

August 25, 2003

MEMORANDUM TO: Gary Janosko, Acting Section Chief
Rulemaking and Guidance Branch
Division of Industrial and
Medical Nuclear Safety, NMSS

FROM: David L. Skeen, Acting Program Director */RA/*
Policy and Rulemaking Program
Division of Regulatory Improvement Programs, NRR

SUBJECT: POTENTIAL RULEMAKING: ENHANCING CRITERIA FOR
CATEGORICAL EXCLUSIONS FROM ENVIRONMENTAL REVIEWS

In response to your request for assistance on the subject proposed rulemaking, NRR has identified three amendments to the requirements in 10 CFR 51.22 which should be made to eliminate the need for preparing unnecessary environmental assessments. These are summarized as follows:

10 CFR 51.22(c)(2)

This paragraph provides a categorical exclusion for amendments to the regulations which are corrective, minor, or of a nonpolicy nature and do not substantially modify existing regulations. NRR routinely modifies the requirements in 10 CFR 50.55a to update its incorporation by reference of the ASME Boiler and Pressure Vessel Code and the Code for Operation and Maintenance of Nuclear Power Plants. These changes in the requirements are of a nonpolicy nature and are approved by the Executive Director of Operations (EDO). They typically streamline operations, enhance safety, or reduce public exposure to radiation and the environmental assessments supporting these revisions that have not identified significant environmental impacts. NRR recommends that this paragraph be amended to clarify that updating of the incorporation by reference of these codes and the regulatory guides that list NRC approved ASME Code Cases are covered by this categorical exclusion.

10 CFR 51.22(c)(9)

This section of the regulations authorizes a categorical exclusion from performing an environmental assessment provided that the amendment to a permit or a license (1) involves no significant hazard considerations (defined in § 50.92), (2) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and (3) there is no significant increase in individual or cumulative occupational radiation exposure. NRR receives many requests for exemptions from the regulations which would also meet these criteria but must perform environmental assessments because this categorical exclusion pertains only to amendments to permits or licenses. Therefore, NRR recommends that a parallel section, § 51.22(c)(22), that applies all the same criteria to allow exclusions for exemptions to the regulations be added.

10 CFR 51.22(c)(10)

Although the language in paragraph (c)(10)(ii) of this section arguably covers administrative changes to a license or a permit, the vagueness of this language has required the preparation of environmental assessments in many instances where the changes are purely administrative. Therefore, we recommend the broadening of this language to clarify that purely administrative and editorial changes are covered by this categorical exclusion.

In order to assist you in this matter, we have prepared suggested amendatory language and explanatory text for the Section-by-Section Discussion Section of the Statements of Consideration (see attachment). We believe that this is a worthwhile effort and will provide you with any further assistance that you may need. Please contact Harry Tovmassian at 301-415-3092, if you have any questions or need any further clarification.

Attachment: As stated

10 CFR 51.22(c)(10)

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Attachment: As stated

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SUGGESTED AMENDATORY LANGUAGE

XX. Section 51.22 is amended by revising paragraphs (c)(2), (c)(10)(i), (ii) and (iii) and adding paragraph (c)(22) 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.

* * * * *

(c) * * *

(2) Amendments to the regulations in this chapter which are corrective or of a minor or nonpolicy nature and do not substantially modify existing regulations, and actions on petitions for rulemaking relating to these amendments including those which—

(i) Update the incorporation by reference of the Editions and Addenda of the ASME Boiler and Pressure Vessel Code and the ASME Code for Operation and Maintenance of Nuclear Power Plants, or

(ii) Update the incorporation by reference of NRC regulatory guides which list Code Cases for the ASME Boiler and Pressure Vessel Code and the ASME Code for Operation and Maintenance of Nuclear Power Plants which are approved for use.

* * * * *

(10) * * *

(i) Changes surety, insurance and/or indemnity requirements;

(ii) Changes recordkeeping, reporting, or administrative procedures or requirements; or

(iii) Makes purely editorial or administrative revisions, including the licensee's name.

* * * * *

(22) Issuance of an exemption to part 50 of this chapter, or issuance of an exemption from a regulation in this chapter which changes a requirement with respect to installation or use of a facility component located within the restricted area as defined in part 20 of this chapter, or which changes an inspection or a surveillance requirement, provided that—

(i) Operation of the facility in accordance with the exemption would not;

(A) Involve a significant increase in the probability or consequences of an accident previously evaluated;

(B) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(C) Involve a significant reduction in a margin of safety;

(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.

SECTION-BY-SECTION DISCUSSION

10 CFR 51.22(c)(2)

The proposed rule would amend § 51.22 (c)(2), to clarify that this categorical exclusion pertains to amendments to the NRC's regulations which incorporate by reference the ASME Boiler and Pressure Vessel (BPV) Code and the ASME Code for Operation and Maintenance (OM) of Nuclear Power Plants. The proposed rule would also clarify that this categorical exclusion pertains to amendments which would incorporate by reference NRC-developed regulatory guides which list ASME BPV and OM Code Cases which are approved or conditionally approved by the NRC for use by licensees without prior NRC approval.

The ASME routinely updates its BPV-Code and OM-Code requirements 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. Updating NRC's incorporation by reference to the most current versions of the ASME Codes and their addenda has been a routine matter and has not presented any policy considerations. Also, environmental assessments performed to support these updates have not identified any significant environmental impacts. Thus, the continued preparation of environmental assessments for these routine amendments to NRC's regulations is not considered necessary.

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 requirements of the ASME BPV and OM Code requirements and often reflect improvements in technology, new information, or improved procedures. The NRC's practice is to review these Code Cases and find them either acceptable, conditionally acceptable, or unacceptable for use by NRC facility licensees. The acceptable Code Cases are then listed in NRC regulatory guides which are incorporated by reference in the NRC's regulations in § 50.55a.

The existing regulation provides this exclusion for amendments to permits and licenses that meet these criteria. The NRC believes that such an exclusion is also needed for exemptions, provided that the stated criteria are met. In the case of license amendments, the NRC makes a determination that the action does not involve a significant hazards consideration in accordance with the criteria specified in § 50.92(c). Although there is no provision for such a hazards consideration for applications for exemptions from NRC's regulations, these applications must contain a discussion of the potential radiological impacts of the proposed exemption. Upon evaluating this discussion in the licensee's application and determining that it satisfies the criteria set forth in § 51.22(c)(9) the staff will grant the exemption in the absence of a formal environmental assessment.

10 CFR 51.22(c)(10)

The proposed rule would clarify that the categorical exclusion permitted by this paragraph pertains to purely administrative changes to a permit or license. Because of the ambiguity of this paragraph, the NRC staff has been required to perform environmental assessments for many minor administrative changes and for the correction of typographical errors. In the past, purely administrative matters such as changes to a licensee's name, telephone number, or address have required environmental assessments which were unnecessary and wasteful of agency resources. This proposed modification would clarify that changes of this nature are excluded from the requirement to perform an environmental assessment.

10 CFR 51.22(c)(22)

The proposed rule would add a new paragraph (c)(22) to provide a categorical exclusion from performing environmental assessments for exemptions from regulations provided that operation of the facility in accordance with the exemption would not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety. Also, the new categorical exclusion would not apply if it involves a significant change in the types or significant increase in the amounts of any effluents that may be released offsite or if there is a significant increase in individual or cumulative occupational radiation exposure. For amendments to permits or licenses, the NRC makes a determination that the action does not involve a significant hazards consideration in accordance with the criteria specified in § 50.92(c) then applies the criteria specified in § 51.22(c)(9) in order to grant the categorical exclusion. The NRC believes that the same criteria that governs the granting of a categorical exclusion for amendments to permits and licenses should apply to exemptions, as well. However, there is no provision for a significant hazards consideration for exemptions. Therefore, the proposed addition of § 51.22(c)(22) captures the criteria specified in § 50.92(c) and § 51.22(c)(9) in order to provide the same criteria for exemptions that are currently used for granting categorical exclusions for amendments.