

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 51

RIN 3150-AI27

[NRC-2008-0269]

### Categorical Exclusions From Environmental Review

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations describing the 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. The proposed revisions would eliminate the preparation of environmental assessments for NRC actions that are minor, administrative, or procedural in nature. The proposed rule would not change any requirements for licensees but would provide for more timely NRC action.

**DATES:** The comment period expires December 23, 2008. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any one of the following methods. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

*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 301-415-5905; e-mail

*Carol.Gallagher@nrc.gov.*

*E-mail comments to:*

*Rulemaking.Comments@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966.

*Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

*Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm during Federal workdays. (Telephone (301) 415-1966).

*Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

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#### FOR FURTHER INFORMATION CONTACT:

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#### I. Background

The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321-4370f, requires Federal agencies to undertake an assessment of the environmental effects of their proposed actions prior to making decisions. 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), or 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 normally prepares an EIS. A categorical exclusion, in contrast, is a category of actions that do not have a significant effect on the human environment, as defined by a Federal agency in its procedures implementing NEPA. If the Federal agency finds that actions in a given

category have repeatedly been shown to have no significant effect on the human environment, either individually or cumulatively, then the agency may establish a categorical exclusion for that category of action. 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 March 12, 1984 (49 FR 9352), the NRC published 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments." The regulation included NRC's first list of 18 categorical exclusions in 10 CFR 51.22, "Criterion for categorical exclusion: identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review."

#### *C. Amendments to NRC Categorical Exclusion Regulations*

Over the past 24 years, NRC has made 14 amendments to the categorical exclusions in § 51.22. Nine 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, organizational, or procedural amendments to certain types of NRC regulations, licenses, and certificates; minor changes related to application filing procedures; certain personnel and procurement activities; and activities when environmental review by NRC is excluded by statute.

#### *D. Basis for Proposed Amendment of Categorical Exclusion Regulation*

The NRC is proposing additional amendments to the 10 CFR 51.22 categorical exclusions to reflect regulatory experience gained since the development of this regulation in March 1984. Prior to this rulemaking effort, there has been no comprehensive review and update of § 51.22 since its

development over 24 years ago. The proposed rulemaking is 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/pdf/toc.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 impact on the human environment. It recommends the use of information from past actions to establish the basis for the no significant impact 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 proposed rule is 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 last 5 years. 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 proposed revisions.

## **II. Discussion**

### *A. What Is a Categorical Exclusion?*

The CEQ regulations note that many actions taken by Federal agencies would have no significant effect on the human environment and introduced the term "categorical exclusion." The CEQ developed the categorical exclusion process to reduce the amount of unnecessary paperwork and delays associated with NEPA compliance. If a certain type of regulatory action, such as the issuance 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 CEQ 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 procedures set out in § 51.22, and for which, therefore, neither an EA nor an EIS 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 using a categorical exclusion for a proposed action, it should be considered whether there may be any special (e.g., unique, unusual or controversial) circumstances arising from or related to that proposed action that may result in the potential for a significant effect to 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 proposing changes to 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. The proposed action would also expand the categorical exclusion that addresses decommissioning activities and add categorical exclusions that address the awarding of education grants, and the granting of exemptions from certain regulatory requirements.

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

#### *E. Who Would This Action Affect?*

This amendment would not impose any new requirements on NRC licenses, but would ensure that licensees' amendment requests are completed in a more efficient, effective, and timely manner, and would result in cost savings to the NRC and licensees. The proposed amendments would eliminate the preparation of EA/FONSI for actions that routinely have been shown to have no effect on the human environment, *e.g.*, administrative, procedural, or organizational licensee requests. 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. Discussion of Proposed Amendments by Section**

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

A change is proposed to § 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?*

Since the adoption of 10 CFR 51.22(c)(1) on March 12, 1984, the Commission adopted additional organizational, administrative, or procedural regulations to 10 CFR, and conforming revisions to this section were inadvertently omitted. The proposed amendment would update § 51.22(c)(1) to include such references to those 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. It was previously established that these types of regulations comprise actions which do not individually or cumulatively have a significant effect on the human environment.

The proposed amendment would update 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 Revise the Categorical Exclusion in 10 CFR 51.22(c)(2) Which Addresses Minor or Corrective Amendments to NRC Regulations?*

The current § 51.22(c)(2) provides a categorical exclusion for amendments to the regulations that are "corrective or of a minor or nonpolicy nature and do not substantially modify existing regulations." The proposed rule would amend this section to clarify and expand the scope of categorical exclusions to include amendments to the NRC's regulations that update requirements. The proposed amendment would clarify that these types of minor amendments to NRC regulations are excluded from the environmental review process. For example, the NRC routinely modifies the requirements in 10 CFR 50.55a, "*Codes and standards*," to update incorporation by reference of the NRC-approved American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPV Code) and the Code for Operation and Maintenance of Nuclear Power Plants (OM Code). The ASME frequently updates its BPV Code and OM Code as advances in technologies are made, new procedures are developed, and new information becomes available. Generally, these changes to the ASME Codes streamline operations, enhance safety, or reduce public exposure to radiation. In the intervals between the issuance of the updated ASME BPV

Code and OM Code Editions and Addenda, the various ASME Committees meet and publish Code Cases on a quarterly basis. These Code Cases are alternatives to the ASME BPV and OM Code requirements, and often reflect improvements in technology, new information, or improved procedures.

The NRC's practice has been to review ASME Code Cases and find them acceptable, conditionally acceptable, or unacceptable for use by NRC facility licensees. The acceptable and conditionally acceptable Code Cases are then listed in NRC regulatory guides that are incorporated by reference in the NRC's regulations in § 50.55a, "Codes and standards." Because 10 CFR 51.22(c)(2), as presently worded, is not clear, each time the NRC updates its regulations to incorporate the most current ASME reference or update any other reference, an EA must be prepared. During the past 5 years (2003 through 2007), the Commission prepared at least eight EA/FONSI in response to a licensee's request to use an updated NRC-approved ASME code. The preparation of EAs for these amendments is costly, and creates unnecessary delays in the completion of regulatory actions.

*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?*

This section currently lists several 10 CFR Parts. The NRC is proposing to revise this section to delete the specific listing of 10 CFR Parts and to add a generic reference to reflect any part of CFR Chapter 10. This proposed 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.

The proposed rule would also add a new paragraph (iv) to § 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 the 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 proposed rule expands the scope of the current categorical exclusion to include the granting of an exemption 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, or an inspection or surveillance requirement. Under the current rule, such an exemption would not be covered by this categorical exclusion, and would therefore require the preparation of an EA. The Commission has now determined, however, that there is ample data in the form of EA/FONSI to justify the categorical exclusion of the granting of such exemptions, provided that the criteria in the current categorical exclusion (*i.e.*, the request involves no significant hazards consideration, there is no significant change in the types of, or increase in the amounts of effluents that may be released offsite, and there is no significant increase in individual or cumulative occupational radiation exposure) are applied to them. During the last five year period, at least 50 EA/FONSI 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 proposed rule revises § 51.22(c)(10) by deleting the specific listing of 10 CFR Parts and replacing it with a generic reference to reflect any part of 10 CFR. This proposed revision would eliminate the need for changes due to new parts being added or deleted. As a result, efficiencies are gained in the rulemaking process.

In addition, § 51.22(c)(10) would be revised to add new paragraphs (iii), (iv), and (v) to clarify that changes to a license or permit that are administrative, procedural, 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 § 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, updated NRC-approved guidance (*e.g.*, NUREG documents), ASME Codes or International Commission on Radiological Protection (ICRP) provisions. Under the current rule, the NRC has been required to prepare EAs 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 impact on the human environment.

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

The proposed regulatory action would expand the 10 CFR 51.22(c)(20) categorical exclusion to cover 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 §§ 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 § 20.1402, without further remediation or analysis. These types of decommissioning activities are described in NUREG-1757, Vol.1, Rev. 2, "Consolidated NMSS Decommissioning," as Group 2 decommissioning activities, which defines seven decommissioning groups.

Group 2 decommissioning activities cover those:

- (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, the licensee's survey demonstrated that levels of radiological contamination on building surfaces or surface soils meet the provisions for unrestricted release 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. These licensees have radiological survey records that characterize the residual radiological contamination levels present within the facilities and at their sites. They are able to demonstrate residual radiological contamination levels without more sophisticated survey procedures or dose modeling. Licensees of Group 2 facilities are not required to have a decommissioning plan, but such a licensee must demonstrate that its site meets the screening criteria of § 20.1402. A decommissioning plan is not required because worker cleanup activities and procedures are consistent with those approved for routine operations and no dose analysis is required.

In many cases, the NRC conducts confirmatory surveys during the licensee's decommissioning activities to verify the accuracy of the licensee's measuring techniques to satisfy the requirements of § 20.1402. The NRC uses a risk-informed process that assigns higher priority for conducting confirmatory surveys at sites that may pose a greater potential 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.

At present, § 51.22(c)(20) categorically excludes 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 current § 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, now codified at 10 CFR Part 20, Subpart E, established a dose-based radiological criterion of 25 mrem/yr in § 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 has 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 has 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 are performed for Group 2 decommissioning activities.

The Commission has now determined, however, that there is ample data in the form of EA/FONSIs to justify the categorical exclusion of Group 2 decommissioning activities. The data show that, over the last five years, every one of the 73 EAs performed for a Group 2 decommissioning action resulted in a FONSI. Thus, the Commission proposes to add a new paragraph (iii) to § 51.22(c)(20) to categorically exclude from the Commission's 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 §§ 30.36(g)(1), 40.42(g)(1), or 70.38(g)(1), and the Commission has determined under § 20.1402 that the facility meets the radiological criteria for unrestricted release without further remediation or analysis. If additional cleanup or analysis is needed to meet § 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 proposed rule would add a new 10 CFR 51.22(c)(24) to categorically exclude the issuance of grants, by the NRC, to institutions of higher education in the United States, for scholarships, fellowships, faculty and curricula development in nuclear safety, nuclear security, nuclear environmental protection, and other fields that the Commission determines to be critical to the NRC's regulatory mission. The proposed 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 would cover actions that the NRC has determined to be administrative in nature. As such, these actions (the issuance of grant awards and the concomitant administration of the grants program) will have no significant effect on the quality of the human environment. The actions covered by this proposed categorical exclusion are not expected to result in increased radiation doses to nuclear industry workers or members of the public; degradation of water quality or of the water supply; any adverse effect to federally listed endangered or threatened species or their critical habitat; increased effluents or changes

in effluent pathways; increased noise; damage or reduced access to cultural resources; changes to local or regional socioeconomic conditions; increased traffic or other transportation effects; or increased competition for available resources. Moreover, the NRC will not issue awards to fund programs that include or involve activities directly affecting the environment, such as the construction of facilities; a major disturbance of the local environment brought about by blasting, drilling, excavating, or other means; large-scale acquisitions of computer equipment; field work affecting the local environment (except field work which only involves noninvasive or non-harmful techniques such as taking water or soil samples or collecting non-protected species of flora and fauna); and the testing and release of radioactive material.

#### *I. Why Add a Categorical Exclusion in 10 CFR 51.22(c)(25) Which Addresses the Granting of Exemptions From Regulatory Requirements?*

The proposed rule would add a new § 51.22(c)(25) to categorically exclude the NRC action of granting exemptions from certain regulatory requirements. The NRC has found that the majority of the exemptions it grants from various regulatory requirements are administrative or procedural in nature, or are otherwise consistent with the existing criteria for approving amendments to licenses and permits under 10 CFR 51.22(c)(9) and (c)(11). As a result, numerous EAs, each resulting in a FONSI, have been prepared to support the granting of such exemptions. For example, the majority of the EA/FONSIs addressed exemption requests concerning the following administrative issues:

- (1) Revising the schedule for the biennial exercise requirements for nuclear reactors in 10 CFR Part 50, Appendix E, Sections IV.F. 2.b and c;
- (2) Applying updated NRC-approved ASME Codes; and
- (3) Training and experience requirements in 10 CFR Part 35, "Medical Use of Byproduct Material."

The proposed categorical exclusion contains prescriptive language that would limit its application to only those exemptions that will not have a significant effect on the human environment.

#### **IV. 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 rulemaking will not have any impact on Agreement States' regulations. Therefore, Agreement States will not need to make conforming changes to their regulations.

#### **V. Plain Language**

The Presidential Memorandum "Plain Language in Government Writing," published June 10, 1998 (63 FR 31885), directed that the Government's documents be written in clear and accessible language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** heading of this document.

#### **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 proposing to amend 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, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an EIS is not required. The NRC has prepared an EA and, on the basis of this EA, has made a FONSI. The proposed amendments are based upon NRC review of environmental assessments conducted over the past 5

years that have consistently resulted in FONSI. The proposed amendments to the categorical exclusions are minor, administrative, or procedural in nature (e.g., no increases in releases/uses of radioactive or chemical materials).

The NRC has sent a copy of the EA and this proposed rule to every State Liaison Officer and requested their comments on the EA. 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 proposed 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 proposed 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 would not, if promulgated, 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 proposed 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.

#### **List of Subjects in Part 51**

Administrative practice and procedure, Environmental impact statement, 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. 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 Public Law 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Public Law 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, Public Law 97–425, 96 Stat. 2232, 2241, and sec. 148, Public Law 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. In § 51.22, paragraphs (a), (c)(1), (c)(2), (c)(3), (c)(9), (c)(10), and (c)(20) are revised, and paragraphs (c)(24) and (c)(25) are added 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 proposed action belongs to a category of actions which the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment.

\* \* \* \* \*

(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.

(2) Amendments to the regulations in this chapter which are corrective, clarifying or of a minor nature or which update references, provided that such amendments do not substantially modify existing regulations, and actions on petitions for rulemaking relating to these amendments.

(3) Amendments to any part in this chapter, and actions on petitions for rulemaking relating to these amendments, 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; or

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

\* \* \* \* \*

(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 release 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 change in the types or significant increase in the amounts of any effluents that may be released offsite;

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

(iii) There is no significant construction impact;

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

(v) 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 requirements;

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

(F) Requirements for safeguard plans, including materials control, accounting, or other inventory requirements;

(G) Scheduling requirements;

(H) Surety, insurance or indemnity requirements;

(I) Requirements to update references; e.g. NRC approved ASME codes, ICRP standards, or regulatory guidance; or

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

Dated at Rockville, Maryland, this 3rd day of October 2008.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8-24033 Filed 10-8-08; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 51

RIN: 3150-A147

[NRC-2008-0404]

### Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to revise its generic determination on the environmental impacts of storage of spent fuel at, or away from, reactor sites after the expiration of reactor operating licenses. The proposed revision reflects findings that the Commission has reached in the "Waste Confidence" decision update published elsewhere in this issue of the **Federal Register**. The Commission now proposes to find that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor at its spent fuel storage basin or at either onsite or offsite independent spent fuel storage installations (ISFSIs) until a disposal facility can reasonably be expected to be available.

**DATE:** Submit comments on the proposed rule by December 8, 2008. Comments received after this date will

be considered if it is practical to do so, but NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any one of the following methods. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

**Federal e-Rulemaking Portal:** Go to <http://www.regulations.gov> and search for documents filed under Docket ID [NRC-2008-0404]. Address questions about NRC dockets to Carol Gallagher 301-415-5905; e-mail [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

**Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

**E-mail comments to:** [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677.

**Hand deliver comments to:** 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone 301-415-1677).

**Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

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

**NRC's Public Document Room (PDR):** The public may examine and have copied for a fee publicly available documents 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](mailto:pdr.resource@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Neil Jensen, Office of the General Counsel,

U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-8480, e-mail, [neil.jensen@nrc.gov](mailto:neil.jensen@nrc.gov).

## SUPPLEMENTARY INFORMATION:

### Background

In 1990, the Commission concluded a generic rulemaking proceeding to reassess its degree of confidence that radioactive wastes produced by nuclear power plants can be safely disposed of, to determine when such disposal or offsite storage will be available, and to determine whether radioactive wastes can be safely stored onsite past the expiration of existing facility licenses until offsite disposal or storage is available. This proceeding reviewed findings the Commission had made in 1984 on these issues in a generic rulemaking proceeding which became known as the "Waste Confidence Proceeding." The 1990 proceeding resulted in the following five reaffirmed or revised Waste Confidence findings:

(1) The Commission finds reasonable assurance that safe disposal of high-level radioactive waste (HLW) and spent nuclear fuel (SNF) in a mined geologic repository is technically feasible;

(2) The Commission finds reasonable assurance that at least one mined geologic repository will be available within the first quarter of the twenty-first century, and that sufficient repository capacity will be available within 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of any reactor to dispose of the commercial HLW and SNF originating in such reactor and generated up to that time;

(3) The Commission finds reasonable assurance that HLW and SNF will be managed in a safe manner until sufficient repository capacity is available to assure the safe disposal of all HLW and SNF;

(4) The Commission finds reasonable assurance that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor at its spent fuel storage basin, or at either onsite or offsite ISFSIs;

(5) The Commission finds reasonable assurance that safe independent onsite spent fuel storage or offsite spent fuel storage will be made available if such storage capacity is needed. (55 FR 38474; September 18, 1990).

These five findings form the basis of the Commission's generic determination of no significant environmental impact