

## Nuclear Regulatory Commission

## § 51.10

are authorized by law and are otherwise in the public interest.

### Subpart A—National Environmental Policy Act—Regulations Implementing Section 102(2)

#### § 51.10 Purpose and scope of subpart; application of regulations of Council on Environmental Quality.

(a) The National Environmental Policy Act of 1969, as amended (NEPA) directs that, to the fullest extent possible: (1) The policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in NEPA, and (2) all agencies of the Federal Government shall comply with the procedures in section 102(2) of NEPA except where compliance would be inconsistent with other statutory requirements. The regulations in this subpart implement section 102(2) of NEPA in a manner which is consistent with the NRC's domestic licensing and related regulatory authority under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and the Uranium Mill Tailings Radiation Control Act of 1978, and which reflects the Commission's announced policy to take account of the regulations of the Council on Environmental Quality published November 29, 1978 (43 FR 55978-56007) voluntarily, subject to certain conditions. This subpart does not apply to export licensing matters within the scope of part 110 of this chapter nor does it apply to any environmental effects which NRC's domestic licensing and related regulatory functions may have upon the environment of foreign nations.

(b) The Commission recognizes a continuing obligation to conduct its domestic licensing and related regulatory functions in a manner which is both receptive to environmental concerns and consistent with the Commission's responsibility as an independent regulatory agency for protecting the radiological health and safety of the public. Accordingly, the Commission will:

(1) Examine any future interpretation or change to the Council's NEPA regulations;

(2) Follow the provisions of 40 CFR 1501.5 and 1501.6 relating to lead agencies and cooperating agencies, except that the Commission reserves the right to prepare an independent environmental impact statement whenever the NRC has regulatory jurisdiction over an activity even though the NRC has not been designated as lead agency for preparation of the statement; and

(3) Reserve the right to make a final decision on any matter within the NRC's regulatory authority even though another agency has made a predecisional referral of an NRC action to the Council under the procedures of 40 CFR part 1504.

(c) The regulations in this subpart<sup>1</sup> also address the limitations imposed on NRC's authority and responsibility under the National Environmental Policy Act of 1969, as amended, by the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500, 86 Stat. 816 *et seq.* (33 U.S.C. 1251 *et seq.*) In accordance with section 511(c)(2) of the Federal Water Pollution Control Act (86 Stat. 893, 33 U.S.C. 1371(c)(2)) the NRC recognizes that responsibility for Federal regulation of nonradiological pollutant discharges<sup>2</sup> into receiving waters rests by statute with the Environmental Protection Agency.

(d) Commission actions initiating or relating to administrative or judicial civil or criminal enforcement actions or proceedings are not subject to Section 102(2) of NEPA. These actions include issuance of notices of violation, orders, and denials of requests for action pursuant to subpart B of part 2 of this chapter; matters covered by part 15 and part 160 of this chapter; and issuance of confirmatory action letters, bulletins, generic letters, notices

<sup>1</sup>See also Second Memorandum of Understanding Regarding Implementation of Certain NRC and EPA Responsibilities and Policy Statement on Implementation of Section 511 of the Federal Water Pollution Control Act (FWPCA) attached as Appendix A thereto, which were published in the FEDERAL REGISTER on December 31, 1975 (40 FR 60115) and became effective January 30, 1976.

<sup>2</sup>On June 1, 1976, the U.S. Supreme Court held that "'pollutants' subject to regulation under the FWPCA [Federal Water Pollution Control Act] do not include source, byproduct, and special nuclear materials. . . ." *Train v. Colorado PIRG*, 426 U.S. 1 at 25.

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of deviation, and notices of non-conformance.

[49 FR 9381, Mar. 12, 1984, as amended at 54 FR 43578, Oct. 26, 1989; 61 FR 43408, Aug. 22, 1996; 86 FR 67843, Nov. 30, 2021]

### § 51.11 Relationship to other subparts. [Reserved]

### § 51.12 Application of subpart to ongoing environmental work.

(a) Except as otherwise provided in this section, the regulations in this subpart shall apply to the fullest extent practicable to NRC's ongoing environmental work.

(b) No environmental report or any supplement to an environmental report filed with the NRC and no environmental assessment, environmental impact statement or finding of no significant impact or any supplement to any of the foregoing issued by the NRC before June 7, 1984, need be redone and no notice of intent to prepare an environmental impact statement or notice of availability of these environmental documents need be republished solely by reason of the promulgation on March 12, 1984, of this revision of part 51.

[49 FR 9381, Mar. 12, 1984, as amended at 49 FR 24513, June 14, 1984]

### § 51.13 Emergencies.

Whenever emergency circumstances make it necessary and whenever, in other situations, the health and safety of the public may be adversely affected if mitigative or remedial actions are delayed, the Commission may take an action with significant environmental impact without observing the provisions of these regulations. In taking an action covered by this section, the Commission will consult with the Council as soon as feasible concerning appropriate alternative NEPA arrangements.

### § 51.14 Definitions.

(a) As used in this subpart:

*Categorical Exclusion* means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which the Commission has found to have no such effect in accordance with procedures set out in § 51.22, and

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for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

*Cooperating Agency* means any Federal agency other than the NRC which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. By agreement with the Commission, a State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may become a cooperating agency.

*Council* means the Council on Environmental Quality (CEQ) established by Title II of NEPA.

*DOE* means the U.S. Department of Energy or its duly authorized representatives.

*Environmental Assessment* means a concise public document for which the Commission is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid the Commission's compliance with NEPA when no environmental impact statement is necessary.

(3) Facilitate preparation of an environmental impact statement when one is necessary.

*Environmental document* includes an environmental assessment, an environmental impact statement, a finding of no significant impact, an environmental report and any supplements to or comments upon those documents, and a notice of intent.

*Environmental Impact Statement* means a detailed written statement as required by section 102(2)(C) of NEPA.

*Environmental report* means a document submitted to the Commission by an applicant for a permit, license, or other form of permission, or an amendment to or renewal of a permit, license or other form of permission, or by a petitioner for rulemaking, in order to aid the Commission in complying with section 102(2) of NEPA.

*Finding of No Significant Impact* means a concise public document for