

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[NRC-2018-0300]

RIN 3150-AK54

Categorical Exclusions from Environmental Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing an advance notice of proposed rulemaking to obtain input from stakeholders on its plan to amend NRC 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 NRC will consider public comments received on its potential changes and on questions related to categorical exclusions to inform a rulemaking that is planned for publication in fiscal year 2022. The NRC will hold a public meeting during the comment period to facilitate public participation.

DATES: Submit comments by July 21, 2021. 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:

- **Federal Rulemaking Web Site:** 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; e-mail: Dawn.Forder@nrc.gov. For technical questions contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **E-mail comments to:** Rulemaking.Comments@nrc.gov. If you do not receive an automatic e-mail 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: Gregory Trussell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6244, e-mail: Gregory.Trussell@nrc.gov.

SUPPLEMENTARY INFORMATION:

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 Web Site:** 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 e-mail to pdr.resource@nrc.gov.

- **Attention:** The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via e-mail at pdr.resource@nrc.gov or call 1-800-397-4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

B. Submitting Comments

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 action. There are three types of NEPA analyses: an environmental impact statement (EIS), an environmental assessment (EA), or a categorical exclusion. An EA is a concise document that provides sufficient evidence and analysis for determining whether to prepare an EIS or make a finding of no significant impact (FONSI). If an EA supports a FONSI, the environmental review process is complete. If the EA reveals that the proposed action may have a significant effect on the human environment, the Federal agency then prepares an EIS. An EIS documents an agency's evaluation of the environmental impacts of a major Federal action significantly affecting the quality of the human environment

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 procedures implementing NEPA. If the Federal agency finds that actions in a given category have repeatedly been shown to have no significant effect on the human environment, either individually or cumulatively, then the agency may establish a categorical exclusion for that category of action. Once it has established a categorical exclusion, the agency is not required to prepare an EA or EIS for any action that falls within the scope of the categorical exclusion, unless the agency finds, for any particular action, that there are special (e.g., unique, unusual, or controversial) circumstances that would preclude use of the categorical exclusion.

The regulations in § 51.22 of title 10 of the *Code of Federal Regulations* (10 CFR), "Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review," specify 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 Task Force published a report, “Modernizing NEPA Implementation” (Task Force Report), that recommended Federal agencies examine their categorical exclusion regulations to identify potential revisions that would eliminate unnecessary and costly EAs. The Task Force Report recommends the use of information from past actions to establish the basis for the no significant effects. It also provides that criteria for identifying new categorical exclusions should include: 1) repetitive actions that do not individually or cumulatively have significant effects on the human environment; 2) actions that generally require limited environmental review; and 3) actions that are noncontroversial. The NRC last amended § 51.22(c) in 2010 (April 10, 2010; 75 FR 20248). On December 6, 2010, CEQ issued final guidance on categorical exclusions (75 FR 75628). Consistent with CEQ guidance, the NRC periodically reviews existing categorical exclusions to ensure their continued appropriate use and usefulness.

Recently the NRC reviewed its environmental programs and organization to identify potential opportunities to continue to meet its NEPA obligations in 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. By identifying those actions that do not have the potential to significantly affect the environment, the NRC will ensure that it is focused on those actions with possibly new or significant environmental impacts. Further, the review for categorical exclusions ensures the NRC’s environmental review program is more aligned with CEQ’s best practices.

III. Regulatory Objectives

Categorical exclusions streamline the NEPA process, saving time, effort, and resources by eliminating the preparation of EAs for NRC regulatory actions that have no significant effect on the human environment. Through internal discussions, the NRC has identified potential new

categorical exclusions, areas where the scope of existing categories could be clarified, and where ambiguity in the criteria has created inconsistencies between existing excluded categories. In addition, the NRC is evaluating existing categorical exclusions to determine if any are no longer necessary or have proven to no longer meet the criteria for categorical exclusion. Amending § 51.22(c) would increase efficiencies and consistency in the implementation of categorical exclusions and ensure applicable NRC regulatory actions are completed in a more efficient, effective, and timely manner. Through this advance notice of proposed rulemaking, the NRC requests public input on potential revisions to § 51.22(c).

IV. Specific Areas of Consideration and Questions

The NRC is seeking stakeholder input on areas under consideration for potential change. The NRC asks that commenters provide the bases for their comments (i.e., the underlying rationale for the position stated in the comment) to enable the agency to have a complete understanding of the comments.

The NRC is considering revisions to categorical exclusions on the following basis, unless otherwise specified in the next section:

1. The NRC has identified recurring actions that may be eligible for categorical exclusion because these actions do not result in environmental impacts and that are considered noncontroversial.
2. Other potential candidates for categorical exclusion include those where, after completing multiple EAs, the NRC has always concluded there are no findings of significant impacts and is not aware of any reason that future EAs would reach a different result.

Summary of Potential Rulemaking Changes to § 51.22(c) Under Consideration:

- Reorganization of the list of categorical exclusions to eliminate redundancy and add clarity.
- 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. For example, the NRC might revise a categorical exclusion from “Issuance of an amendment to a permit or license issued under this chapter which...” to “An action under this chapter that...”
- Revisions to consolidate categorical exclusions for exemptions into one category, for example, by moving the criterion for exemptions related to installation or use of a facility component located within the restricted area.
- Revisions to categorically exclude license terminations that are administrative acts that do not have the potential to affect the environment such as termination of licensees for which no construction or pre-construction activities have occurred or where all decommissioning activities have been completed and approved and license termination is a final administrative step.
- Revisions to categorically exclude the NRC’s concurrence, under the Atomic Energy Act of 1954, as amended (AEA), § 274c., on termination by an Agreement State of licenses for AEA § 11e.(2) byproduct material where all decommissioning activities have been completed and approved and NRC’s concurrence is a final administrative step.

- Revisions to categorically exclude issuance of exemptions to low-level waste disposal sites for the storage and disposal of special nuclear material regulated by Agreement States.
- Revisions to remove or clarify no significant hazards considerations criteria in existing categorical exclusions because these criteria are related to a process for some license amendments for reactor licenses (from § 50.92, “Issuance of amendment”), not environmental reviews, and are not relevant to materials licenses (e.g., 10 CFR part 30, “Rules of General Applicability to Domestic Licensing of Byproduct Material,” or part 40, “Domestic Licensing of Source Material,” licenses).
- Revisions to categorically exclude actions authorizing licensees to delay implementation of certain new NRC requirements, for example, where the new requirements were previously found to not result in an environmental impact.
- Revisions to categorically exclude approval of relief and alternative requests under 10 CFR 50.55a, “Codes and standards.”
- Revisions to categorically exclude issuance of new, amended, revised, and renewed certificates of compliance for cask designs used for spent fuel storage and transportation (issued as amendments to 10 CFR 72.214, “List of approved spent fuel storage casks”).
- Revisions to categorically exclude approval of decommissioning funding plans submitted under 10 CFR parts 30, 40, 70, “Domestic Licensing of Special Nuclear Material,” or 72, “Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste.”

- Revisions to categorically exclude approvals of certain long-term surveillance plans of decommissioned uranium mills. However, long-term surveillance plans that include groundwater monitoring might not be included in the categorical exclusion.
- Revisions to categorically exclude authorizations to revise emergency plans for administrative changes such as reduction in staffing.
- Revisions to categorically exclude approvals for alternative waste disposal procedures for reactor and material licenses in accordance with § 20.2002, “Method for obtaining approval of proposed disposal procedures.”
- Revisions to categorically exclude NRC actions during decommissioning that do not authorize changes to physical structures such as changes to administrative, organizational, or procedural requirements; and therefore, do not include activities that have environmental impacts.
- Revisions to include references to the definition of construction in § 51.4, “Definitions,” after the phrase “significant construction impacts” to clarify this term where it is used in various categorical exclusions.

Additional Questions

Question 1) Are there licensing and regulatory actions that do not or have not resulted in environmental impacts that the NRC should consider as a categorical exclusion?

Question 2) Are there any categorical exclusions that are listed in 10 CFR 51.22(c) that the NRC should consider modifying or clarifying? For example, are there categorical exclusions that licensees, applicants, or members of the public have found confusing?

Question 3) Are there any current categorical exclusions (§ 51.22(c)) that the NRC should consider removing? For example, are there categorical exclusions that are no longer in use, or are there activities listed that have been shown to have an environmental impact?

Question 4) Are there aspects of NRC authorized changes to previously approved programs, such as emergency plans, cybersecurity programs, quality assurance programs, radiation protection programs, or materials control and accounting programs that the NRC should consider categorically excluding?

Question 5) Is there anything else that the NRC should consider regarding its regulations for categorical exclusions?

V. Public Meeting

The NRC will conduct a public meeting to discuss the potential rulemaking and answer questions. The NRC will publish a notice of the location, time, and agenda of the meeting on the NRC's public meeting Web site at least ten calendar days before the meeting. Interested members from the public should monitor the NRC's public meeting Web site for information about the public meeting at: <https://www.nrc.gov/public-involve/public-meetings/index.cfm>. In addition, the meeting information will be posted on <https://www.regulations.gov/> under Docket ID NRC-2018-0300.

VI. 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.

VII. Rulemaking Process

The NRC does not intend to provide a detailed response to individual comments submitted on this advance notice of proposed rulemaking; however, the NRC will evaluate all public input in the development of a proposed rule. If the NRC determines a need for supporting guidance, the NRC will issue the draft guidance for public comment. The NRC will provide another opportunity for public comment for any subsequent proposed rule developed before it is finalized.

Dated: April 30, 2021.

For the Nuclear Regulatory Commission

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Margaret M. Doane,
Executive Director for Operations