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(A) Changes for temporary use of the land for public recreational purposes;

(B) Site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(C) Preparation of a site for construction of a facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(D) Erection of fences and other access control measures that are not safety or security related, and do not pertain to radiological controls;

(E) Excavation;

(F) Erection of support buildings (e.g., construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;

(G) Building of service facilities (e.g., paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines);

(H) Procurement or fabrication of components or portions of the proposed facility occurring at other than the final, in-place location at the facility;

(I) Manufacture of a nuclear power reactor under a manufacturing license under subpart F of part 52 of this chapter to be installed at the proposed site and to be part of the proposed facility; or

(J) With respect to production or utilization facilities, other than testing facilities and nuclear power plants, required to be licensed under section 104.a or section 104.c of the Act, the erection of buildings which will be used for activities other than operation of a facility and which may also be used to house a facility (e.g., the construction of a college laboratory building with space for installation of a training reactor).

(2) For materials licenses, taking any site-preparation activity at the site of a facility subject to the regulations in

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10 CFR parts 30, 36, 40, and 70 that has a reasonable nexus to radiological health and safety or the common defense and security; provided, however, that construction does not mean:

(i) Those actions or activities listed in paragraphs (1)(ii)(A)–(H) of this definition; or

(ii) Taking any other action that has no reasonable nexus to radiological health and safety or the common defense and security.

NRC means the Nuclear Regulatory Commission, the agency established by Title II of the Energy Reorganization Act of 1974, as amended.

NRC staff means any NRC officer or employee or his/her authorized representative, except a Commissioner, a member of a Commissioner's immediate staff, an Atomic Safety and Licensing Board, a presiding officer, an administrative judge, an administrative law judge, or any other officer or employee of the Commission who performs adjudicatory functions.

NRC staff director means the Executive Director for Operations; the Director, Office of Nuclear Reactor Regulation; the Director, Office of Nuclear Material Safety and Safeguards; the Director, Office of Nuclear Regulatory Research; the Director, Office of Public Affairs; and the designee of any NRC staff director.

[49 FR 9381, Mar. 12, 1984, as amended at 51 FR 35999, Oct. 8, 1986; 52 FR 31612, Aug. 21, 1987; 72 FR 57443, Oct. 9, 2007; 73 FR 5723, Jan. 31, 2008; 76 FR 56964, Sept. 15, 2011; 77 FR 46599, Aug. 3, 2012; 79 FR 75740, Dec. 19, 2014; 84 FR 65644, Nov. 29, 2019; 87 FR 68031, Nov. 14, 2022]

§51.5 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§51.6 Specific exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines

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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 subpart¹ 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 discharges² 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

¹See 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.

²On 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.