with NEPA under the provisions of this part. The supplement or assessment may incorporate by reference any information contained in the final environmental impact statement—for the operating or combined license stage, as appropriate, or in the records of decision prepared in connection with the early site permit, construction permit, operating license, or combined license for that facility. The supplement will include a request for comments as provided in §51.73. Unless otherwise required by the Commission in accordance with the generic determination in §51.23(a) and the provisions of §51.23(b), a supplemental environmental impact statement for the postoperating or post combined license stage or an environmental assessment, as appropriate, will address the environmental impacts of spent fuel storage only for the term of the license, license amendment or license renewal applied for.


§ 51.97 Final environmental impact statement—materials license.

(a) Independent spent fuel storage installation (ISFSI). Unless otherwise determined by the Commission, and in accordance with the generic determination in §51.23(a) and the provisions of §51.23(b), a final environmental impact statement on the issuance of an initial license for the storage of spent fuel at an independent spent fuel storage installation (ISFSI) or any amendment thereto, will address environmental impacts of spent fuel storage only for the term of the license, license amendment or amendment applied for.

(b) Monitored retrievable storage facility (MRS). As provided in sections 141 (c), (d), and (e) and 148 (a) and (c) of the Nuclear Waste Policy Act of 1982, as amended (NWPA) (96 Stat. 2242, 42 U.S.C. 10161 (c), (d), (e); 101 Stat. 1330–235, 1330–236, 42 U.S.C. 10168 (a), (c)) a final environmental impact statement for the construction of a monitored retrievable storage installation (MRS) will not address the need for the MRS or any alternative to the design criteria for an MRS set forth in section 141(b)(1) of the NWPA (96 Stat. 2242, 42 U.S.C. 10161(b)(1)) but may consider alternative facility designs which are consistent with these design criteria.

(c) Uranium enrichment facility. As provided in section 5(e) of the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (104 Stat. 2834 at 2835, 42 U.S.C. 2243), a final environmental impact statement must be prepared before the hearing on the issuance of a license for a uranium enrichment facility is completed.

(30) day period and the minimum ninety (90) day period may run concurrently to the extent they overlap.

(b) In any rulemaking proceeding for the purpose of protecting the public health or safety or the common defense and security, the Commission may make and publish the decision on the final rule at the same time that the Environmental Protection Agency publishes the Federal Register notice of filing of the final environmental impact statement.

§51.101 Limitations on actions.

(a) Until a record of decision is issued in connection with a proposed licensing or regulatory action for which an environmental impact statement is required under §51.20, or until a final finding of no significant impact is issued in connection with a proposed licensing or regulatory action for which an environmental assessment is required under §51.21:

(1) No action concerning the proposal may be taken by the Commission which would (i) have an adverse environmental impact, or (ii) limit the choice of reasonable alternatives.

(2) Any action concerning the proposal taken by an applicant which would (i) have an adverse environmental impact, or (ii) limit the choice of reasonable alternatives may be grounds for denial of the license. In the case of an application covered by §§30.32(f), 40.31(f), 50.10(c), 70.21(f), or §§72.16 and 72.34 of this chapter, the provisions of this chapter, the provisions of this paragraph will be applied in accordance with §§30.33(a)(5), 40.32(e), 50.10(c) and (e), 70.23(a)(7) or §72.40(b) of this chapter, as appropriate.

(b) While work on a required program environmental impact statement is in progress, the Commission will not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Absent any satisfactory explanation to the contrary, interim action which tends to determine subsequent development or limit reasonable alternatives, will be considered prejudicial.

(c) This section does not preclude any applicant for an NRC permit, license, or other form of permission, or amendment to or renewal of an NRC permit, license, or other form of permission, (1) from developing any plans or designs necessary to support an application; or (2) after prior notice and consultation with NRC staff, (i) from performing any physical work necessary to support an application, or (ii) from performing any other physical work relating to the proposed action if the adverse environmental impact of that work is de minimis.


§51.102 Requirement to provide a record of decision; preparation.

(a) A Commission decision on any action for which a final environmental impact statement has been prepared shall be accompanied by or include a concise public record of decision.

(b) Except as provided in paragraph (c) of this section, the record of decision will be prepared by the NRC staff director authorized to take the action.

(c) When a hearing is held on the proposed action under the regulations in subpart G of part 2 of this chapter or when the action can only be taken by the Commissioners acting as a collegial body, the initial decision of the presiding officer or the final decision of the Atomic Safety and Licensing Appeal Board or the final decision of the Commissioners acting as a collegial body will constitute the record of decision. An initial or final decision constituting the record of decision will be distributed as provided in §51.93.

§51.103 Record of decision—general.

(a) The record of decision required by §51.102 shall be clearly identified and shall:

(1) State the decision.

(2) Identify all alternatives considered by the Commission in reaching the decision, state that these alternatives were included in the range of