

# PUBLIC SUBMISSION

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**Docket:** NRC-2018-0300  
Categorical Exclusions from Environmental Review

**Comment On:** NRC-2018-0300-0001  
Categorical Exclusions from Environmental Review

**Document:** NRC-2018-0300-DRAFT-0010  
Comment on FR Doc # 2021-09675

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## Submitter Information

**Email:** tansey.moore@ncsl.org  
**Government Agency Type:** Tribal  
**Government Agency:** Nuclear Energy Tribal Working Group

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## General Comment

See attached file

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## Attachments

NRC Categorical Exclusion comment letter 7\_21\_21 Final



July 21, 2021

Secretary, US Nuclear Regulatory Commission

Washington, DC 20055-0001

RE: NRC Docket 20118-0300

ATTN: Rulemakings and Adjudications Staff

The Nuclear Energy Tribal Work Group (NETWG), is a U.S. Department of Energy (DOE) chartered working group, focused on engaging tribal governments interested in the broad spectrum of activities under the purviews of the Department of Energy Office of Nuclear Energy (NE) and Nuclear Regulatory Commission (NRC). We respectfully submit the following comments for consideration related to the proposed Categorical Exclusion for Environmental Review.

NETWG monitors nuclear research, development and regulation, small modular reactors, cultural resource impacts related to nuclear energy production and distribution in addition to siting of facilities and waste storage.

On May 7, 2021, the NRC published a notice in the Federal Register (86 FR 24515) requesting comments on its Advance Notice of Proposed Rulemaking (ANPR) related to agency activities that could be exempt from environmental review under the National Environmental Policy Act (NEPA).

NETWG offers the following comments on the ANPR:

In general, we believe categories for potential exemption are too broad and lack detail. Any proposed rule must clearly explain why a particular category of exemption would have no possibility of leaving a potential environmental effect unevaluated. Additionally, the *Supplementary Information* to the proposed rule should explicitly state the NRC Atomic Energy Act (AEA) responsibilities to protect public health and safety would not be affected. Equally, similar emphasis applies to the Endangered Species Act

and the National Historic Preservation Act. Although these reviews are generally contained in elements of a NEPA Environmental Impact Statement (EIS) and analysis, the two Acts impose a substantive responsibility on the NRC above and beyond the responsibilities contained in NEPA.

In terms of the categories listed for potential exemption in the Federal Register Notice (FRN), NRC will need to provide additional information in any proposed rule including but not limited to the revisions to categorically exclude issuance of exemptions to low-level waste disposal sites for the storage and disposal of special nuclear material regulated by Agreement States. Additionally, revisions to categorically exclude the NRC's concurrence provision under the AEA, Section 274c of termination by an Agreement State of licenses for 11e920 byproduct material where all decommissioning activities have been completed and approved including NRC's concurrence as the final administrative step which can require revisions to categorically exclude:

- approval of relief and alternative requests under 10 CFR 50.55;
- issuance of new, revised, and renewed certificates of compliance for cask designs used for spent fuel storage and transportation;
- approval of decommissioning funding plans for many categories of radioactive waste; and
- authorizations to revise emergency plans for administrative changes such as reduction in staffing.

NETWG appreciates the opportunity to comment and remains hopeful the NRC will provide a systematic analysis of the merits of our comments before proposing any policy changes that minimize the intent of a comprehensive NEPA review. Lastly, we recommend the proposed rule should include a provision that allows a tribal government, interested party, or concerned citizen, to challenge the application of a categorical exclusion without consideration to new and significant information that would otherwise not be considered.

Sincerely,

NUCLEAR ENERGY TRIBAL WORKING GROUP