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RULEMAKING ISSUE **(Notation Vote)**

November 14, 2022

SECY-22-0100

FOR: The Commissioners

FROM: Daniel H. Dorman
Executive Director for Operations

SUBJECT: PROPOSED RULE: CATEGORICAL EXCLUSIONS FROM
ENVIRONMENTAL REVIEW (3150-AK54; NRC-2018-0300)

PURPOSE:

The purpose of this paper is to obtain Commission approval to publish in the *Federal Register* (FR) for public comment the enclosed proposed rule (Enclosure 1). This document is related to U.S. Nuclear Regulatory Commission (NRC) regulations for categorical exclusions from environmental review for certain licensing, regulatory, and administrative actions that individually or cumulatively do not have a significant effect on the human environment. The staff identified new categorical exclusions and modified existing categories due to inconsistencies between existing excluded categories. In addition, the staff evaluated all existing categorical exclusions to determine if any are no longer necessary or have proven to no longer meet the criteria for categorical exclusion. The proposed revisions would eliminate the preparation of environmental assessments (EAs) for such actions. The proposed rule would not change requirements for licensees or applicants and would provide for more timely NRC action. This paper addresses no new commitments.

SUMMARY:

The proposed rule would amend the NRC's regulations for categorical exclusions from environmental review for certain licensing, regulatory, and administrative actions that individually or cumulatively do not have a significant effect on the human environment.

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The proposed revisions to the categorical exclusion regulations would reduce inefficiencies and inconsistencies in the implementation of the NRC's regulatory program. The amendments would ensure resources are directed to activities that have the potential to significantly affect the environment.

BACKGROUND:

The NRC's categorical exclusion regulations are found in Section 51.22 of Title 10 of the *Code of Federal Regulations* (CFR), "Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review," which specifies actions that the NRC has determined not to have significant environmental impacts. On September 24, 2003, the Council on Environmental Quality (CEQ) National Environmental Policy Act (NEPA) Task Force published a report, "Modernizing NEPA Implementation" (Task Force Report) ([Modernizing NEPA Implementation](#)), which recommended that Federal agencies periodically examine their categorical exclusion regulations to identify potential revisions. The Task Force Report recommends the use of information from past actions to establish the basis for determining that certain actions have no significant effects. It also provides that while the criteria for identifying new categorical exclusions might vary from agency to agency, some candidates for categorical exclusions include repetitive actions that do not individually or cumulatively have significant effects on the human environment, those that generally require limited environmental review, and those that are noncontroversial.

In the December 6, 2010, *Federal Register* notice (75 FR 75628), the CEQ issued its final guidance¹ on categorical exclusions and recommended that agencies periodically review categorical exclusions to ensure their continued appropriate use and usefulness. The review should help determine if the existing categorical exclusions are still relevant and if there are additional eligible actions. Further, the CEQ recommended that agencies develop a process and timeline to periodically review their categorical exclusions (and extraordinary circumstances) to ensure that their categorical exclusions remain current and appropriate, and that those reviews should be conducted at least every 7 years. Recently, in accordance with the CEQ's 2010 guidance memorandum, the NRC staff reviewed and analyzed past actions, including supporting NEPA documentation, to develop initial candidates for potential changes to categorical exclusion regulations. The CEQ guidance memorandum provides four methods for substantiating a new or revised categorical exclusion. The NRC used two of those methods in substantiating its proposed changes. The CEQ methods used in the NRC's proposal are based on: (1) data from implementing comparable past actions and the expert judgment of the NRC staff who conducted the past actions, and (2) information from other NRC staff (e.g., through an IdeaScale campaign, which used crowdsourcing from the staff to identify potential candidates for categorical exclusions). Based on its review of all the information collected, the staff believes that actions covered by the proposed changes would not individually or cumulatively have significant effects on the human environment.

The proposed rule is consistent with the CEQ's recommendations for periodic review and updates of categorical exclusions. The NRC last amended its categorical exclusion regulations in 2010 (75 FR 20248; April 10, 2010). Recently, the NRC reviewed its environmental programs and organization to identify potential opportunities to continue to meet its NEPA obligations in

¹ *Federal Register* notice, "Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act" (75 FR 75628; December 6, 2010).

different ways that would enhance the process, save time, and reduce resources. One of the opportunities identified was the possibility of creating new or revised categorical exclusions. The staff also reviewed existing categorical exclusions to ensure they remain valid. Through these reviews, the staff has identified several instances when staff or program offices have cited different, potentially overlapping, categorical exclusions for similar or even identical actions. In other cases, application of some criteria in a categorical exclusion can create unnecessary work, such as when the staff has to apply the “no significant hazards considerations” criteria in non-reactor exemption actions (10 CFR 51.22(c)(25)(i)) even though the criteria apply only to reactors. By identifying actions that do not have the potential to significantly affect the environment, the NRC would ensure that its environmental reviews are focused on those actions with potential new or significant environmental impacts. Further, the review for categorical exclusions would ensure that the NRC’s environmental review program is more aligned with the CEQ’s best practices. Revisions to the categorical exclusions would: (1) increase efficiency in the environmental review process, and (2) increase consistency and decrease regulatory burden by providing the same level of environmental review across regulatory programs.

The NRC has the option to prepare and issue an EA or Environmental Impact Statement for any proposed action, even if the proposed action meets the criteria for a categorical exclusion. If a proposed action meets the criteria for a categorical exclusion, and the NRC staff wishes to rely upon that categorical exclusion, then the staff must determine that special circumstances are not present that would preclude use of that categorical exclusion.

DISCUSSION:

In the staff requirements memorandum to SECY-20-0065, “Rulemaking Plan—Categorical Exclusions from Environmental Review,” dated November 30, 2020 (Agencywide Documents Access and Management System [ADAMS] Accession No. ML20336A009), the Commission approved the staff’s recommendation to initiate a rulemaking to add new, approved categorical exclusions and amend existing categorical exclusions. In developing the proposed rule, the staff conducted a more detailed review of EAs and their associated findings of no significant impacts completed since the 2010 rulemaking. The staff’s 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 considered in the proposed revisions. The review also identified two categories that are no longer needed and should be removed. The staff also prepared a draft regulatory analysis (Enclosure 2) to determine anticipated costs and benefits associated with implementing the proposed requirements.

CEQ Conformity Determinations

The CEQ regulations in 40 CFR 1507.3(b), “Agency NEPA procedures,” include a process for Federal agencies to consult with the CEQ whenever they amend their NEPA procedures. The process concludes with a determination on the final rule from CEQ that the amended procedures conform to NEPA and CEQ regulations (a “conformity determination”). To receive a conformity determination, an agency provides its proposed and final rules to the CEQ for review and comment, and the CEQ issues the agency a letter of conformity determination for the final rule.

As an independent agency, the NRC is not required to follow the conformity determination process; however, on March 2, 2022, the staff held a briefing with the CEQ to discuss the NRC's proposed amendments to the requirements of 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," and subsequently provided the draft proposed rule to CEQ for their review. The CEQ provided comments that the staff has addressed in the draft proposed rule. As a best practice, the staff will continue to engage with the CEQ during development of this rulemaking. The staff will continue to use CEQ feedback on the NRC's proposed rule in the development of the final rule and plans to voluntarily submit the final rule to the CEQ for a conformity determination.

Overview of Proposed Changes

Proposed Revisions to Address Inefficiencies and Inconsistencies

The staff proposes removing the "no significant hazards consideration" criterion in 10 CFR 51.22(c)(9) and (25)(i) and (v), which is related to a process for issuing license amendments for nuclear power reactor and testing facility licenses (from 10 CFR 50.92, "Issuance of amendment.") The "no significant hazards consideration" is a procedural standard that governs whether the NRC must provide an opportunity for a hearing before taking action on a license amendment request under 10 CFR 50.91, "Notice for public comment; State consultation" (51 FR 7746; March 6, 1986). The standard is not directly related to environmental impacts and is not applicable to exemptions that do not include license amendments or actions related to licenses issued under other parts of the NRC's regulations (e.g., materials licenses under 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material.") Removing the no significant hazards considerations criterion would clarify and greatly simplify the application of these categorical exclusions without changing the potential for environmental effects of the actions that are categorically excluded.

The staff also proposes to remove the "no significant construction impact" criterion in the current 10 CFR 51.22(c)(6), (11), (12)(i), and (25)(iv) and revise the language to indicate that any ground disturbance must be limited to previously disturbed areas. The purpose of this change is to provide clarification. The regulatory history indicates that the "no significant construction impact" criterion was intended to preclude actions that would result in ground disturbing activities in undisturbed areas and that have the potential to alter, modify, or destroy important attributes of environmental resource areas (e.g., land use, terrestrial ecology, historic and cultural resources). Based on experience with the use of these categorical exclusions, the staff believes it is clearer to explicitly state the relevant consideration in the regulations.

Proposed Revisions to Existing Categorical Exclusions

The staff proposes to reorganize the list of categorical exclusions to eliminate redundancy and add clarity. The reorganization would consolidate similar actions currently described in separate paragraphs into one categorical exclusion. The reorganization also would eliminate distinctions in categorical exclusions between license amendments, exemptions, rulemaking, and other forms of NRC actions to ensure that categorical exclusions are based on the activities that would be authorized rather than the administrative and legal differences between the different forms of NRC approvals.

The proposed organization would list the categorical exclusions based on threshold criteria used to identify the listed categorical exclusions more clearly and consistently. For example, paragraph (a) combines similar excluded categories of actions that do not have threshold

criteria, while paragraph (b) is used for a single current category of actions (and any that may be added in the future) that have a threshold criteria, i.e., can only be excluded if they do not involve ground disturbance of previously undisturbed areas. This proposed organized list would be contained in four separate categorical exclusion paragraphs, paragraphs (a) through (d), and each sub-paragraph would be organized to group similar actions to add clarity.

In certain instances, the elimination of distinctions between NRC actions would expand categorical exclusions. In these cases, the rulemaking analyses these newly included activities for suitability for categorical exclusion but does not revisit the suitability of the existing categorical exclusion. For example, an existing categorical exclusion that refers to license amendments has been revised to now refer to all NRC actions and so now includes license amendments and additional activities such as exemptions and orders. Thus, the staff is not revisiting the suitability of that categorical exclusions as applied to license amendments, but did evaluate its suitability as applied to exemptions and orders.

The specific changes are described in the bulleted paragraphs below.

- The proposed 10 CFR 51.22(a)(1) would be a new categorical exclusion that would cover all NRC actions that are administrative, procedural, or solely financial in nature. The list of activities in proposed paragraphs (a)(1)(i) through (xi) would not be exclusive; rather, for the convenience of staff and public users, it would consolidate existing categorical exclusions as examples of actions included in the category. The actions described in proposed subparagraphs (a)(1)(xii) and (xiii) would be newly categorically excluded by paragraph (a)(1), as described in more detail below, but is proposed to clarify that those activities are included in the proposed categorical exclusion for activities that are administrative, procedural, or solely financial in nature. The actions included in proposed 10 CFR 51.22(a)(1) would be limited to activities that are administrative, procedural, or solely financial in nature. The actions would not have the potential for significant environmental effects. For example, actions that are solely financial in nature would affect the financial arrangements of licensees but would not have environmental impacts.
- The proposed 10 CFR 51.22(a)(8) would expand an existing categorical exclusion to include all forms of related NRC actions, including exemptions and orders. Specifically, it would expand the categorical exclusion for issuance, amendment, or renewal of operators' licenses under 10 CFR Part 55. Although issuance or denial of an operator's license may have a significant economic effect on the individual applicant, the action of the Commission in issuing, amending, or renewing an operator's license in accordance with the procedures of 10 CFR Part 55, "Operators' Licenses," does not have an environmental effect. The environmental impact of the operation of a licensed facility by a licensed operator is fully considered in the environmental impact statement or EA prepared in connection with the licensing action authorizing operation of the facility. The formal action of certifying an operator does not authorize facility operation.
- The proposed 10 CFR 51.22(a)(10) would expand an existing categorical exclusion to include all forms of related NRC actions, including exemptions and orders, but not rule-makings. Specifically, it would expand the current categorical exclusion for issuance, amendment, or renewal of materials licenses authorizing certain specified activities. This category applies to licenses issued under 10 CFR Parts 30, 31, "General Domestic Licenses for Byproduct Material," 32, "Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material," 33, "Specific Domestic Licenses of Broad Scope for Byproduct Material," 34, "Licenses for Industrial Radiography and

Radiation Safety Requirements for Industrial Radiographic Operations,” 35, “Medical Use of Byproduct Material,” 36, “Licenses and Radiation Safety Requirements for Irradiators,” 39, “Licenses and Radiation Safety Requirements for Well Logging,” 40, “Domestic Licensing of Source Material,” or 70, “Domestic Licensing of Special Nuclear Material,” authorizing the types of activities listed in 10 CFR 51.22(c)(14). These actions involve insignificant amounts of source, byproduct, or special nuclear material in quantities and form similar to those categorically excluded in 10 CFR 51.22(c)(14) and therefore, have an insignificant environmental impact.

- The proposed 10 CFR 51.22(d)(1) through (3), (5) and (9), would expand certain categorical exclusions to include rulemaking, orders, and license amendments, provided the covered actions would not disturb previously undisturbed ground, would not result in a significant change in the types or amounts of effluents released off site, would not significantly increase individual or cumulative public or occupational radiation exposure, and would not increase the potential for or consequences of radiological accidents. In the staff’s experience, these actions do not result in any significant adverse incremental impacts to the environment.
- The proposed 10 CFR 51.22(d)(7) would expand an existing categorical exclusion to include rulemaking, exemptions, and orders. Specifically, it would expand the current categorical exclusion for issuance of amendments to licenses for fuel cycle plants and radioactive waste disposal sites and amendments to materials licenses identified in 10 CFR 51.60(b)(1), “Environmental report – materials licenses,” that are administrative, organizational, or procedural in nature, or that result in a change in process operations or equipment, provided that certain criteria are met. In the staff’s experience, these actions do not result in any significant adverse impacts to the environment.
- The proposed 10 CFR 51.22(d)(8) would expand an existing categorical exclusion to include exemptions and orders under 10 CFR Part 50, “Domestic Licensing of Production and Utilization Facilities,” or 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants.” It would also expand the categorical exclusion to include installation or use of a facility component outside the restricted area under certain circumstances. The intent of this proposed requirement is to expand the existing categorical exclusion for the issuance of an amendment to a permit or license for a reactor under 10 CFR Part 50, “Domestic Licensing of Production and Utilization Facilities,” or 10 CFR Part 52 that changes a requirement or issuance of an exemption from a requirement with respect to installation or use of a facility component. The staff’s conclusion is that rulemakings and orders in this category either have no environmental impact or the environmental impact is insignificant.

Proposed New Categorical Exclusions

The staff is recommending the following new categorical exclusions for activities that do not significantly affect the human environment, individually or cumulatively.

- *Termination of licenses that were issued but for which no construction or pre-construction activities have begun or where all decommissioning activities have been completed and approved and license termination is a final administrative step.* First, the termination of licenses that were issued but for which no construction or pre-construction activities have begun would remove authorization for activities that

could affect the environment, such as ground disturbing activities, and therefore there would be no change in environmental conditions and no environmental impacts. Second, when all site decommissioning activities have been approved and completed, license termination is an NRC administrative action. The proposed rule would explicitly exclude partial site releases and license terminations at decommissioning power reactor sites from this category, so this example would not apply to license terminations at those sites. To be eligible for license termination, facilities must complete necessary dismantlement and decontamination activities and have met radiological criteria in 10 CFR Part 20, "Standards for Protection Against Radiation," for site release and demonstrated that public health and safety and the environment will be protected. Therefore, the action of terminating a license after all site decommissioning activities have been approved and completed is administrative in nature and does not have the potential to affect the human environment individually or cumulatively. The NRC has historically cited various other categorical exclusions for these activities. The inclusion of this example in proposed in Section 51.22(a)(1)(xiii) would provide clarity and consistency for future license terminations. This proposed categorical exclusion would not include the NRC's concurrence on termination by an Agreement State of an Agreement State license for the Atomic Energy Act of 1954, as amended (AEA), Section 11e.(2) byproduct material.

- *Actions on or changes to requirements for decommissioning funding plans under Parts 30, 40, 50, 70, or 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste."* Decommissioning funding actions are strictly financial in nature and relate only to changes in the management of funds allowed for managing irradiated fuel activities. They do not authorize new land-disturbing activities that could affect land use, soils and geology, water resources, ecological resources, historic and cultural resources, air quality, traffic and transportation, socioeconomics, environmental justice, or accidents. These actions would be included in proposed 10 CFR 51.22(a)(1) and explicitly listed as an example in paragraph (a)(1)(xii).
- *Issuance of amendments to 10 CFR 72.214, "List of approved spent fuel storage casks," or new, amended, revised, or renewed certificates of compliance for cask designs used for spent fuel storage.* The codification of certificates of compliance for cask designs is accomplished by rulemaking to amend 10 CFR Part 72. As background, on July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The EA for the 1990 final rule first analyzed the potential environmental impact of using NRC-approved storage casks. Certificates of compliance for cask design approvals do not result in any radiological or nonradiological environmental impacts that significantly differ from the environmental impacts evaluated in the EA supporting the 1990 final rule. Currently, the NRC prepares EAs for new, amended, revised, and renewed certificates of compliance for cask designs used for spent fuel storage. This categorical exclusion is proposed as 10 CFR 51.22(a)(12).
- *Actions under 10 CFR 50.55a, "Codes and standards."* The regulation in 10 CFR 50.55a establishes minimum quality standards for the design, fabrication, erection, construction, testing, and inspection of certain systems, structures, and components of boiling and pressurized water-cooled nuclear power plants. Under 10 CFR 50.55a, the NRC can authorize proposed alternatives to these standards (10 CFR 50.55a(z)), grant relief from or augment requirements for inservice inspection and testing of components due to

impracticality (10 CFR 50.55a(f)(6)(i) and (g)(6)(i)), or approve the early use of later code editions for inservice inspection and testing of components (10 CFR 50.55a(f)(4)(iv) and (g)(4)(iv)). This categorical exclusion is proposed as 10 CFR 51.22(a)(16).

- *Changes to fire protection programs, emergency plans, physical security, or quality assurance programs, provided certain criteria are met.* The EAs associated with the approval of exemptions or license amendments to fire protection programs, emergency plans, physical security, or quality assurance programs have concluded that these actions would not increase the probability of consequences of accidents, and there would be no significant change in the type or amount of effluent released offsite or any significant increase in public or occupational exposure. These actions would be categorically excluded by proposed 10 CFR 51.22(d)(4).
- *Changes to extend implementation dates.* These revisions would categorically exclude actions authorizing licensees to delay implementation of certain new NRC requirements. This proposed categorical exclusion applies only to implementation date delays for activities previously found to have no significant environmental impact and the delay would have no significant increase in the potential for or consequences from radiological accidents, result in no ground disturbance in undisturbed areas, cause no effluent releases, and result in no additional doses to individuals. The proposed categorical exclusion does not apply to authorizations for other date extensions, such as license term extensions. These actions would be categorically excluded by proposed in Section 51.22(d)(6).

Existing Categorical Exclusions Proposed for Removal from 10 CFR Part 51

The staff evaluated all existing categorical exclusions to determine if any are no longer necessary or have proven to no longer meet the criteria for categorical exclusion. The staff determined that two existing categorical exclusions are no longer necessary because they are obsolete and the other existing categorical exclusions remain valid.

The staff is proposing to remove 10 CFR 51.22(c)(17), which reads as follows:

Issuance of an amendment to a permit or license under parts 30, 40, 50, 52, or part 70 of this chapter which deletes any limiting condition of operation or monitoring requirement based on or applicable to any matter subject to the provisions of the Federal Water Pollution Control Act.

The staff has concluded its activity to amend applicable NRC licenses and permits to delete limiting conditions of operation or monitoring requirements pertaining to nonradiological discharge pollutants under the Federal Water Pollution Control Act and no longer includes such conditions in NRC permits and licenses (49 FR 9380; March 12, 1974). Therefore, the staff has determined that this categorical exclusion is no longer necessary.

The staff also proposes to remove 10 CFR 51.22(c)(18), which reads as follows:

Issuance of amendments or orders authorizing licensees of production or utilization facilities to resume operation, provided the basis for the authorization rests solely on a determination or redetermination by the Commission that applicable emergency planning requirements are met.

This categorical exclusion was established in 1984 when the NRC issued regulations to implement NEPA (49 FR 9352; March 12, 1984) to support a 1980 emergency planning rule (45 FR 55402; August 19, 1980). That emergency planning rule has been fully implemented; therefore, the NRC has determined that this categorical exclusion is no longer applicable and should be removed.

Cumulative Effects of Regulation

The staff held a public meeting on June 16, 2021 (ML21179C286), to facilitate comments on the advance notice of proposed rulemaking (ANPR) (86 FR 24514; May 7, 2021). The ANPR identified potential opportunities for the NRC to continue to meet its mission of protecting people and the environment in ways that would enhance the process, save time, and reduce resources. The staff presented background on the categorical exclusions, the NRC's regulations on categorical exclusions, and the potential rulemaking changes under consideration. Participants asked clarifying questions about the staff's approach and were given details on how to submit their comments.

The NRC received more than 2,300 comment submittals on the ANPR; most were identical comments on topics that the staff determined were out of the scope of this rulemaking. The staff evaluated approximately 20 unique comment submittals that pertained to issues within the scope of the NRC's proposal and considered these comments during the development of the proposed rule. Some of the comments supported the NRC's plan to reorganize the list of categorical exclusions to eliminate redundancy and add clarity. Additionally, some comments supported the NRC's planned revision to eliminate distinctions in categorical exclusions between license amendments, exemptions, rulemaking, and other forms of NRC actions to ensure that categorical exclusions are based on the activities that would be authorized rather than the administrative and legal differences between the different forms of NRC approvals.

The NRC also received comments that did not support some of the proposed new categorical exclusions. Based on an in-depth review of these comments, the staff modified some of the changes; for example, the staff is no longer pursuing four proposed categorical exclusions that would have established categorical exclusions for: (1) issuance of exemptions to low-level waste disposal sites for the storage and disposal of special nuclear material regulated by Agreement States; (2) approvals for alternative waste disposal procedures for reactor and material licenses in accordance with 10 CFR 20.2002, "Method for obtaining approval of proposed disposal procedures;" (3) the NRC's concurrence, under the AEA, section 274c., on termination by an Agreement State of licenses for AEA section 11e.(2) byproduct material where all decommissioning activities have been completed; and (4) approvals of long-term surveillance plans for decommissioned uranium mills.

In addition, based on a comment received on the ANPR, the staff evaluated categorical exclusions adopted by other Federal agencies for potential adoption by the NRC. This evaluation did not identify any categorical exclusions for incorporation in this proposed rule.

Implementing Guidance

There is no guidance for licensee or applicant implementation and compliance that would be updated. The categorical exclusions section of NUREG-1748, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs," issued August 2003 (ML032450279), is used primarily as internal instructions for staff when reviewing categorical exclusions. The proposed rule would not affect licensees' use of NUREG-1748. The NRC staff is working to update NUREG-1757, "Consolidated Decommissioning Guidance," and intends to remove unnecessary references to the current 10 CFR 51.22 as part of the update. Thus, NUREG-1757 will also not need to be updated to implement the proposed rule.

The staff would issue revised internal instructions² after publication of the final rule.

Backfitting and Issue Finality Considerations

This proposed rule would eliminate the NRC's requirement to prepare EAs or environmental impact statements for certain categories of actions, and thus could reduce the information an applicant or petitioner for rulemaking would be obligated to provide in an environmental report under 10 CFR 51.40, "Consultation with NRC staff," 51.41, "Requirement to submit environmental information," 51.45, "Environmental report," 51.49, "Environmental report – limited work authorization," 51.50, "Environmental report – construction permit, early site permit, or combined license stage," 51.51, "Uranium fuel cycle environmental data," 51.52, "Environmental effects of transportation of fuel and waste," 51.53, "Postconstruction environmental reports," 51.54, "Environmental report – manufacturing license," 51.55, "Environmental report – standard design certification," 51.58, "Environmental report – number of copies; distribution," 51.60, 51.61, "Environmental report – independent spent fuel storage installation (ISFSI) or monitored retrievable storage installation (MRS) license," 51.62, "Environmental report – land disposal of radioactive waste licensed under 10 CFR part 61," 51.66, "Environmental report – number of copies; distribution," and 51.67, "Environmental information concerning geologic repositories," and 51.68, "Environmental report – rulemaking." Reductions in the information required to be included in applications and petitions for rulemaking constitutes a voluntary reduction in requirements and therefore is not a backfit under the backfitting rules (10 CFR 50.109, 70.76, 72.62, or 76.76) nor a violation of any issue finality provisions in 10 CFR Part 52.

Further, applicants and petitioners are not, with certain exceptions, within the scope of either the backfitting rules (10 CFR 50.109, "Backfitting," 70.76, 72.62, or 76.76) or any issue finality provisions in 10 CFR Part 52. The backfitting and issue finality regulations include language delineating when those provisions begin; in general, they begin after the issuance of a license, permit, or approval (e.g., 10 CFR 50.109(a)(1)(iii) and 10 CFR 52.98(a), "Finality of combined licenses; information requests.") Neither the backfitting provisions nor the issue finality provisions, with certain exceptions, are intended to apply to NRC actions that substantially change the expectations of current and future applicants. These applicants cannot reasonably expect that future requirements will not change.

² LIC-101, "License Amendment Review Procedures," LIC-102, "Relief Request Reviews," LIC-103, "Exemption from NRC Regulations," and LIC-203, "Procedural Guidance for Preparing Categorical Exclusions, Environmental Assessments, and Considering Environmental Issues."

Therefore, this proposed rule does not involve any provisions within the scope of the backfit rules (10 CFR 50.109, 70.76, 72.62, or 76.76) or the issue finality provisions in 10 CFR Part 52.

RECOMMENDATIONS:

The staff recommends that the Commission approve the enclosed proposed rule for publication in the FR.

If the Commission approves publication of the proposed rule, the staff will complete the following activities:

- (1) The staff will publish the proposed rule in the FR and provide a 75-day public comment period.
- (2) The staff will make publicly available the draft regulatory analysis for the proposed rule.
- (3) The Office of Congressional Affairs will inform the appropriate congressional committees.
- (4) The staff will work with the Office of Public Affairs on an appropriate public communication when the NRC publishes the proposed rule in the FR.
- (5) The staff will hold a public meeting during the comment period for the proposed rule.

COORDINATION:

The Office of the General Counsel has no legal objection to the publication of the proposed rule.

The Office of the Chief Financial Officer reviewed this package and has no concerns with the estimated resources in Enclosure 3.

Daniel H.
Dorman

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Daniel H. Dorman
Executive Director
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Enclosures:

1. FRN- Proposed Rule Regarding NRC
Categorical Exclusions from
Environmental Review
2. Draft Regulatory Analysis for the Proposed
Rule: Categorical Exclusions from
Environmental Review
3. Estimated Rulemaking Resources

SUBJECT: PROPOSED RULE: CATEGORICAL EXCLUSIONS FROM ENVIRONMENTAL REVIEW (3150-AK54; NRC-2018-0300) DATED: November 14, 2022

ADAMS Accession Nos.: ML22136A314 (Package); ML22136A315 (SECY Paper); ML22136A316 (Enclosure 1); ML22088A033 (Enclosure 2); ML22136A317 (Enclosure 3)

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