



NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC-2020-0071]

RIN 3150-AL35

Cost Expenditure Criteria for Research and Development Utilization Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to address the financial criteria used to determine whether a utilization facility that is useful in the conduct of research and development activities is licensed as a commercial facility under section 103, “Commercial Licenses,” of the Atomic Energy Act of 1954, as amended, or as a research and development facility under section 104, “Medical Therapy and Research and Development.” This rulemaking revises the NRC’s regulations to be consistent with the Nuclear Energy Innovation and Modernization Act, enacted on January 14, 2019, and the Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy Act of 2024, enacted on July 9, 2024.

DATES: This final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Please refer to Docket ID NRC-2020-0071 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:** Electronically at <https://www.regulations.gov>.

Search for Docket ID NRC-2020-0071. Address questions about NRC dockets to Helen Chang; telephone: 301-415-3228; email: Helen.Chang@nrc.gov. For technical questions, contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **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 ADAMS Public Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 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 the SUPPLEMENTARY INFORMATION section.

- **NRC's PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. 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 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Soly Soto Lugo, telephone: 301-415-7528, email: Soly.Sotolugo@nrc.gov and Michael Balazik, telephone: 301-415-2856, email: Michael.Balazik@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

This rulemaking is separate from NRC's comprehensive review and reform of its regulations in accordance with Executive Order (E.O.) 14300, "Ordering the Reform of the Nuclear Regulatory Commission" (90 FR 22587; May 29, 2025). The rulemakings associated with that effort will comprehensively reexamine NRC requirements. The NRC

is moving forward with this final rule at this time because it was in progress before the issuance of E.O. 14300 and is a deregulatory action of high interest to NRC stakeholders.

TABLE OF CONTENTS:

- I. Background
- II. Discussion
- III. Section-by-Section Analysis
- IV. Regulatory Flexibility Certification
- V. Regulatory Analysis
- VI. Backfitting
- VII. Plain Writing
- VIII. National Environmental Policy Act
- IX. Paperwork Reduction Act
- X. Administrative Procedure Act
- XI. Executive Orders
- XII. Congressional Review Act

I. Background

The NRC's regulations in part 50, "Domestic Licensing of Production and Utilization Facilities," of title 10 of the *Code of Federal Regulations* (10 CFR), provide requirements and procedures for licensing of production and utilization facilities. For production or utilization facilities used for commercial or industrial purposes, the NRC issues licenses under section 103, "Commercial Licenses," of the Atomic Energy Act of 1954, as amended (AEA), and 10 CFR 50.22, "Class 103 licenses; for commercial and industrial facilities." Section 50.22 currently provides that a production or utilization facility is deemed to be for industrial or commercial purposes if it is to be used so that more than 50 percent of the annual cost of owning and operating the facility is devoted to the production of materials, products, or energy for sale or commercial distribution, or to the sale of services, other than research and development or education or training. Commercial and industrial facilities are subject to additional licensing requirements beyond those for research and development facilities, such as review by the Advisory

Committee on Reactor Safeguards, mandatory hearings, and fixed license terms not to exceed 40 years.

For production or utilization facilities useful in the conduct of research and development, the NRC issues licenses under paragraph c of section 104, “Medical Therapy and Research and Development,” of the AEA and paragraph (c) of § 50.21, “Class 104 licenses; for medical therapy and research and development facilities.” Under the current regulations, a production or utilization facility can be licensed as a research and development facility only if the licensee devotes no more than 50 percent of the annual cost of owning and operating the facility to the commercial activities described in § 50.22.

Amendments made to the AEA by the Nuclear Energy Innovation and Modernization Act (NEIMA), enacted on January 14, 2019 (Pub. L. 115-439; 132 Stat. 5565), and the Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy Act of 2024 (ADVANCE Act), enacted on July 9, 2024 (Pub. L. 118-67, div. B, 138 Stat. 1448), changed the framework for determining whether a utilization facility would be licensed by the NRC under section 103 or section 104c. of the AEA. This final rule revises the NRC’s regulations to be consistent with the AEA, as amended by NEIMA and the ADVANCE Act.

II. Discussion

The NRC is amending its regulations in §§ 50.21(c) and 50.22 to conform with changes made to section 104c. of the AEA that apply to the issuance of class 104c licenses for utilization facilities. This final rule does not change the cost expenditure criterion in § 50.22 for production facilities.

Section 106, “Encouraging Private Investment in Research and Test Reactors,” of NEIMA amended section 104c. of the AEA in two ways. First, NEIMA removed language in section 104c. of the AEA that provided that the facility is not of the type specified in section 104b. of the AEA. Second, NEIMA added language to the end of

section 104c. of the AEA providing that the NRC may issue a license for a research and development utilization facility under section 104c. of the AEA if two conditions were satisfied: (1) not more than 75 percent of the annual costs of owning and operating the facility are recovered through sales of nonenergy services, energy, or both (not counting sales of research and development or education and training); and (2) not more than 50 percent of the annual costs are recovered through sales of energy. This amendment to the AEA changed the framework under which the NRC determines whether a utilization facility that is useful in the conduct of research and development would be licensed under section 103 or section 104c. of the AEA. Before the enactment of NEIMA, the AEA did not specify the criteria to use when determining whether to issue a class 103 or class 104c license for a facility—the criterion appeared only in § 50.22.

Section 601 of the ADVANCE Act amended section 104c. of the AEA to remove the language that NEIMA added and to replace it with new language focused on the percentage of the annual cost of owning and operating a facility that is devoted to commercial activities, similar to the criterion currently included in § 50.22. The new language added by the ADVANCE Act specifies that the NRC may issue a license for a research and development utilization facility under section 104c. of the AEA if two conditions are satisfied: (1) not more than 75 percent of the annual costs of owning and operating the facility are devoted to the sale of nonenergy services, energy, or a combination of these activities (not counting sales of research and development or education and training); and (2) not more than 50 percent of the annual costs of owning and operating the facility are devoted to the sale of energy. The ADVANCE Act thus increases the percentage of annual costs of owning and operating the facility that may be devoted to commercial activities beyond the percentage currently included in the NRC's regulations in § 50.22 for determining whether a utilization facility useful in the conduct of research and development activities may be licensed under section 104c. of the AEA. The changes to § 50.22 made by this final rule align the regulation with the changes to the AEA made by the ADVANCE Act and do not establish new or different

classes of production or utilization facilities that are licensed under section 103 of the AEA and § 50.22. The term “class 103 license” continues to be used for production or utilization facilities that are licensed under section 103 of the AEA and § 50.22.

III. Section-by-Section Analysis

The following paragraphs describe the changes made by this final rule.

Section 50.21 Class 104 licenses; for medical therapy and research and development facilities

This final rule amends paragraph (c) to implement the amendment made by NEIMA to remove language in section 104c. of the AEA that provided that the facility is not of the type specified in section 104b. of the AEA. Consistent with this statutory change, this final rule amends paragraph (c) in § 50.21 to remove the language that specifies that the facility is not of the type specified in paragraph (b) in § 50.21. Paragraph (c) in § 50.21 continues to specify that the facility is not of the type specified in § 50.22.

Section 50.22 Class 103 licenses; for commercial and industrial facilities

This final rule amends § 50.22 by reorganizing the section to add paragraphs (a), (b), and (c) for the criteria for issuing class 103 licenses. Paragraph (a) retains the current list of activities covered by a class 103 license. Paragraph (b) retains the current cost expenditure criterion for when a production facility that is useful in the conduct of research and development shall be licensed as an industrial or commercial facility. Paragraph (c) contains the amended cost expenditure criteria for when a utilization facility that is useful in the conduct of research and development shall be licensed as an industrial or commercial facility.

IV. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule affects the licensing and operation of utilization facilities that are useful in the conduct of research and development purposes, which are predominately non-power utilization facilities. In general, the companies, universities, and government agencies that own these facilities do not fall within the scope of the definition of “small entities” set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810, “NRC size standards”).

V. Regulatory Analysis

The NRC has prepared a final regulatory analysis for this regulation. The analysis examines the costs and benefits of the rulemaking alternative. The NRC estimates that the final rule results in savings of approximately \$44,000 (7 percent net present value in 2025 dollars to licensees and the NRC). To conduct this analysis, the NRC assumed that under the regulatory baseline alternative, should the NRC not engage in rulemaking, all 32 existing class 104c licensees would submit license exemption requests in order to continue to abide by the conditions of their licenses should they choose to increase the percentage of the annual costs of owning and operating the facility devoted to commercial activity up to the percentage allowed under the AEA. The NRC did not analyze any additional alternatives because there is no other way to remove the inconsistency between the NRC’s regulations and the AEA except for rulemaking.

The savings of the final rule consist of the averted costs of licensees to prepare and submit license exemption requests and the averted costs of the NRC to review those license exemption requests. These averted costs are roughly split evenly between the licensees and the NRC. The NRC expects that licensees will also incur some minor

costs to understand the final rule and to update their internal accounting guidelines. The costs for this rule will occur immediately after implementation of the final rule, as there are no costs to the rule over an extended period. In addition, the NRC does not expect that this rule will cause any entities to submit applications to become class 104c licensees. The final rule also provides benefits to regulatory efficiency because it removes the inconsistency between the NRC's regulations in §§ 50.21(c) and 50.22 and section 104c. of the AEA, which may create a lack of clarity for existing and future class 104c licensees. It also allows class 104c licensees to continue to operate as allowed under the AEA without concern for enforcement activities by the NRC. Based on this analysis, the NRC considers this rule to be cost beneficial to both industry and the NRC.

VI. Backfitting

This final rule does not constitute “backfitting” as the term is defined in § 50.109, “Backfitting.” This final rule applies to applicants or future applicants for certain licenses under 10 CFR part 50. In general, applicants for licenses under part 50 are not the subject of the part 50 backfitting provision, with one exception not applicable to this final rule.

The NRC is amending its rule text to be consistent with section 104c. of the AEA. As such, rulemaking to align §§ 50.21(c) and 50.22 with section 104c. of the AEA constitutes a non-discretionary change. The Commission's policy in Management Directive 8.4, “Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests” (ADAMS Accession No. ML18093B087) is that non-discretionary changes generally do not meet the definition of backfitting in § 50.109.

VII. 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).

VIII. National Environmental Policy Act

The NRC has determined that this final rule is the type of action described in § 51.22(c)(3)(i), which provides a categorical exclusion for amendments to part 50 that relate to procedures for filing and reviewing applications, amendments, or renewals for licenses or other forms of permission. Therefore, neither an environmental impact statement nor environmental assessment has been prepared for this final rule.

IX. Paperwork Reduction Act

This final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing collections of information were approved by the Office of Management and Budget (OMB), approval number 3150-0011.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

X. Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B), the NRC finds that there is good cause to issue this final rule without prior notice and comment. This final rule is limited to changes to make the NRC's regulations consistent with the amendments made to section 104c. of the AEA by NEIMA and the ADVANCE Act. The regulatory revisions are not subject to interpretation, and the NRC lacks any discretion regarding this change. Accordingly,

notice and public comment procedures are unnecessary. For these same reasons, the NRC also finds good cause to waive the 30-day delay in the effective date under 5 U.S.C. 553(d).

XI. Executive Orders

The following are Executive orders that are related to this final rule:

A. Executive Order 12866: Regulatory Planning and Review (as amended by Executive Order 14215, Ensuring Accountability for All Agencies)

The Office of Information and Regulatory Affairs has determined that this final rule is not a significant regulatory action.

B. Executive Order 14154: Unleashing American Energy

The NRC has examined this final rule and has determined that it is consistent with the policies and directives outlined in E.O. 14154.

C. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is a deregulatory action as defined by E.O. 14192. Details on the estimated costs of this final rule can be found in Section V, "Regulatory Analysis," of this document.

D. Executive Order 14270: Zero-Based Regulatory Budgeting to Unleash American Energy

E.O. 14270, "Zero-Based Regulatory Budgeting to Unleash American Energy," requires the NRC to insert a conditional sunset date into all new or amended NRC regulations provided the regulations are (1) promulgated under the AEA, the Energy Reorganization Act of 1974, as amended, or the Nuclear Waste Policy Act of 1982, as amended; (2) not statutorily required; and (3) not part of the NRC's permitting regime. The NRC determined that the regulatory changes in this final rule are limited to making the NRC's regulations consistent with statutory amendments and constitute part of the NRC's permitting regime authorized by statute. Therefore, the NRC views this

rulemaking to be outside the scope of E.O. 14270 and did not insert conditional sunset dates for the regulatory changes in this final rule.

XII. Congressional Review Act

This final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has found that it does not meet the criteria at 5 U.S.C. 804(2).

List of Subjects in 10 CFR Part 50

Administrative practice and procedure, Antitrust, Backfitting, Classified information, Criminal penalties, Education, Fire prevention, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Whistleblowing.

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 adopting the following amendments to 10 CFR part 50:

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Sec. 109, Pub. L. 96-295, 94 Stat. 783.

§ 50.21 [Amended]

2. In § 50.21, in paragraph (c), remove the phrase “in paragraph (b) of this section or”.

3. Revise § 50.22 to read as follows:

§ 50.22 Class 103 licenses; for commercial and industrial facilities.

(a) A class 103 license will be issued, to an applicant who qualifies, for any one or more of the following: To transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, or use a production or utilization facility for industrial or commercial purposes.

(b) In the case of a production facility that is useful in the conduct of research and development activities of the types specified in section 31 of the Act, such facility is deemed to be for industrial or commercial purposes and a class 103 license is required if the facility is to be used so that more than 50 percent of the annual costs to the licensee of owning and operating the facility are devoted to the production of materials, products, or energy for sale or commercial distribution, or to the sale of services, other than research and development or education or training.

(c) In the case of a utilization facility that is useful in the conduct of research and development activities of the types specified in section 31 of the Act, such facility is deemed to be for industrial or commercial purposes and a class 103 license is required if the facility is to be used so that:

(1) more than 75 percent of the annual costs to the licensee of owning and operating the facility are devoted to the sale, other than for research and development or education and training, of nonenergy services, energy, or a combination of nonenergy services and energy; or

(2) more than 50 percent of the annual costs to the licensee of owning and operating the facility are devoted to the sale of energy.

Dated: April 7, 2026.

For the Nuclear Regulatory Commission.

Michael King,
Executive Director for Operations.

[FR Doc. 2026-08024 Filed: 4/23/2026 8:45 am; Publication Date: 4/24/2026]