

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[NRC-2018-0300]

RIN 3150-AK54

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 on categorical exclusions for licensing, regulatory, and administrative actions that individually or cumulatively do not have a significant effect on the human environment. The proposed revisions would eliminate the preparation of environmental assessments for such NRC actions. The proposed rule would not change any requirements for applicants or licensees.

The NRC plans to hold a public meeting to promote full understanding of the proposed rule and facilitate public comment.

DATES: Submit comments by **[INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- **Federal rulemaking website:** Go to <https://www.regulations.gov> and search for Docket ID: NRC-2018-0300. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407; email: Dawn.Forder@nrc.gov. For technical questions contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **Email comments to:** Rulemaking.Comments@nrc.gov. If you do not receive an automatic email reply confirming receipt, then contact us at 301-415-1677.

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

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Nancy Martinez, Office of Nuclear Material Safety and Safeguards, telephone: 630-829-9734, email: Nancy.Martinez@nrc.gov and Gregory Trussell, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-6244, email: Gregory.Trussell@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2018-0300 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2018-0300.

- **NRC's Agencywide Documents Access and Management System**

(ADAMS): You may obtain publicly available documents online in the ADAMS Public

Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **NRC’s PDR:** You may examine and purchase copies of public documents by appointment at the NRC’s PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (ET). Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2018-0300 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment

submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to undertake an assessment of the environmental effects of their proposed actions prior to deciding whether to approve or disapprove the proposed actions. The NRC's NEPA implementing regulations are contained in part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions."

A. General Overview of Categorical Exclusions

There are three types of NEPA analyses: environmental assessments (EAs), environmental impact statements (EISs), and categorical exclusions. If a Federal agency believes that the environmental impacts of a proposed action are not likely to be significant, the agency may prepare an EA. An EA is a concise document that provides evidence and analysis for determining whether to make a finding of no significant impact (FONSI) or to prepare an EIS. If a Federal agency believes that the environmental impacts of a proposed action may be significant (for example, because an EA did not result in a FONSI), the agency will prepare an EIS. An EIS is an in-depth evaluation of the environmental impacts of a proposed action and alternatives to the proposed action.

A categorical exclusion, by contrast, falls into the category of actions that do not have a significant effect on the human environment, as defined by a Federal agency in its NEPA implementing regulations. 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 actions. The NRC has the option to prepare and issue an EA or EIS for any proposed action, even if the proposed action meets the criteria for a categorical exclusion. 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 extraordinary circumstances (called special circumstances in the NRC's regulations) that would preclude use of the categorical exclusion. Categorical exclusions increase efficiency in the environmental review 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, including § 51.22, "Criterion for categorical exclusion: identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review." The regulation included the NRC's first list of 18 categorical exclusions in § 51.22(c). Since 1984, the NRC has made 18 amendments to the categorical exclusions in § 51.22(c). The NRC's categorical exclusions include administrative, organizational, and 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 for which environmental review by the NRC is excluded by statute.

On September 24, 2003 (68 FR 55954), the Council on Environmental Quality (CEQ) National Environmental Policy Act Task Force published a report, "Modernizing NEPA Implementation" (Task Force Report) that recommended Federal agencies

periodically examine their categorical exclusion regulations to identify potential revisions. The Task Force Report recommended the use of information from past actions to establish the basis for the determination of no significant effects. It also provided 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 a December 6, 2010, *Federal Register* notification (75 FR 75628), the CEQ issued final guidance, “Establishing, Applying, and Revising Categorical Exclusions under NEPA” (hereafter “CEQ guidance memorandum”), which recommends agencies periodically review categorical exclusions to assure their continued appropriate use and usefulness. The review should help determine if the existing categorical exclusions are still relevant or if there are additional eligible actions. Further, the CEQ recommended that agencies develop a process and timeline to periodically review their categorical exclusions to ensure that their categorical exclusions remain current and appropriate, and that those reviews should be conducted at least every seven years. The NRC last amended its categorical exclusion regulations in 2010 (75 FR 20248; April 10, 2010).

Consistent with the CEQ recommendations, the NRC reviewed its environmental programs and organization to identify potential opportunities to continue to protect people and the environment in different ways that would enhance the process, save time, and reduce resources. That review resulted in SECY-20-0065, “Rulemaking Plan-Categorical Exclusions from Environmental Review,” which recommended to the Commission that the staff conduct this rulemaking activity (ADAMS Accession No. ML20021A160).

C. Basis for Proposed Amendment of Categorical Exclusion Regulation

In staff requirements memorandum (SRM) SRM-SECY-20-0065, “Rulemaking Plan—Categorical Exclusions from Environmental Review,” dated November 30, 2020 (ADAMS Accession No. ML20336A009), the Commission approved the staff’s recommendation to initiate a rulemaking to add new categorical exclusions and amend existing categorical exclusions.

This proposed rule is based upon a review of NRC regulatory actions, consistent with the CEQ guidance memorandum, which recommends that agencies evaluate past EA/FONSI for particular categories of actions to develop new or expand existing categorical exclusions. To be consistent with this recommendation, the NRC conducted an in-depth review of the NRC activities, including EA/FONSIs, completed since the 2010 rulemaking was conducted. The review identified several recurring categories of regulatory actions that are not addressed in § 51.22 and have no significant effect on the human environment, either individually or cumulatively. These categories of actions were considered in developing this proposed rule.

The NRC held a public meeting on June 16, 2021, to help facilitate comments on the advance notice of proposed rulemaking (ANPR) that was published on May 7, 2021 (86 FR 24514). The ANPR identified potential rulemaking changes that would allow the NRC to continue to protect people and the environment in different ways that would enhance the process, save time, and reduce resources. The ANPR raised the possibility of reorganizing the existing categorical exclusions and adding new categorical exclusions. During the meeting, the NRC presented background, the NRC’s regulations on categorical exclusions, and the potential rulemaking changes under consideration. Participants asked clarifying questions on the NRC’s approach and were provided 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 NRC determined were out of scope for this rulemaking. Approximately 20 unique comment submittals were within scope. The NRC evaluated and considered the comments during the development of this proposed rule. Some of the comments supported reorganizing the list of categorical exclusions to eliminate redundancy and add clarity. Additionally, some comments supported revisions 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 received comments that did not support some of the categories considered in the ANPR. Based on an in-depth review of these comments, the NRC modified some of the changes under consideration; for example, the NRC is not pursuing categorical exclusions for four categories of actions considered in the ANPR:(1) the 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 materials licenses in accordance with 10 CFR 20.2002, "Method for obtaining approval of proposed disposal procedures"; (3) the NRC's concurrence, under the Atomic Energy Act of 1954, as amended (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 NRC 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.

III. Discussion

A. What Action Is the NRC Taking?

The NRC is proposing changes to its list of categorical exclusions to clarify the scope of existing categories, to improve consistency in their application, and to add new categories of actions that have no significant effect on the human environment. For example, the NRC is proposing 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 (e.g., certain maintenance activities) rather than on the different forms of the NRC approvals. The amendments would ensure resources are directed to activities that have the potential to significantly affect the environment.

B. How are Categorical Exclusions Applied?

If a Federal agency finds that actions in a given category 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 extraordinary circumstances that may have a significant effect on the human environment. If such extraordinary circumstances are or are likely to be present, the agency would prepare an EA (which may result in a FONSI) or, if necessary, an EIS. If extraordinary circumstances are not present, the

categorical exclusion may be applied and the agency will have satisfied its NEPA obligation for that proposed action.

Under NRC regulations, the determination of whether extraordinary circumstances (called special circumstances in the NRC's regulations) are present is a matter of agency discretion. The determination that special circumstances are not present does not require the preparation of any specific or additional documentation beyond the documentation normally prepared indicating that the categorical exclusion is being invoked for the proposed action.

C. Whom Would This Action Affect?

The amendments would not impose any new requirements on NRC applicants or licensees, but would ensure that NRC actions (including licensing requests) are completed in a more consistent, efficient and effective manner and would result in cost savings to the NRC and applicants and licensees. The proposed amendments would eliminate the NRC's preparation of EA/FONSI for actions that the NRC knows from staff expertise or that routinely have no significant effect on the human environment (e.g., administrative, procedural, or organizational licensee requests). For example, ambiguities in the current categorical exclusion regulations have resulted in resources being directed to EAs for approvals of organizational name changes, which do not have the potential to significantly affect the environment.

The NRC is not required to provide opportunity for comment on draft EA/FONSI. However, the NRC under certain circumstances does provide opportunity for comment on draft EA/FONSI. Therefore, the NRC cannot rule out the possibility that adding new categorical exclusions (as proposed in this proposed rule) could result in fewer opportunities for public participation in the NRC's environmental review process, albeit

only for activities where the NRC has determined there will not be a significant effect on the human environment.

D. Why Is the NRC Taking This Action Now?

This proposed rule is based upon a review of NRC regulatory actions. As noted, the CEQ guidance memorandum recommends that Federal agencies regularly review their categorical exclusion regulations to identify potential revisions that would ensure resources are directed to activities that have the potential to significantly affect the environment.

E. How Did the NRC Determine Which Categorical Exclusions to Modify or Add?

In accordance with CEQ's 2010 guidance memorandum, the NRC reviewed and analyzed past actions, including their supporting NEPA documentation, to develop initial candidates for potential changes to categorical exclusion regulations. The NRC then solicited input from internal stakeholders and, through an ANPR, from the public on the initial candidates and to identify any additional potential candidates. The NRC then considered available information and experience to determine whether the candidates for categorical exclusion and revisions to the existing categorical exclusions could be substantiated.

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 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) professional opinions and information from other NRC staff. Based on its review of all the information collected, the NRC

determined that actions covered by the proposed changes would not individually or cumulatively have significant effects on the human environment.

The NRC has prepared a supporting rationale in Section III of this document for each of its proposed changes that provides specific background and context.

F. What Are the Proposed Revisions to Address Inefficiencies and Inconsistencies?

The NRC is proposing to reorganize the list of categorical exclusions to eliminate redundancy, add clarity, and improve consistency. The current regulation contains 25 separate paragraphs, several of which contain multiple categorical exclusions. The NRC has identified several actions where staff have cited different, potentially overlapping, categorical exclusions for similar or even identical actions (e.g., § 51.22(c)(9) versus (c)(25)). The reorganization 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 reorganization would remove the overlapping actions and consolidate similar actions into one categorical exclusion.

The proposed organization would list the categorical exclusions in four separate categorical exclusion paragraphs, paragraphs (a) through (d) based on threshold criteria used to more clearly and consistently identify the categories of actions being excluded. For example, each paragraph would be organized into similar actions to add clarity.

The NRC is proposing to remove the “no significant hazards consideration” criterion in § 51.22(c)(9), (25)(i) and (v). The “no significant hazards consideration” is a procedural standard from § 50.92, “Issuance of amendment” that governs whether an

opportunity for a hearing must be provided before an action is taken by the NRC for a production and utilization facility under Part 50 (51 FR 7746; March 6, 1986). “It is not related to NEPA and not applicable to materials licenses (e.g., 10 CFR part 30, “Rules of General Applicability to Domestic Licensing of Byproduct Material,” or 10 CFR part 40, “Domestic Licensing of Source Material,” licenses). Therefore, as part of the reorganization, the NRC is proposing to eliminate the criterion for no significant hazards considerations criteria currently in § 51.22(c)(9) and (25).

In addition, the “no significant construction impact” criterion in § 51.22(c)(6), (11), (12)(i), and (25)(iv) would be revised to “provided that any ground disturbance is 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, which would 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 NRC’s view is that it would be clearer to explicitly state the relevant consideration in the regulations.

G. What Is the Basis for Proposed New Categorical Exclusions?

The NRC is proposing to add the following categorical exclusions.

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 individually or cumulatively affect the human environment. The NRC has historically cited various other categorical exclusions for these activities. The inclusion of this example in proposed in § 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 AEA § 11e.(2) byproduct material.

Actions on or changes to requirements for decommissioning funding plans under 10 CFR parts 30, 40, 50, 70, or 72. Decommissioning funding actions only relate 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. Categorically excluding decommissioning funding plan submittals would provide clarity and surety for future such actions and eliminate inconsistencies in the decommissioning funding plan approval process. Licensees would continue to comply with all appropriate NRC regulations related to occupational and public radiation exposure and therefore decommissioning funding actions would not result in an increase to occupational or public doses. Finally, licensees are required to maintain adequate funding for radiological decommissioning and to provide information regarding this funding to the NRC. Since 2010 the NRC has completed approximately 30 EAs for decommissioning funding plans, all resulting in FONSI. Therefore, the NRC determined that decommissioning funding actions are strictly financial in nature and do not have the potential to individually or cumulatively affect the human environment. These actions would be categorically excluded by proposed § 51.22(a)(1) and listed as an example in subparagraph (xii).

Issuance of amendments to § 72.214 for 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 potential environmental impact of using NRC-approved storage casks was initially analyzed in the EA for 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. Since the 2010 rulemaking the NRC has completed approximately 125 EAs for amendments to § 72.214 for new, amended, revised, or renewed certificates of compliance for cask designs, all

resulting in FONSI. Accordingly, the NRC determined that certificate of compliance cask design changes do not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the EA and FONSI supporting the 1990 final rule. Therefore, the NRC concludes that codifying certificates of compliance for cask designs do not individually or cumulatively affect the human environment. This categorical exclusion is proposed as § 51.22(a)(12).

Actions under § 50.55a, “Codes and standards.” Section 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 § 50.55a, the NRC can authorize proposed alternatives to these standards (§ 50.55a(z)), grant relief from or impose augments to requirements for in service inspection and testing of components due to impracticality (§ 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 (§ 50.55a(f)(4)(iv) and (g)(4)(iv)). Categorically excluding these actions would provide clarity and surety for future actions of this type. For the following reasons, these approvals under § 50.55a do not individually or cumulatively have a significant effect on the human environment, which makes these actions eligible for categorical exclusion. Approvals under § 50.55a do not authorize new ground disturbance or the installation of new systems, structures, or components; rather, they relate to requirements for the design, construction, and maintenance of systems, structures and components authorized for use by other actions (i.e., licensing). These approvals also do not increase the probability or consequences of accidents, result in changes to the types or amounts of effluents released offsite, result in an increase to occupational or public dose, or result in other radiological or nonradiological environmental impacts. Therefore, the NRC concludes that actions

under § 50.55a do not individually or cumulatively affect the human environment. This categorical exclusion is proposed as § 51.22(a)(16).

Changes to requirements for fire protection, emergency planning, physical security, cybersecurity, or quality assurance. Since 2010, the NRC has completed 51 EAs/FONSIIs associated with the approval of exemptions or license amendments related to emergency planning, physical security, or fire protection requirements. The EAs have concluded that these amendments or exemptions do not increase the probability or consequences of accidents and do not result in significant changes to the types or amounts of effluents released offsite, increases to occupational or public dose, or any other radiological or non-radiological environmental impacts. However, some of these actions include ground disturbing activities, such as construction of security fences. Therefore, the NRC concludes that these changes to requirements for fire protection, emergency planning, or physical security plans do not individually or cumulatively affect the human environment, provided that any associated ground disturbance is limited to previously disturbed areas.

Quality assurance programs are intended to provide adequate confidence that a structure, system, or component will perform satisfactorily in service. Elements of a quality assurance program include procedures, recordkeeping, inspections, corrective actions, and audits. Cybersecurity plans protect computer and digital communication systems and networks against cyber-attacks. Changes to quality assurance programs or cybersecurity plans affect activities that occur inside buildings. These changes do not increase the probability or consequences of accidents and do not result in significant changes to the types or amounts of effluents released offsite, increases to occupational or public dose, or any other radiological or non-radiological impacts and do not involve ground disturbance in undisturbed areas. Therefore, changes to requirements for quality

assurance or cybersecurity do not have the potential to individually or cumulatively affect the human environment.

These actions would be categorically excluded by proposed § 51.22(d)(4).

Changes to extend implementation dates for activities previously found to not have a significant environmental impact. These revisions would categorically exclude actions authorizing licensees to delay implementation of certain new NRC requirements. This proposed categorical exclusion only applies to implementation date delays for activities previously found to have no significant environmental impact and where the delay would result in no significant increase in the potential for or consequences from radiological accidents, no ground disturbance in undisturbed areas, no changes in effluents released offsite, and no additional doses to individuals. The proposed categorical exclusion does not apply to authorizations for other date extensions, such as license term extensions. Since 2010 the NRC has completed approximately 44 EAs to extend implementation dates, all resulting in FONSIIs. Therefore, the NRC determined that implementation date extensions are strictly administrative in nature and do not have the potential to individually or cumulatively affect the human environment. These actions would be categorically excluded by proposed in § 51.22(d)(6).

H. What Is the Basis for the Proposed Revisions to Existing Categorical Exclusions?

The NRC is proposing to reorganize the list of categorical exclusions to eliminate redundancy, add clarity, and improve consistency. The reorganization 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 reorganization would consolidate similar actions into one categorical exclusion. In some instances, the revisions would expand or clarify language used in the existing categorical exclusions (e.g., focusing on ground disturbance rather than on whether there would be a significant construction impact). In these cases, the rulemaking analyses these newly included actions for suitability for categorical exclusion but does not revisit the suitability of the existing categorical exclusion. The NRC would also make a small number of editorial revisions. This section provides the basis for the proposed revisions.

The proposed new categorical exclusion in § 51.22(a)(1) applies to all NRC actions that are administrative, procedural, or solely financial in nature including exemptions and orders pertaining to these actions. The list of activities in proposed paragraphs 51.22(a)(1)(i) through (xi) consolidates all existing categorical exclusions that fit into the new category, but is not exclusive; rather it provides examples of actions that are included in the category to for clarity. The actions included in proposed § 51.22(a)(1) are limited to administrative, procedural, or solely financial in nature. The NRC notes that actions that are “solely financial in nature” do not include, for example, grants or contracts that enable activities that could have environmental effects. Instead, this refers to activities that relate only to sources or means of funding or verifying that adequate funding is available for approved activities. Actions that are solely financial in nature affect the financial arrangements of the licensees, but do not have environmental impacts. Accordingly, the NRC concludes that these actions would not have significant individual or cumulative effects on the human environment.

The proposed § 51.22(a)(8) would expand the categorical exclusion for issuance, amendment, or renewal of operators' licenses under 10 CFR part 55 to include all forms of related NRC actions, including exemptions and orders. Part 55 of 10 CFR prohibits

persons from performing the functions of an operator or a senior operator at a licensed facility unless authorized to do so by a license issued by the Commission. 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 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 EIS 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. Accordingly, the NRC finds that issuance, amendment, or renewal of operators' licenses under 10 CFR part 55 comprises a category of actions that do not individually or cumulatively have a significant effect on the human environment. For the same reasons, the NRC concludes that neither exemptions nor orders relating to these requirements would have significant effects on the human environment.

The proposed § 51.22(a)(10) would expand an existing categorical exclusion to include all forms of related NRC actions, including exemptions and orders, but not rulemakings. Specifically, it would expand the current categorical exclusions for issuance, amendment, or renewal of materials licenses issued under 10 CFR parts 30, 31, 32, 33, 34, 35, 36, 39, 40, or 70 authorizing the types of activities listed in the current § 51.22(c)(14). It has been the NRC's experience that additional NRC actions such as exemptions and orders involve insignificant amounts of source, byproduct, or special nuclear material in quantities and form similar to those categorically excluded in § 51.22(c)(14) and, therefore, have an no significant individual or cumulative environmental impact. For the same reasons, the NRC concludes that neither

exemptions nor orders relating to these requirements would have significant individual or cumulative effects on the human environment.

The proposed § 51.22(b) and (d) include a criterion stating that the actions would not result in disturbances to previously undisturbed ground. This wording replaces the previous wording of “no significant construction impact.” The purpose of this new wording is to clarify that ground disturbance in areas that are already disturbed is a primary factor in determining whether an action would have potential impacts. Actions that involve ground disturbance in areas not already disturbed will be reviewed for potential environmental impacts. The proposed § 51.22(b) is otherwise substantively unchanged from the existing § 51.22(c)(6).

The proposed § 51.22(d)(1) through (3), and (5) would expand the following categorical exclusions to include rulemaking, orders, and license amendments, provided the actions would not disturb previously undisturbed ground, would not result in a significant change in the types or amounts of effluents released offsite, would not significantly increase individual or cumulative public or occupational radiation exposure, and would not increase the potential for or consequences from radiological accidents:

- changes to inspection or surveillance requirements (proposed § 51.22(d)(1)): this would also be expanded to apply to facilities other than reactors (i.e., would eliminate reference to 10 CFR part 50 or 52). Expanding this categorical exclusion to include facilities other than reactors improves the consistency of the categorical exclusion. The NRC expects that the application of this categorical exclusion to non-reactor facilities would not be materially different from the current application to reactor facilities because the activities are substantially similar at all NRC licensed facilities;

- changes to equipment servicing or maintenance requirements (proposed § 51.22(d)(2));
- changes to safeguards plans or material control and accounting inventory requirements, including modifications to systems used for security and/or materials accountability (proposed § 51.22(d)(3));
- changes to scheduling requirements (proposed § 51.22(d)(5)); and

In addition to exemptions, the NRC conveys its regulatory decisions using other forms, such as rulemaking, orders, and license amendments. The NRC previously found that requests for exemptions from requirements for inspection and surveillance, equipment servicing and maintenance, safeguards plans and material control and accounting, and scheduling requirements would not lead to significant environmental impacts on the human environment individually or cumulatively. Similarly, the NRC concludes that changes to these requirements resulting from rulemakings, orders, and license amendments, assuming the changes meet the criteria in the proposed § 51.22(d), would not have significant individual or cumulative effects on the human environment.

The proposed § 51.22(d)(7) would expand an existing categorical exclusion, current § 51.22(c)(11), to include exemptions, orders, and rulemaking. Specifically, current § 51.22(c)(11) is a categorical exclusion for amendments to licenses for fuel cycle plants and radioactive waste disposal sites and amendments to materials licenses identified in § 51.60(b)(1) that are administrative, organizational, or procedural in nature, or that result in a change in process operations or equipment, provided that there is no significant change in the types or significant increase in the amounts of any effluents released offsite, no significant increase in individual or cumulative public or occupational radiation exposure, no significant construction impact, and no significant increase in the potential for or consequences from radiological accidents. In the NRC's experience,

these actions also do not result in any significant adverse incremental impacts to the environment. Implementation of these minor and routine types of changes do not significantly alter the previously evaluated environmental impacts associated with the licensed activity, considering the potential for ground disturbance, types and amounts of effluents released by the operation, occupational exposure to employees, or potential accidents. The actions that would be categorically excluded do not affect the scope or nature of the licensed activity. Therefore, the issuance of exemptions and orders relating to these matters in and of themselves would not cause any significant individual or cumulative environmental effects.

The proposed § 51.22(d)(7) relating to authorizations that result in changes in process operations or equipment under certain licenses, would be subject to the criterion in proposed § 51.22(d) stating that the actions would not result in disturbances to previously undisturbed ground. This wording replaces the limitation in the existing categorical exclusion (at § 51.22(c)(11)) to activities that involve “no significant construction impact.” The purpose of this new wording is to clarify that ground disturbance is a primary factor in determining whether an action would have potential impacts and should not be categorically excluded from environmental review.

The proposed § 51.22(d)(8), relating to certain authorizations under part 50 or 52, would expand the existing categorical exclusion in § 51.22(c)(9) to include rulemakings and orders. Specifically, it would expand the existing categorical exclusion for the issuance of an amendment to a permit or license for a reactor under 10 CFR part 50 or 52 that changes a requirement or issuance of an exemption from a requirement with respect to installation or use of a facility component. The proposed rule would also expand this categorical exclusion to include installation or use of a facility component outside the restricted area under certain circumstances. Changes which relate to the

installation or use of a facility component located within a restricted area and which do not involve significant hazards considerations, significant changes in offsite effluents, or significant increases in occupational doses do not result in offsite effects that could have a significant individual or cumulative effects on the human environment. Associated effects, if any, would be minimal and would be confined to limited access areas on site.

The proposed § 51.22(d)(8) would be subject to the criterion in proposed § 51.22(d) stating that the actions would not result in disturbances to previously undisturbed ground. This criterion would replace restriction in the current categorical exclusion (at § 51.22(c)(9)) to facility components located within the restricted area. The purpose of the existing restriction is to ensure that ground disturbance is limited to previously disturbed areas, which was the basis for the previous limitation for this categorical exclusion to components in the restricted area. Thus, this proposed revision would continue to ensure that the categorical exclusion does not apply to activities that include ground disturbance in areas not already disturbed. As a result of this proposed change, this categorical exclusion would apply where a facility component is located inside or outside the restricted area as long as installation or use of the component would not disturb previously undisturbed ground (and meets the other criteria in § 51.22(d)).

I. Why Is the NRC Proposing to Remove Existing Categorical Exclusions?

The NRC 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 NRC determined that two existing categorical exclusions are no longer necessary because they are obsolete. The remaining existing categorical exclusions continue to be valid. The NRC is proposing to remove § 51.22(c)(17), "Issuance of an amendment to a permit or license under 10 CFR part 30, 40, 50, 52, or 70, which removes 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 NRC has concluded its activity to amend applicable NRC licenses and permits to remove 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, 1984). Therefore, the NRC has determined that this categorical exclusion is no longer necessary.

The NRC is also proposing to remove § 51.22(c)(18), “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 the NRC 1984 NEPA implementing regulations (49 FR 9352; March 12, 1984) to support the implementation of 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.

IV. Specific Requests for Comments

The NRC is seeking feedback from the public on the proposed rule. We are particularly interested in comments and supporting rationale from the public on the following:

- The categorical exclusions in proposed § 51.22(b) (related to confirmatory research and review and approval of transportation routes under 10 CFR 73.3) and (d)

(addressing nine different types of actions) will require the application of threshold criteria to determine whether the actions listed in those sections may be categorically excluded. The threshold criteria in current § 51.22 paragraphs (b) and (d) include “no significant construction impact.” The NRC is proposing to substitute the phrase “would not disturb previously undisturbed land” for “no significant construction impact.” The purpose of this change would be to prevent the categorical exclusion of actions that would disturb previously undisturbed land, which have the potential to affect historic or cultural resources, and actions that would disturb areas that have been allowed to return to a natural state, which have the potential to affect functioning ecologies. The NRC is requesting input on the proposed phrase “would not disturb previously undisturbed land.”

- The NRC is considering defining the phrase, “previously disturbed land” to refer to “land that has been changed such that its functioning ecological processes have been and remain altered by human activity. The phrase encompasses areas that have been transformed from natural cover to non-native species or a managed state, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available.” The NRC is requesting input on the proposed definition.

- As discussed in Section III.F, of this document, the NRC is proposing to remove the “no significant hazards consideration” determination in § 51.22(c)(9), (25)(i) and (v), which is related to a process for issuance of license amendments for nuclear power reactor and testing facility licenses, but is not related to environmental impacts and not relevant to materials licenses. The “no significant hazards consideration” is a procedural standard which governs whether an opportunity for a hearing must be provided before an action is taken by the NRC. The NRC is requesting input on the

removal of the “no significant hazards consideration” determination in § 51.22(c)(9), (25)(i) and (v).

- The categorical exclusion in proposed § 51.22(a)(1) would not include partial site releases or license terminations at decommissioning power reactor sites. The NRC is requesting input on whether there are other administrative, procedural or solely financial actions that should be explicitly excluded from the category.

V. Section-by-Section Analysis

The following paragraphs describe the specific changes proposed by this rulemaking.

Section 51.21 Criteria for and identification of licensing and regulatory actions requiring environmental assessments.

This proposed rule would revise § 51.21 to update the references for those categorical exclusions and other actions identified as not requiring an environmental review.

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

This proposed rule would revise the section heading to more accurately reflect the section. The proposed rule also would add introductory text, redesignate paragraph (d) as paragraph (e), add a new paragraph (d), and revise paragraphs (a) through (c) to add, clarify, and eliminate categorical exclusions.

Section 51.25 Determination to prepare environmental impact statement or environmental assessment; eligibility for categorical exclusion.

This proposed rule would revise § 51.25 to update the reference for the location of categorical exclusions to § 51.22 (a) through (d).

Appendix A to Subpart A of Part 51, Format for Presentation of Material in Environmental Impact Statements

This proposed rule would revise footnote 4 to remove the reference to § 51.22(c)(17).

VI. Regulatory Flexibility Certification

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

VII. Regulatory Analysis

The NRC has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The conclusion from the analysis is that this proposed rule and associated guidance would result in a net benefit to the NRC of \$71,000 using a 7-percent discount rate and \$266,200 using a 3-percent discount rate. The NRC requests public comment on the draft regulatory analysis. The regulatory analysis is available under ADAMS Accession No. ML22088A033.

VIII. Backfitting and Issue Finality

This proposed rule would eliminate the NRC's requirement to prepare environmental assessments or environmental impact statements for certain categories of actions. Although the proposed rule would not alter requirements for applicants or petitioners for rulemaking to provide environmental reports under §§ 51.40–51.68, it could reduce the information an applicant or petitioner for rulemaking would be obligated to provide in an environmental report. 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 (§§ 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 (§§ 50.109, 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., § 50.109(a)(1)(iii) and § 52.98(a)). 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.

Therefore, this proposed rule does not involve any provisions within the scope of the backfit rules (§§ 50.109, 70.76, 72.62, or 76.76) or the issue finality provisions in 10 CFR part 52. Accordingly, the NRC did not prepare a backfit or forward fit analysis for this proposed rule.

IX. Cumulative Effects of Regulation

The NRC is following its Cumulative Effects of Regulation (CER) process by engaging with external stakeholders throughout this proposed rule and related regulatory activities. Opportunity for public comment is provided to the public at this proposed rule stage.

The staff published an ANPR in the *Federal Register* on May 7, 2021. The NRC held a public meeting on June 16, 2021, to help facilitate comments for the ANPR. The NRC will conduct another public meeting during the comment period for this proposed rule.

The NRC is requesting CER feedback on the following questions:

1. In light of any current or projected CER challenges, would a 30-day effective date from the publication of the final rule provide sufficient time to implement the new requirements as proposed?
2. If CER challenges currently exist or are expected, what should be done to address them? For example, if more time is required for implementation of the new requirements, what period of time is sufficient?
3. Do other (NRC or other agency) regulatory actions (e.g., orders, generic communications, license amendment requests, inspection findings of a generic nature) influence the implementation of the proposed rule's requirements?
4. Are there unintended consequences? Does the proposed rule create conditions that would be contrary to the proposed rule's purpose and objectives? If so, what are the unintended consequences, and how should they be addressed?

5. Please comment on the NRC's cost and benefit estimates in the regulatory analysis that supports the proposed rule.

X. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31885). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

XI. Paperwork Reduction Act

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

XII. Compatibility of Agreement State Regulations

Under the "Agreement State Program Policy Statement" approved by the Commission on October 2, 2017, and published in the *Federal Register* on October 18, 2017 (82 FR 48535), this rule is classified as compatibility "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or

the provisions of title 10 of the *Code of Federal Regulations*, and although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with a particular State's administrative procedure laws, but does not confer regulatory authority on the State.

XIII. 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 § 51.22, the NRC's list of categories of actions that the NRC has determined to have no significant individual or cumulative effect on the human environment. This action does not constitute the establishment of a standard that contains generally applicable requirements.

XIV. Availability of Guidance

There is no licensee or applicant implementation or compliance required by this rulemaking. The NRC staff plans to update guidance documents that currently contain references to § 51.22: NUREG-1748, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs," and NUREG-1757, "Consolidated Decommissioning Guidance." However, these updates would be part of a larger, ongoing comprehensive update not driven by this rulemaking. The NUREG-1748 and

NUREG-1757 updates related to this rule are not necessary for implementation of this rulemaking. The NRC will publish notice in the *Federal Register* announcing the availability of the revised guidance documents. The final guidance documents will be available on the NRC website and at <http://www.regulations.gov> by searching on Docket ID NRC-2018-0300.

XV. Public Meeting

The NRC will conduct a public meeting during the comment period for this proposed rule for the purpose of facilitating the submittal of comments and answering questions from the public on this proposed rule.

The NRC will publish a notice of the location, time, and agenda of the meeting on the NRC's public meeting website at least 10 calendar days before the meeting. Stakeholders should monitor the NRC's public meeting website for information about the public meeting at: <https://www.nrc.gov/public-involve/public-meetings/index.cfm>.

List of Subjects In 10 CFR Part 51

Administrative practice and procedure, Environmental impact statements, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is proposing to amend 10 CFR part 51 as follows:

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: Atomic Energy Act of 1954, secs. 161, 193 (42 U.S.C. 2201, 2243); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); National Environmental Policy Act of 1969 (42 U.S.C. 4332, 4334, 4335); Nuclear Waste Policy Act of 1982, secs. 144(f), 121, 135, 141, 148 (42 U.S.C. 10134(f), 10141, 10155, 10161, 10168); 44 U.S.C. 3504 note.

2. Revise § 51.21 to read as follows:

§ 51.21 Criteria for and identification of licensing and regulatory actions requiring environmental assessments.

All licensing and regulatory actions subject to this subpart require an environmental assessment except those identified in § 51.20(b) as requiring an environmental impact statement, those covered by categorical exclusions identified in § 51.22(a) through (d), and those identified in § 51.22(e) as other actions not requiring environmental review. As provided in § 51.22, the Commission may, in special circumstances, prepare an environmental assessment on an action covered by a categorical exclusion.

3. In § 51.22:
 - a. Revise the section heading;
 - b. Add introductory text;
 - c. Revise paragraphs (a) through (c);
 - d. Redesignate paragraph (d) as paragraph (e) and;
 - f. Add new paragraph (d).

The revisions and addition read as follows:

§ 51.22 Categorical exclusions.

Licensing, regulatory, and administrative actions eligible for categorical exclusion must belong to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the actions within the category do not individually or cumulatively have a significant effect on the human environment. Except in special circumstances, as determined by the Commission upon its own initiative or upon request of any interested person, an environmental assessment or an environmental impact statement is not required for any action within a category of actions included in the list of categorical exclusions set out in paragraphs (a) through (d) of this section. Special circumstances include the circumstance where the proposed action involves unresolved conflicts concerning alternative uses of available resources within the meaning of section 102(2)(E) of NEPA.

(a) The following categories of NRC actions are excluded from the requirement to prepare an environmental assessment or environmental impact statement:

(1) Actions that are administrative, procedural, or solely financial in nature except partial site releases or license terminations at decommissioning power reactor sites, including, for example:

- (i) Issuance of or changes to procedures for filing and reviewing applications;
- (ii) Issuance of or changes to recordkeeping or reporting requirements;
- (iii) Issuance of or changes to surety, insurance, or indemnity requirements;
- (iv) Issuance of or changes to administrative procedures or requirements;

(v) Actions on petitions for rulemaking, but not including rulemakings in response to a petition for rulemaking;

(vi) Amendments to the regulations in this chapter that are corrective or of a minor or nonpolicy nature and do not substantially modify existing regulations;

(vii) Issuance of or changes to guidance for the implementation of regulations in this chapter and other informational and procedural documents that do not impose any legal requirements;

(viii) Changes to a person or organization's name, position, or title;

(ix) Revisions that are editorial, corrective, or otherwise minor, including the updating of NRC-approved references, or changes to formatting of a document;

(x) Changes to contact information;

(xi) Personnel or managerial actions;

(xii) Actions on or changes to requirements for decommissioning funding under parts 30, 40, 50, 70, or 72 of this chapter; or

(xiii) 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.

(2) Issuance of or changes to education, training, experience, qualification, or other employment suitability requirements.

(3) 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.

(4) Procurement of general equipment and supplies, and procurement of technical assistance and personal services relating to the safe operation and protection of commercial reactors, other facilities, and materials subject to NRC licensing and regulation.

(5) Entrance into or amendment, suspension, or termination of all or part of an agreement with a State under section 274 of the Atomic Energy Act of 1954, as

amended, providing for assumption by the State and discontinuance by the Commission of certain regulatory authority of the Commission.

(6) Approvals of direct or indirect transfers of any license issued by the NRC (any associated amendments of a license required to reflect the approval of a direct or indirect transfer of an NRC license are included in paragraph (a)(1) of this section).

(7) The import of nuclear facilities and materials under part 110 of this chapter, but not including the import of spent power reactor fuel.

(8) Approvals of or changes to operators' licenses under part 55 of this chapter.

(9) Approvals of package designs for packages to be used for the transportation of licensed materials.

(10) Actions under parts 30, 31, 32, 33, 34, 35, 36, 39, 40 or 70 of this chapter authorizing the following:

(i) Distribution of radioactive material and devices or products containing radioactive material to general licensees and to persons exempt from licensing;

(ii) Distribution of radiopharmaceuticals, generators, reagent kits and/or sealed sources to persons licensed under 10 CFR 35.18;

(iii) Nuclear pharmacies;

(iv) Use of radioactive materials for medical and veterinary purposes;

(v) Use of radioactive materials for research and development and for educational purposes;

(vi) Industrial radiography;

(vii) Irradiators;

(viii) Use of sealed sources and use of gauging devices, analytical instruments and other devices containing sealed sources;

(ix) Use of uranium as shielding material in containers or devices;

(x) Possession of radioactive material incident to performing services such as installation, maintenance, leak tests and calibration;

(xi) Use of sealed sources and/or radioactive tracers in well-logging procedures;

(xii) Acceptance of packaged radioactive wastes from others for transfer to licensed land burial facilities provided the interim storage period for any package does not exceed 180 days and the total possession limit for all packages held in interim storage at the same time does not exceed 50 curies;

(xiii) Manufacturing or processing of source, byproduct, or special nuclear materials for distribution to other licensees, except processing of source material for extraction of rare earth and other metals;

(xiv) Nuclear laundries;

(xv) Possession, manufacturing, processing, shipment, testing, or other use of depleted uranium military munitions; or

(xvi) Any use of source, byproduct, or special nuclear material not listed above which involves quantities and forms of source, byproduct, or special nuclear material similar to those listed in paragraphs (a)(10)(i) through (xv) of this section.

(11) Standard design approvals under part 52 of this chapter.

(12) Issuance of amendments to 10 CFR 72.214 for new, amended, revised, or renewed certificates of compliance for cask designs used for spent fuel storage.

(13) Issuance, amendment, modification, or renewal of a certificate of compliance of gaseous diffusion enrichment plants under part 76 of this chapter.

(14) The 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), 10 CFR 40.42(g)(1), or 10 CFR 70.38(g)(1), and the NRC has determined that the facility meets the radiological criteria for unrestricted use in 10 CFR 20.1402 without further remediation or analysis.

(15) The Commission finding for a combined license under 10 CFR 52.103(g).

(16) Actions under 10 CFR 50.55a.

(b) The following categories of NRC actions are excluded from the requirement to prepare an environmental assessment or environmental impact statement, provided that any ground disturbance is limited to previously disturbed areas:

(1) Procurement of confirmatory research.

(2) Review and approval of transportation routes under 10 CFR 73.37.

(c) The following categories of NRC actions are excluded from the requirement to prepare an environmental assessment or environmental impact statement except to the extent they include activities directly affecting the environment, such as the construction of facilities; a major disturbance brought about by blasting, drilling, excavating or other means; 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 the release of radioactive material:

(1) 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.

(2) [Reserved]

(d) The following categories of NRC actions are excluded from the requirement to prepare an environmental assessment or environmental impact statement provided that any ground disturbance is limited to previously disturbed areas and there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, no significant increase in individual or cumulative public or occupational radiation exposure, and no significant increase in the potential for or consequences from radiological accidents.

(1) Changes to inspection or surveillance requirements.

(2) Changes to equipment servicing or maintenance requirements.

(3) Changes to safeguard plans or materials control and accounting inventory requirements, including modifications to systems used for security and/or materials accountability.

(4) Changes to requirements for fire protection, emergency planning, physical security, cybersecurity, or quality assurance.

(5) Changes to scheduling requirements.

(6) Changes to extend implementation dates for activities previously found to not have a significant environmental impact.

(7) Actions that result in a change in process operations or equipment under licenses for fuel cycle facilities or radioactive waste disposal sites, or under the materials licenses identified in § 51.60(b)(1).

(8) Authorizations under, or changes to requirements in 10 CFR part 50 or 52 with respect to installation or use of a facility component.

4. Revise § 51.25 to read as follows:

§ 51.25 Determination to prepare environmental impact statement or environmental assessment; eligibility for categorical exclusion.

Before taking a proposed action subject to the provisions of this subpart, the appropriate NRC director will determine on the basis of the criteria and classifications of types of actions in §§ 51.20, 51.21 and 51.22 whether the proposed action is of the type listed in § 51.22(a) through (d) as a categorical exclusion or whether an environmental impact statement or an environmental assessment should be prepared. An environmental assessment is not necessary if it is determined that an environmental impact statement will be prepared.

5. In appendix A to subpart A of part 51, revise footnote 4 to read as follows:

Appendix A to Subpart A - Format for Presentation of Material in Environmental Impact Statements

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⁴ With respect to limitations on NRC's NEPA authority and responsibility imposed by the Federal Water Pollution Control Act Amendments of 1972, see §§ 51.10(c) and 51.71(d).

Dated: <Month XX, 20XX>.

For the Nuclear Regulatory Commission.
Brooke P. Clark,
Secretary of the Commission.