maupin@nrc.gov.

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I. Background

NEPA requires Federal agencies to undertake an assessment of the environmental effects of their proposed actions prior to making a decision on whether to approve or disapprove

of the proposed action. The NRC's NEPA regulations are contained in 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions."

A. General Overview of Categorical Exclusion

There are three types of NEPA analysis: an environmental impact statement (EIS), an environmental assessment (EA), and a categorical exclusion. An EIS documents an agency's evaluation of the environmental impacts of a major Federal action significantly affecting the quality of the human environment. An EA is a concise, publicly available document that provides sufficient evidence and analysis for determining whether to prepare an EIS or make a finding of no significant impact (FONSI). If an EA supports a FONSI, the environmental review process is complete. If the EA reveals that the proposed action may have a significant effect on the human environment, the Federal agency then prepares an EIS. A categorical exclusion, in contrast, is a category of actions that the agency has determined not to have a significant effect, either individually or cumulatively, on the human environment. A categorical exclusion is established by rulemaking. Once it has established a categorical exclusion, the agency is not required to prepare an EA or EIS for any action that falls within the scope of the categorical exclusion, unless the agency finds, for any particular action, that there are special (*e.g.*, unique, unusual or controversial) circumstances that may have a significant effect on the human environment. Categorical exclusions streamline the NEPA process, saving time, effort, and resources.

B. NRC Categorical Exclusion Regulations

On July 18, 1974, the NRC published a final rule (39 FR 26279) that added 10 CFR Part 51, "Licensing and Regulatory Policy and Procedures for Environmental Protection," to the

NRC regulations. This rulemaking listed four categorical exclusions. On March 12, 1984, the NRC published a final rule (49 FR 9352) revising and renaming 10 CFR Part 51, “Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments.” This final rule expanded the number of categorical exclusions from four to eighteen, and redesignated the section listing the NRC’s approved categorical exclusions as 10 CFR 51.22., “Criterion for and identification of licensing and regulatory actions eligible for categorical exclusion.”¹

C. Amendments to NRC Categorical Exclusion Regulations

NRC has made 14 amendments to the categorical exclusions in § 51.22 since 1984. Ten of these amendments were minor, corrective, or conforming changes, and four were more substantive. All resulted from rulemaking efforts addressing other parts of NRC regulations. As a result of the 14 amendments, the list of categorical exclusions in § 51.22(c) increased from 18 to 23 categorical exclusions. The NRC’s categorical exclusions include administrative, managerial, or organizational amendments to certain types of NRC regulations, licenses, and certificates; minor changes related to application filing procedures; and certain personnel and procurement activities.

D. Basis for Amendment of Categorical Exclusion Regulation

The NRC is amending the 10 CFR 51.22 categorical exclusions to reflect regulatory experience gained since the development of this regulation in March 1984. Prior to this amendment effort, there has been no comprehensive review and update of § 51.22. The amendments being adopted in this final rule are based, in part, on the Council on Environmental

¹ The section heading was revised to its current heading, “Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review,” by a final rule published on July 3, 1989 (54 FR 27870).

Quality (CEQ) September 2003 NEPA Task Force Report (Task Force Report) “Modernizing NEPA Implementation,” <http://www.nepa.gov/ntf/report/pdfdoc.html>. The Task Force Report notes that the development and updating of categorical exclusions by Federal agencies occurs infrequently and recommends that Federal agencies examine their categorical exclusion regulations to identify potential revisions that would eliminate unnecessary and costly EAs. It also provides recommendations for categorical exclusion development and revision.

The Task Force Report notes that in developing new or broadening existing categorical exclusions, a key issue is how to evaluate whether a proposed categorical exclusion is appropriate and how to support the determination that it describes a category of actions that do not individually or cumulatively have a significant effect on the human environment. The Task Force Report recommends the use of information from past actions to establish the basis for the no significant effect determination. It further advises Federal agencies to evaluate past actions that occurred during a particular period to determine how often the NEPA analyses resulted in FONSI for the category of actions being considered. The Task Force Report indicates that an adequate basis for developing new or broadening existing categorical exclusions exists if all the evaluated past actions resulted in FONSI. It also provides that criteria for identifying new categorical exclusions should include: (1) repetitive actions that do not individually or cumulatively have significant effects on the human environment; (2) actions that generally require limited environmental review; and (3) actions that are noncontroversial.

The amendments being adopted in this final rule are also based upon a review of NRC regulatory actions. As noted, the Task Force Report recommends that agencies evaluate past EA/FONSI for particular categories of actions to develop new or broaden existing categorical exclusions. To comply with this recommendation, an NRC search of files for EA/FONSI completed during the 20-year period from 1987 to 2007 was conducted. The search revealed

that more than 1,500 actions resulted in EA/FONSI. NRC conducted an in-depth review of the EA/FONSI issued during the period 2003-2007. That review identified several recurring categories of regulatory actions that are not addressed in 10 CFR 51.22, and have no significant effect on the human environment, either individually or cumulatively. These categories of actions were considered in the amendments being adopted in this final rule.

II. Discussion

A. What is a Categorical Exclusion?

The CEQ Task Force report defines the term "categorical exclusion" as "a category of actions that do not individually or cumulatively have a significant effect on the human environment and, therefore, preparing an EA or an EIS is not required unless extraordinary circumstances indicate otherwise."² If a certain type of regulatory action, such as the amendment of regulations, would not normally result in any significant effect upon the human environment, then it is unnecessary to spend time and effort to repeatedly document that fact. The Task Force Report's definition of a "categorical exclusion" also provides for "extraordinary circumstances" (essentially, the NRC equivalent of special circumstances) in which a normally excluded action may have a significant environmental effect, and thus require preparation of an EA or an EIS.

B. What is NRC's Definition of Categorical Exclusion?

A "categorical exclusion" is defined in NRC's regulations in 10 CFR 51.14 as 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

² CEQ regulations define the term "categorical exclusion" at 40 CFR 1508.4.

procedures set out in § 51.22, and for which, therefore neither an environmental assessment nor an environmental impact statement is required.” The NRC has determined that the categorical exclusions listed in 10 CFR 51.22 do not have a significant effect on the human environment.

C. How Should a Categorical Exclusion be Applied?

Before applying a categorical exclusion to a proposed action, it should be determined whether there are any special circumstances that would potentially effect the human environment. If such special circumstances are, or are likely to be present, the NRC would then prepare an EA and, if necessary, an EIS. If special circumstances are not present, then the categorical exclusion may be applied and the NRC will satisfy its NEPA obligation for that proposed action. The determination of whether special circumstances are present is a matter of NRC discretion. The determination that special circumstances are not present will not require the preparation of any specific or additional documentation beyond the documentation normally prepared, if any, indicating that the categorical exclusion is being invoked for the proposed action.

D. What Action is the NRC Taking?

The NRC is amending its list of categorical exclusions to clarify the scope of existing categories and to add new categories of actions that have been shown to have no significant effect on the human environment. For example, the provisions in § 51.22(c)(10) cover administrative and procedural changes to a license or permit. However, because of the ambiguity of the language in this provision, the NRC has prepared numerous EA/FONSI for changes to a licensee’s name, address, or telephone number. In addition, these amendments

broaden the scope of the categorical exclusion that addresses decommissioning activities and adds categorical exclusions that address the awarding of education grants and the granting of exemptions from certain regulatory requirements.

The amendments to the categorical exclusion regulations will reduce inefficiencies and inconsistencies in the implementation of NRC's regulatory program. The amendments will eliminate the need to prepare unnecessary EAs for NRC regulatory actions that have no significant effect on the human environment. The amendments will also support the NRC's organizational objectives of ensuring that its actions are effective, efficient, realistic, and timely.

E. Who Would This Action Affect?

This amendment will not impose any new requirements on NRC licensees. It will ensure that review of licensees' amendment requests are completed by the NRC in a more efficient, effective, and timely manner, and will result in cost savings to the NRC and licensees. The amendments eliminate the need for the preparation of EA/FONSI for actions that routinely have been shown to have no effect on the human environment, *e.g.*, licensee requests concerning administrative, managerial, or organizational matters. For example, current ambiguities in the categorical exclusion regulations have created delays in licensee decisions when organizational name changes occur, because these decisions must await the completion of an EA/FONSI and publication in the *Federal Register* by the NRC.

III. Summary of Public Comments on the Proposed Rule

The proposed rule to amend the categorical exclusions in 10 CFR 51.22 was published on October 9, 2008 (73 FR 59540), with a 75-day comment period, which ended on December 23, 2009. The NRC received four comment submissions on the proposed rule. The

commenters included a member of the public, one industry organization, and two State agencies. Copies of the public comments are available for review in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD., or <http://www.regulations.gov> under Docket ID NRC-2008-0269.

Analysis of Public Comments

1. Comment. The commenter, a member of the public, stated that there should never be exemptions from any environmental review. The comment submission also included other comments that are beyond the scope of this rulemaking.

Response: Excluding categories of actions from environmental review, for which the agency has demonstrated that there will be no significant effect on the human environment, either individually or cumulatively, is an established, authorized NEPA practice. CEQ regulations expressly authorize and encourage the use of categorical exclusions by agencies to reduce “excessive paperwork.”³ According to the CEQ Task Force Report, CEQ “strongly discourages procedures that require additional paperwork to document that an activity has been categorically excluded.”⁴ The categorical exclusion process provides that if a certain type of regulatory action would not normally result in any significant effect upon the human environment, then it is unnecessary to spend time and effort to repeatedly document that fact.

Moreover, a categorical exclusion does not indicate the absence of an environmental review, but rather, that the agency has established a sufficient administrative record to show that the subject actions do not, either individually or cumulatively, have a significant effect on the human environment. Agencies establish sufficient administrative records to support categorical

³ 40 CFR 1500.4(p). See also 40 CFR 1501.4(a)(2) (agency determines under its procedures whether action would be one that is normally subject to an EIS or is not subject to an EIS or EA and thus, a categorical exclusion); and 40 CFR 1508.4 (CEQ definition of categorical exclusion).

⁴ CEQ, “The NEPA Task Force Report to the Council on Environmental Quality: Modernizing NEPA Implementation” (Task Force Report) 57-58 (2003).

exclusions through the use of professional staff opinions, past NEPA records which show that the agency made a FONSI each time it considered the action, and the establishment of similar categorical exclusions by other agencies.⁵

With respect to those categorical exclusions established by this final rule, the NRC has established a sufficient administrative record, consisting of professional staff opinions and past NEPA records, which shows that these actions, either individually or cumulatively, do not result in a significant effect on the human environment. The statements of consideration for this final rule summarize the NRC's administrative record for each categorical exclusion. Also, under 10 CFR 51.22(b), in the event that special circumstances are present, the NRC retains discretion to prepare either an EA or EIS for an action that is otherwise categorically excluded.

2. Comment: The commenter, an industry organization, stated in its comment submission that it had reviewed the proposed revisions to 10 CFR Part 51 as described in the proposed rule and agreed that the categories of actions included therein have been shown to have no significant effect on the human environment, either individually or collectively, and should be excluded in accordance with NEPA and as defined in NRC regulations. The commenter supported issuance of a final rule to implement the proposed revisions set forth in the proposed rule.

Response: No response necessary.

3. Comment: The commenter, a State Department of Health, stated in its comment submission that it had reviewed the proposed revisions to 10 CFR Part 51 as described in the proposed rule and concurred with the recommendation that the NRC periodically examine its categorical exclusion regulations to identify potential revisions that would eliminate unnecessary

⁵ Task Force Report at 59.

and costly environmental assessments. The commenter also supported the concept that information from past actions be used to identify and modify or eliminate requirements that have no significant impact on humans or the environment. The commenter also agreed that the proposed revisions of the categorical exclusion regulations would minimize inefficiencies and inconsistencies in the implementation of NRC's regulatory program.

Response: No response necessary.

4. Comment: The commenter, a State Department of Environmental Conservation, raised concerns about the broadening of existing categorical exclusion 10 CFR 51.22(c)(9) to include power reactor licensee exemption requests from requirements concerning the installation or use of a facility component located within the restricted area of a Part 50 or 52 facility. The commenter stated that the fact that an EA and FONSI have been issued in the past is not sufficient justification to preclude all future requests for an exemption from Part 50 or 52 from a NEPA review. The commenter noted that Parts 50 and 52 regulate a broad range of activities at nuclear facilities and urged the NRC to take a hard look at the breadth of activities to be covered under the proposed revisions and to more carefully define the types of exception requests that qualify to be classified as a "categorical exclusion." The commenter stated that the proposed revision to 10 CFR 51.22(c)(9) had two critical defects: (1) that the public will be deprived of an opportunity to comment on an exemption from one or more of the enumerated requirements that potentially impacts public health, safety or welfare, and (2) important technical reviews will be foregone because a permit or license holder's request for exemption is erroneously considered insignificant. The commenter concludes that the amendment to 10 CFR 51.22(c)(9) is overly broad and warrants additional, more refined conditioning language to ensure that the above two critical defects are avoided.

Response: The commenter asserts that the fact that an EA and FONSI have been issued in the past is not sufficient justification to preclude all future requests for an exemption from Part 50 or 52 from a NEPA review under the amendment to 10 CFR 51.22(c)(9). As described in the CEQ Task Force Report, a consistent record of EA and FONSIs for a given category of actions is an acceptable basis to establish a categorical exclusion. In this regard, the NRC staff determined that during the 5 year period 2003 through 2007, over 50 EAs were prepared for licensee requests for exemptions, all of which resulted in a FONSI.

Moreover, an environmental review is not precluded by the establishment of this categorical exclusion. Before the categorical exclusion is applied, the NRC staff must find that the exemption request involves no significant hazards consideration, there is no significant change in the types 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.⁶ The above findings would be made as part of the NRC's safety analysis for any licensee exemption request. If the NRC cannot make these findings, then the categorical exclusion will not apply and the NRC will prepare an EA, and if necessary, an EIS. Furthermore, the NRC can, in the event of special circumstances, as provided in 10 CFR 51.22(b), choose to prepare an EA or an EIS. Thus, the NRC concludes that the broadening of 10 CFR 51.22(c)(9) is appropriate.

The commenter urges the NRC to take a "hard look" at the breadth of activities to be covered under the amendment to 10 CFR 51.22(c)(9) in order to more carefully define the types of exemption requests that "truly qualify" to be classified as categorical exclusions. The amendment to this categorical exclusion, however, only covers exemption requests from a specified subset of requirements under Part 50 or 52, namely, those exemption requests from Part 50 or 52 requirements related to the installation of or use of a facility component located

⁶ 10 CFR 51.22(c)(9)(i)-(iii).

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.

Given the 10 CFR 51.22(c)(9)(i)-(iii) criteria and the nature of the restricted area, it is extremely unlikely that the granting any such exemption request would create any significant 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 protections and is supported by an adequate administrative record.

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 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).

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.

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

regulatory actions do not individually or cumulatively have a significant effect on the human environment.

This amendment updates 10 CFR 51.22(c)(1) to include references to the following Commission organizational, administrative, or procedural requirements in the following 10 CFR Parts:

Part 5 - Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. This part is designed to eliminate (with certain exceptions) sex discrimination in any education program or activity receiving Federal financial assistance.

Part 12 – Implementation of the Equal Access to Justice Act in Agency Proceedings. This part establishes regulatory requirements for awarding of attorney fees to eligible individuals and entities in certain administrative proceedings before the Commission.

Part 13 – Program Fraud Civil Remedies. This part establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, false, fictitious, or fraudulent claims. It also specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties.

Part 15 – Debt Collection Procedures. This part establishes administrative procedures for the Commission to collect the payment of debts owed to the United States Government in the form of money or property, unless a different procedure is specified in a statute, regulation, or contract.

Part 16 – Salary Offset Procedures for Collecting Debts Owed by Federal Employees to the Federal Government. This part establishes procedures for the collection by administrative offset of a Federal employee's salary without his or her consent to satisfy certain debts owed to the Federal Government.

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.

C. Why the Commission Has Chosen Not to Revise the Categorical Exclusion in 10 CFR 51.22(c)(2)?

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

F. Why Revise the Categorical Exclusion in 10 CFR 51.22(c)(10) which Addresses Administrative, Procedural, Organizational, or Editorial Changes to a Permit or License?

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

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

- (1) Amendments to reflect changes in ownership;
- (2) Amendments to reflect organization name changes;
- (3) Amendments to reflect corporate restructuring, including mergers;
- (4) Amendments to licenses to reflect changes in references; and
- (5) Amendments correcting typographical and editorial errors on licenses, permits, and associated technical specification documents.

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

G. Why Revise the Categorical Exclusion in 10 CFR 51.22(c)(20) which Addresses Decommissioning of Sites?

The final rule adds a new subparagraph (iii) to 10 CFR 51.22(c)(20) to broaden the scope of the 10 CFR 51.22(c)(20) categorical exclusion to include group 2 decommissioning activities. Decommissioning activities are described in NRC's guidance, NUREG-1757, Vol.1, Rev. 2, "Consolidated NMSS Decommissioning." NUREG-1757 divides decommissioning activities into seven decommissioning groups, Groups 1-7. Prior to this amendment, the 10 CFR 51.22(c)(20) categorical exclusion covered Group 1 decommissioning activities only. Group 2 decommissioning activities are those activities that involve the decommissioning of sites where licensed operations have been limited to the use of radioactive materials in such a manner that a decommissioning plan is not required by 10 CFR 30.36(g)(1), 40.42(g)(1) or 70.38(g)(1), and the NRC has determined that the facility meets the radiological criteria for unrestricted use in 10 CFR 20.1402, without further remediation or analysis.

Group 2 decommissioning activities cover:

(1) Facilities where the licensee possessed and used only sealed sources, but the most recent leak tests indicate that the sources leaked or leak tests are not available; or

(2) Facilities where the licensee used unsealed radioactive material and the licensee's survey demonstrated that levels of radiological contamination on building surfaces or surface soils meet the provisions for unrestricted use in 10 CFR 20.1402 by applying NRC-approved decommissioning screening criteria, and the licensee is not required to submit a decommissioning plan.

Group 2 decommissioning requests received by the NRC involve licensees who are authorized to possess and use sealed and/or unsealed radioactive materials with half-lives greater than 120 days. For example, the most common unsealed radioactive materials used by Group 2 licensees are tritium (H-3) and Carbon-14.

Normally, Group 2 licensees in the decommissioning process remediate their sites, as necessary, using their operating procedures. These licensees are required to keep records of material receipt, use, and disposal, enabling them to quantify past radiological material possession and use with a high degree of confidence. In order for the decommissioning action to meet Group 2 criteria, the licensee must maintain radiological survey records that characterize the residual radiological contamination levels present within the facilities and at their sites. In addition, Group 2 licensees must be able to demonstrate residual radiological contamination levels without more sophisticated survey procedures or dose modeling. These licensees are not required to have a decommissioning plan, but must demonstrate that their site meets the screening criteria of 10 CFR 20.1402.

In many cases, the NRC conducts confirmatory surveys during the licensee's decommissioning activities to verify the accuracy of the measuring techniques used to satisfy the requirements of 10 CFR 20.1402. The NRC uses a risk-informed process that assigns higher priority for conducting confirmatory surveys at sites that may pose a greater threat to the public health and safety. The results of this survey are used by the NRC to support a decision on whether to approve a licensee's request to terminate a license and release the site for unrestricted use.

Prior to this amendment, 10 CFR 51.22(c)(20) categorically excluded from further NRC environmental review those activities which are defined in NUREG-1757 as Group 1 decommissioning activities, namely, the decommissioning of sites where licensed operations had been limited to the use of small quantities of unsealed short-lived radioactive materials or

radioactive materials in sealed sources, provided there is no evidence of leakage of radioactive material from these sealed sources. The 10 CFR 51.22(c)(20) decommissioning categorical exclusion was added with the promulgation of the license termination rule, "Radiological Criteria for License Termination," (July 21, 1997; 62 FR 39058). The license termination rule, codified at 10 CFR Part 20, Subpart E, established a dose-based radiological criterion of 25 mrem/yr in 10 CFR 20.1402 for the release of a decommissioned site for unrestricted use.

In establishing the decommissioning categorical exclusion, the Commission relied on the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination on NRC-Licensed Nuclear Facilities" (GEIS; NUREG-1496, Vol. 1). The GEIS concluded that with the use of "decay in storage" for the short-lived nuclides (those with a half-life of less than or equal to 120 days) and the time involved in submitting the information necessary to terminate a license, the activity of licensed material would reach sufficiently low levels such that decontamination of the building or of soils would not be needed.

However, the GEIS did not enable the Commission to determine that there would be no significant effect on the human environment from the use of unsealed radioactive materials with half-lives of more than 120 days. Specifically, the Commission determined that the unique conditions of each licensee facility and the specific uses of unsealed radioactive materials at each site prevented the environmental impacts from being analyzed on a generic basis. Accordingly, the Commission relied on the GEIS to satisfy its obligations under NEPA regarding decommissioning decisions on sites that meet the 25 mrem/y (0.25 mSv/yr) criterion for unrestricted use, but continued to require an EA for the decommissioning of any site on which unsealed radioactive materials with half-lives of more than 120 days are located. As such, based upon the 1997 Commission decision, EAs were performed for Group 2 decommissioning activities.

The Commission has now determined that there is ample data in the form of EA and FONSI to justify the categorical exclusion of Group 2 decommissioning activities. The data show that, during the period 2003 through 2007, each of the 73 EAs performed for a Group 2 decommissioning action resulted in a FONSI. Thus, subparagraph (iii) is added to 10 CFR 51.22(c)(20) to categorically exclude from further environmental review the decommissioning of sites where radioactive material has been used in such a manner that a decommissioning plan is not required based on 10 CFR 30.36(g)(1), 40.42(g)(1), or 70.38(g)(1) and the NRC has determined that the facility meets the radiological criteria for unrestricted use in 10 CFR 20.1402 without further remediation or analysis. If further remediation or analysis is needed to meet 10 CFR 20.1402, the decommissioning activity would be considered a Group 3 or higher decommissioning activity in accordance with NUREG-1757, and would not be covered by this categorical exclusion.

H. Why Add a Categorical Exclusion in 10 CFR 51.22(c)(24) which Addresses the Awarding of Education Grants?

The final rule adds a new categorical exclusion, 10 CFR 51.22(c)(24), which categorically excludes the issuance of grants, by the NRC, to institutions of higher education in the United States, for scholarships, fellowships, and stipends in science, engineering, or another field of study that the NRC determines is in a critical skill area related to its regulatory mission. These grants may also support faculty or curriculum development as well as other domestic educational, technical assistance, or training programs (including those of trade schools) in such fields. This categorical exclusion covers those actions that are specifically geared toward the development of teaching and educational programs in the nuclear field. The purpose of the grant program is to foster a work force capable of supporting the safe design, construction, operation, and regulation of nuclear facilities, and the safe handling of nuclear materials.

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 limit 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 or other means.

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

The final rule adds a new categorical exclusion, 10 CFR 51.22(c)(25), which addresses the granting of licensee exemption requests from certain regulatory requirements. Various NRC regulations allow for the granting of specific exemptions from NRC regulations.⁸ Before an exemption may be granted, the NRC must satisfy certain criteria, namely, it must make findings that the exemption is “authorized by law,” “will not endanger life or property or the common defense and security,” and is “otherwise in the public interest.” In the case of Part 50 and 52 exemptions, the exemption request must meet additional criteria.⁹ The NRC thoroughly evaluates each exemption request under these provisions, and only those exemption requests that meet these provisional criteria are granted.

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

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

⁸ *E.g.*, 10 CFR 20.2301, 30.11, 40.14, 50.12, 52.7, 70.17, 72.7, and 76.23.

⁹ 10 CFR 50.12(a)(2); 10 CFR 52.7.

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

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

V. Agreement State Compatibility

Under the “Policy Statement on Adequacy and Compatibility of Agreement State Programs” approved by the Commission on June 30, 1997, and published in the *Federal Register* on September 3, 1997 (62 FR 46517), this rule is classified as a Compatibility Category “NRC.” The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State’s administrative procedure laws but does not confer regulatory authority on the State. NEPA applies only to

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.

VI. Voluntary Consensus Standards

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 FONSI. 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

Comments section of this final rule. The EA may be examined at the NRC Public Document Room, 11555 Rockville Pike, Room O-1F23, Rockville, MD 20852.

VIII. Paperwork Reduction Act Statement

This rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

IX. Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

X. Regulatory Analysis

This rule is anticipated to be cost-effective. It would eliminate the need to prepare EAs for actions that have no significant effect on the human environment, and would eliminate the delays associated with the preparation of these documents. A regulatory analysis is not required because this rulemaking does not impose any new requirements on NRC licensees.

XI. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

XII. Backfit Analysis

The NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this rule because this amendment would not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required.

XIII. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

List of Subjects in Part 51

Administrative practice and procedure, Environmental impact statement, Hazardous Waste, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC proposes to adopt the following amendments to 10 CFR Part 51:

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

1. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853-854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95-604, Title II, 92 Stat. 3033-3041; and sec. 193, Pub. L. 101-575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80. and 51.97 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100-203, 101 Stat. 1330-223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036-3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also under Nuclear Waste Policy Act of 1982, sec 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

2. Amend § 51.22 to revise paragraphs (a), (c)(1), (c)(3), (c)(9), (c)(10), and (c)(20)

and to add paragraphs (c)(24) and (c)(25) to read as follows:

§ 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.

(a) Licensing, regulatory, and administrative actions eligible for categorical exclusion shall meet the following criterion: The 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.

* * * * *

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

(1) Amendments to Parts 1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 15, 16, 19, 21, 25, 26, 55, 75, 95, 110, 140, 150, 160, 170, or 171 of this chapter, and actions on petitions for rulemaking relating to Parts 1, 2, 4, 5, 7, 9, 10, 11, 12, 13, 14, 15, 16, 19, 21, 25, 26, 55, 75, 95, 110, 140, 150, 160, 170, or 171 of this chapter.

* * * * *

(3) Amendments to any part in this chapter which relate to--

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

(ii) Recordkeeping requirements;

(iii) Reporting requirements;

(iv); Education, training, experience, qualification or other employment suitability requirements or

(v) Actions on petitions for rulemaking relating to these amendments.

* * * * *

(9) Issuance of an amendment to a permit or license for a reactor under part 50 or part 52 of this chapter, which changes a requirement, or grants an exemption from any such 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 or exemption involves no significant hazards consideration;
- (ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and
- (iii) There is no significant increase in individual or cumulative occupational radiation exposure.

(10) Issuance of an amendment to a permit or license issued under this chapter which --

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

* * * * *

(20) Decommissioning of sites where licensed operations have been limited to the use of--

- (i) Small quantities of short-lived radioactive materials;

(ii) Radioactive materials in sealed sources, provided there is no evidence of leakage of radioactive material from these sealed sources; or

(iii) Radioactive materials in such a manner that a decommissioning plan is not required by 10 CFR 30.36(g)(1), 40.42(g)(1), or 70.38(g)(1), and the NRC has determined that the facility meets the radiological criteria for unrestricted use in 10 CFR 20.1402 without further remediation or analysis.

* * * * *

(24) Grants to institutions of higher education in the United States, to fund scholarships, fellowships, and stipends for the study of science, engineering, or another field of study that the NRC determines is in 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, except to the extent that such grants or programs include activities directly affecting the environment, such as:

(i) The construction of facilities;

(ii) A major disturbance brought about by blasting, drilling, excavating or other means;

(iii) Field work, except that which only involves noninvasive or non-harmful techniques such as taking water or soil samples or collecting non-protected species of flora and fauna; or

(iv) The release of radioactive material.

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

(i) There is no significant hazards consideration;

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

(iv) There is no significant construction impact;

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

(vi) The requirements from which an exemption is sought involve:

(A) Recordkeeping requirements;

(B) Reporting requirements;

(C) Inspection or surveillance requirements;

(D) Equipment servicing or maintenance scheduling requirements;

(E) Education, training, experience, qualification, requalification or other employment suitability requirements;

(F) Safeguard plans, and materials control and accounting inventory scheduling requirements;

(G) Scheduling requirements;

(H) Surety, insurance or indemnity requirements; or

(I) Other requirements of an administrative, managerial, or organizational nature.

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

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

ENVIRONMENTAL ASSESSMENT AND FINAL FINDING OF
NO SIGNIFICANT IMPACT
FOR THE
FINAL RULE
AMENDING 10 CFR PART 51.22

“Criteria for Categorical Exclusion: Identification of Licensing and Regulatory Actions Eligible for
Categorical Exclusion or Otherwise not requiring Environmental Review”

Office of Federal and State Materials and Environmental Management Programs

U.S. Nuclear Regulatory Commission

December 2009

I. THE PROPOSED ACTION

The NRC is issuing a final rule (RIN 3150-AI27) that will amend the list of categorical exclusions in 10 CFR 51.22 to clarify the scope of the existing categories of actions and to add new categories of actions that have been determined by the NRC to have no significant effect on the human environment.

II. THE NEED FOR THE PROPOSED ACTION

Prior to this final rule, there has been no comprehensive review and update of the Section 51.22 since its promulgation on March 12, 1984.¹ The amendments being adopted in this final rule are based, in part, on the September 2003 Council of Environmental Quality's (CEQ) NEPA Task Force Report (Task Force Report) "Modernizing NEPA Implementation," <http://www.nepa.gov/ntf/report/pdfoc.html>. The Task Force Report notes that the development and updating of categorical exclusions occur too infrequently and recommended that Federal agencies examine their categorical exclusion regulations and identify potential revisions that would eliminate unnecessary environmental assessments (EAs). It also provides recommendations for categorical exclusion development and revision.

The Task Force Report notes that in developing new or broadening existing categorical exclusions, a key issue is how to evaluate whether a proposed categorical exclusion is appropriate and how to support the determination that it describes a category of actions do not individually or cumulatively have a significant effect on the human environment. The Task

¹ On July 18, 1974, the NRC published a final rule (39 FR 26279) that added 10 CFR Part 51, "Licensing and Regulatory Policy and Procedures for Environmental Protection," to the NRC regulations. This rulemaking listed four categorical exclusions. On March 12, 1984, the NRC published a final rule (49 FR 9352) revising and renaming 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments." This final rule expanded the number of categorical exclusions from four to eighteen, and redesignated the section listing the NRC's approved categorical exclusions as 10 CFR 51.22., "Criterion for and identification of licensing and regulatory actions eligible for categorical exclusion."

Force Report recommends the use of information from past actions to establish the basis for the no significant effect determination. This report further advises Federal agencies to evaluate past actions that occurred during a particular period to determine how often the NEPA analyses resulted in findings of no significant impacts (FONSI) for the category of actions being considered. The Task Force Report indicates that an adequate basis for developing new or broadening existing categorical exclusions exists if all the evaluated past actions resulted in FONSI. It also provides that criteria for identifying new categorical exclusions should include: (1) repetitive actions that do not individually or cumulatively have significant effects on the human environment; (2) actions that generally require limited environmental review; and (3) actions that are noncontroversial in nature.

The rule is also based upon a review of NRC regulatory actions. As noted, the Task Force Report recommends that agencies evaluate past EA and FONSI for particular categories of actions to develop new or broaden existing categorical exclusions. To comply with this recommendation, the NRC conducted a file search for EA and FONSI completed during the period from 1987 to 2007. The search revealed that more than 1,500 actions resulted in EA and FONSI. The NRC conducted an in-depth review of the EA and FONSI issued during the period 2003-2007. That review identified several recurring categories of regulatory actions that resulted in FONSI that are not addressed in the categorical exclusions in 10 CFR 51.22, and have no significant effect on the human environment, either individually or cumulatively. These categories of regulatory actions were considered in the rule.

The amendments to the list of categorical exclusions set forth in 10 CFR 51.22 will minimize inefficiencies and inconsistencies in the implementation of NRC's regulatory program. The amendments to 10 CFR 51.22 will eliminate the need to prepare unnecessary EAs for

NRC regulatory actions that have no significant effect on the human environment. The revisions will also support the NRC's goal of ensuring that its actions are effective, efficient, realistic, and timely.

III. ENVIRONMENTAL IMPACTS OF PROPOSED ACTION

As explained in the final rule's statements of consideration, which are hereby incorporated within this EA, the amendments will not have a significant effect on the human environment. As noted above, the amendments are based upon EAs for NRC actions that are minor, administrative, or procedural in nature (e.g., no increases in releases/uses of radioactive or chemical materials), and for which the NRC has consistently determined a FONSI. As such, the NRC concludes that:

(1) The proposed action will not significantly increase the probability or consequences of accidents;

(2) The proposed action will not significantly change the types or significantly increase the amounts of any effluents that may be released offsite from a facility regulated by the NRC;

3) The proposed action will not significantly increase individual or cumulative public or occupational radiation exposure;

(4) The proposed action will have no significant construction impact; and

(5) The proposed action does not have a potential to affect any historic or cultural resources, nor will it have any significant impact on threatened, endangered, or protected species, or protected habitats, under the Endangered Species Act, or significant impacts to essential fish habitat covered by the Magnuson-Steven's Act.

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

IV. ALTERNATIVES TO THE PROPOSED ACTION

The alternative to this proposed action is not to promulgate the final rule. This alternative would leave the current regulations in place. This alternative was rejected because it would require the continued expenditure of NRC's resources on unnecessary EAs that delay regulatory actions. This option would not support NRC's strategic goal of ensuring that its actions are effective, efficient, realistic, and timely.

V. ALTERNATIVE USE OF RESOURCES

There are no irreversible commitments of resources determined in this assessment.

VI. AGENCIES AND PERSONS CONTACTED

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 Comments section of the final rule. The final rule and the EA may be examined at the NRC Public Document Room, 11555 Rockville Pike, Room O-1F23, Rockville, MD 20852.

VII. FINDING OF NO SIGNIFICANT IMPACT

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that the amendments implemented by this final rule are not a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement will not be prepared. The proposed amendments would add categorical exclusions to obviate the need to prepare environmental assessments for NRC actions that are minor, administrative, or

procedural in nature (e.g., no increases in releases/uses of radioactive or chemical materials), and for which the NRC has, in the past, consistently determined FONSIs.

As such, the rule would have no significant impact on the environment.