**COMMENTS OF ATTORNEYS GENERAL OF WASHINGTON, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS, MINNESOTA, NEW MEXICO, NEW YORK, OREGON, AND VERMONT AND HARRIS COUNTY, TEXAS**

August 21, 2026

Via Electronic Submission
The Honorable David A. Wright, Chairman
Nuclear Regulatory Commission
Washington, DC 20555-0001

**Re: Implementation of the National Environmental Policy Act, 91 Fed. Reg. 42,086 (July 7, 2026).**

**Docket ID No. NRC-2025-0478**

Dear Chairman Wright:

The Offices of the Attorneys General of Washington, California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Mexico, New York, Oregon, and Vermont and Harris County, Texas ("the Attorneys General") submit these comments on the Nuclear Regulatory Commission's ("NRC" or "Commission") proposed rulemaking, Implementation of the National Environmental Policy Act, 91 Fed. Reg. 42,086 (July 7, 2026) (Proposed Rule). By its own admission, the NRC proposes to make its NEPA implementing regulations less thorough, thereby reducing "public confidence in the safety and security of the nuclear sector."[1] The Attorneys General urge the NRC to rescind this rulemaking effort in order to comply with its statutory obligations under NEPA.

The Attorneys General recognize the role that nuclear energy may play in providing energy in our States. However, the development of nuclear energy cannot come at the cost of safety and meaningful environmental review.

The NRC's existing NEPA regulations provide for review of the environmental impacts of proposed nuclear activities to inform the NRC's decisions and protect the nation's environment. Indeed, the NRC recognizes the importance of environmental protection to its mission by noting "the NRC's authorizing statutes and other legislation express a Federal policy to restore, protect, or enhance environmental quality."[2] The Attorneys General are concerned that the NRC, through the promulgation of the Proposed Rule, is moving away from its statutory mission and historical practice by "streamlin[ing]" environmental review at the cost of a robust analysis of impacts. The NRC itself recognizes that the current NEPA review process is "more thorough" than in the Proposed Rule.[3] Even more concerning is the fact that the NRC asserts that costs of the Proposed Rule "include the loss of the value of information collected in the baseline

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[1] Regulatory Analysis for the Proposed Rule: Implementation of the National Environmental Policy Act at iii.
[2] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,089.
[3] See Regulatory Analysis for the Proposed Rule: Implementation of the National Environmental Policy Act at iii.

NEPA review process and reduced public confidence in the safety and security of the nuclear sector assured by the more thorough NEPA review provided by the baseline process."[4]

The NRC's NEPA process has historically allowed States and the public to participate in the environmental review of nuclear power facilities, in accordance with NEPA. The Proposed Rule's erasure of several points of participation in the NEPA process will compromise the States' ability to exercise their own police powers to protect their natural resources and residents. The States will bear the brunt of any impacts and the States' environmental and natural resources and our communities will become the testing ground for these streamlined reviews.

Given this outlook, the Attorneys General urge the NRC to rescind the Proposed Rule. If the NRC decides to finalize the rule, it must reconsider several aspects to ensure that the NRC engages in responsible licensing decision-making informed by an understanding of the potential environmental impacts before making a decision. The NRC must define "effects" consistent with the text of NEPA and existing case law to cover all the reasonably foreseeable impacts of a licensing action. The NRC must ensure meaningful public participation in the NEPA process at the draft environmental document stage and in the promulgation of categorical exclusions. The NRC must ensure categorical exclusions are consistent with NEPA and fully supported.

Additionally, the NRC has not engaged in a full NEPA analysis with respect to its Proposed Rule. The NRC must conduct a NEPA analysis of the Proposed Rule and must consider alternatives to its Proposed Rule beyond the "No Action" alternative. And, the NRC must consider economic and environmental impacts on the States, focusing beyond benefits to industry, to examine the cost to the public.

This rulemaking comes in the midst of several significant changes in nuclear regulations by the NRC, the Department of Energy (DOE), and the Department of Defense (DOD). The Proposed Rule fails to examine the cumulative effects of all the recent and pending regulatory changes in this arena, and thus fails to give the Attorneys General—all of whom are Agreement States—and Harris County, Texas sufficient notice of how the Attorneys General's regulatory and enforcement activities will be affected. If the NRC finalizes the rule it must provide this analysis.

The NRC should rescind the Proposed Rulemaking and reconsider how to achieve its objective of streamlined reviews without compromising its statutory compliance. However, if the NRC proceeds with this rulemaking, however, it must revise the Proposed Rule to meet its statutory obligations, including its obligations to protect the environment and the public and provide sufficient analysis of and justification for the changes it wishes to make.

## SUMMARY OF PROPOSED RULE

The NRC proposes to modify its existing NEPA regulations pursuant to Executive Orders 14300, 14154, 14192, and 14270; statutory updates to NEPA from the Fiscal Responsibility and One Big Beautiful Bill Acts; and the recent Supreme Court decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 605 U.S. 168 (2025).[5] The NRC is also revising its regulations to address the Commission's Staff Requirements Memoranda SRM-

[4] *Id.* at 15.
[5] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,087.

SECY–24–0046, "Implementation of the Fiscal Responsibility Act of 2023 National Environmental Policy Act Amendments," and SRM–SECY–25– 0007, "Withdrawing the Environmental Justice Policy Statement and Environmental Justice Strategy."[6]

The Proposed Rule includes substantial modifications to the NRC's NEPA implementing regulations at 10 C.F.R. pts 2, 30, 40, 50, 51, 52, 53, 54, 61, 70, 72, 76 and 110. The NRC proposes the most changes to 10 C.F.R. § 51. Overall these changes purport to "streamline" the NEPA process but do so at the cost of valuable environmental and economic information, public participation, and transparency into the Agency's decision-making process. These changes, if enacted, would reduce the NRC's consideration of the environmental impacts of its actions as well as the public's knowledge of those actions, thereby, by NRC's own admission, reducing public confidence in the safety and security of nuclear power. These changes will also increase regulatory uncertainty applicants have to navigate different state regulatory landscapes.

The NRC's proposed changes include the following:

1. Revising the definition of "effects' to exclude effects which do not have "a reasonable nexus to radiological health and safety or the common defense and security;"[7]
2. Limiting alternatives analysis for most actions to either analysis of the proposed action or the no-action alternative;
3. Removing references to the analysis of environmental justice issues and climate change;
4. Removing public participation opportunities at the Draft Environmental Impact Statement (EIS), Draft Environmental Assessment (EA), and Draft Finding of No Significant Impact (FONSI) stages;
5. Bifurcating the analysis of environmental issues into one process for NEPA analysis, and another process for other environmental analysis;
6. Promulgating a new process to develop categorical exclusions outside of the regulatory rulemaking process; and
7. Encouraging applicants to develop customized Categorical Exclusions (CE).

While Executive Order 14300 encourages the NRC to "[lower] regulatory and cost barriers to entry" associated with licensing of nuclear technologies,[8] the NRC may not abandon the fundamental mandate Congress assigned it under the Atomic Energy Act (AEA) to protect public health and safety, promote the common defense and security, and protect the environment.[9] Nor should it undermine the slogan it prominently and proudly asserts on its publications: "Protecting People and the Environment." While Section 501 of the Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy Act of 2024 (Pub. L. 118-67, 138 Stat. 1448 (2024)) (ADVANCE Act) directed the NRC to update its mission statement to ensure that licensing and regulation are conducted efficiently and do not unnecessarily limit the civilian use of radioactive materials and nuclear energy or the benefits those technologies provide to society, Congress expressly required that this mission alignment remain consistent with the

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[6] *Id*.
[7] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,105 (proposed 10 C.F.R. § 51.4).
[8] Executive Order 14300, *Ordering the Reform of the Nuclear Regulatory Commission* § 2, 90 Fed. Reg. 22,587 (May 29, 2025).
[9] 42 U.S.C. § 2232(a).

policies and requirements of the AEA and the Energy Reorganization Act. In updating its mission statement pursuant to the ADVANCE Act, the NRC recognized that it must "protect[] public health and safety" and regulate nuclear energy "for the benefit of society and the environment."[10] Accordingly, neither the ADVANCE Act nor the Nuclear Energy Innovation and Modernization Act (NEIMA) altered the NRC's core statutory responsibility to ensure adequate protection of public health and safety, maintain security, and protect the environment. Rather, these laws direct the NRC to carry out those responsibilities in an efficient, risk-informed, and predictable manner while avoiding unnecessary regulatory burden.

For the reasons set forth below, the NRC must make significant changes to the Proposed Rule to ensure it is compliant with the Atomic Energy Act, the National Environmental Policy Act, 42 U.S.C. §§ 4321-4347, and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551-559.

## BACKGROUND

### I. STATUTORY BACKGROUND

#### A. Atomic Energy Act of 1954

Congress first addressed civilian nuclear energy development in the Atomic Energy Act of 1946, Pub. L. 79–585, 60 Stat. 755 (1946). The current statutory framework governing NRC licensing was established by the Atomic Energy Act of 1954, Pub. L. 83-703, 68 Stat. 919 (1954), codified at 42 U.S.C. §§ 2011-2021, 2022–2286i, 2296a–2297h-13, which superseded the 1946 Act and remains the operative statutory authority for the NRC's licensing and safety mandates discussed herein.

Most relevant here, under the AEA, the NRC may not issue a license for use of nuclear material unless the licensee can "provide adequate protection to the health and safety of the public."[11] Importantly, the NRC's "primary" mandate—to ensure the adequate protection of public health and safety—has been untouched by subsequent amendments to the AEA.[12]

The AEA authorizes the NRC to issue licenses for nuclear utilization and production facilities under several pathways. AEA Section 101, 42 U.S.C. § 2131, prohibits any person from acquiring, transferring, or using special nuclear material or operating a utilization or production facility except pursuant to a license issued by the Commission. AEA Section 103, 42 U.S.C.

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[10] Memorandum from Carrie M. Safford to Brooke Poole Clark and General Counsel, *SECY-24-0083 – Statement Update Options Pursuant to Subsection 501(A) of the Advance Act Of 2024* (Jan. 24, 2025), https://www.nrc.gov/docs/ML2502/ML25024A040.pdf.

[11] 42 U.S.C. § 2232(a).

[12] *See Union of Concerned Scientists v. U.S. Nuclear Regulatory Commission*, 824 F.2d 108, 109 (1987) ("Section 182(a) of the [AEA] provides the primary statutory standard relating to the Commission's mandate to ensure the safe operation of nuclear power plants."); *see also* ADVANCE Act, Pub. L. No. 118-67, div. B, § 501(a), 138 Stat. 1448, 1514 (2024) (directing NRC mission reforms only "while remaining consistent with the policies of the Atomic Energy Act of 1954 . . . including to provide reasonable assurance of adequate protection of the public health and safety"); 170 Cong. Rec. S4130 (daily ed. June 18, 2024) (Sen. Carper) ("The ADVANCE Act does not in any way alter the Nuclear Regulatory Commission's longstanding statutory responsibility to protect public health, safety, and the environment."); NEIMA, Pub. L. No. 115-439, 132 Stat. 5565 (2019) (directing new licensing framework but not amending AEA § 182(a) or § 11(cc)).

§ 2133, authorizes the NRC to issue commercial licenses for the utilization or production of special nuclear material for industrial or commercial purposes, subject to the adequate-protection standard in AEA Section 182(a), 42 U.S.C. § 2232(a).

### B. Energy Reorganization Act of 1974

The NRC's licensing and regulatory authority for commercial nuclear reactors derives from the Atomic Energy Act of 1954.[13] The Energy Reorganization Act of 1974, Pub. L. 93-438, 88 Stat. 1233, transferred these functions from the former Atomic Energy Commission to the newly established Nuclear Regulatory Commission.[14]

### C. ADVANCE Act of 2024

In 2024, Congress enacted the Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy Act, Pub. L. No. 118-67, 138 Stat. 1448 (2024). The ADVANCE Act amends specific provisions of the AEA and adds new statutory directives, including the following key provisions relevant to this rulemaking:

Although the ADVANCE Act directs the NRC to streamline processes and create new frameworks, it does not supersede or diminish the underlying statutory obligations that bind the Commission as a matter of law.[15] The AEA's Section 182(a) requirement that license applications contain sufficient information for the NRC to make its safety findings remains in force and was not waived by the ADVANCE Act. Likewise, the AEA's adequate-protection standard remains the non-delegable regulatory floor below which the NRC cannot reduce safety requirements regardless of congressional directives promoting efficiency or deployment. Accordingly, the ADVANCE Act should be understood as directing the NRC to achieve greater regulatory efficiency and predictability while continuing to satisfy the safety, security, environmental protection and legal requirements established by the AEA.

### D. Administrative Procedure Act

Under the APA, an agency action is unlawful if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with [the] law" or "without observance of procedure required by law."[16] In contrast, to comply with the APA, an agency "must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'"[17] An agency rule is arbitrary and capricious "if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[18] When an agency action represents a

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[13] *See* AEA § 101, 42 U.S.C. § 2131 (license required); AEA § 103, 42 U.S.C. § 2133(a) (authorizing NRC to issue licenses for utilization and production facilities "for industrial or commercial purposes"); AEA § 182(a), 42 U.S.C. § 2232(a) (adequate protection standard).

[14] *See* 42 U.S.C. § 5842(1)-(2).

[15] ADVANCE Act of 2024 div. B, § 501(a), 138 Stat. at 1514 (directing NRC mission updates and efficiency measures only "while remaining consistent with the policies of the Atomic Energy Act of 1954 . . . including to provide reasonable assurance of adequate protection of the public health and safety.").

[16] 5 U.S.C. § 706(2)(A), (D).

[17] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quotation omitted).

[18] *Id.*

change in policy or interpretation, the agency must provide a rational explanation for that change.[19] The agency must demonstrate that the new rule "is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately indicates."[20]

### E. National Environmental Policy Act

The National Environmental Policy Act has long supported informed and transparent agency decision-making and allowed for meaningful public participation in developing and reviewing proposed federal actions. Congress enacted NEPA to advance a national policy of environmental protection by requiring federal agencies to conduct thorough and careful review of their actions' environmental impacts. NEPA does this through a requirement that agencies consider the "reasonably foreseeable environmental effects of the proposed agency action" and a "reasonable range of alternatives" *before* taking action.[21] As the Supreme Court has explained, Congress intended NEPA's "action-forcing procedures" to help "[e]nsure that the policies [of NEPA] are implemented."[22] By requiring thorough environmental review ahead of major federal actions, NEPA has helped regulatory agencies and the American people evaluate and understand how such projects impact the environment and public health.

The Attorneys General and the Harris County Attorney have a strong interest in robust NEPA compliance and the significant opportunities under NEPA for public participation it provides, as this protects their residents, property, and natural resources from ill-informed decision-making at the federal levels. The Attorneys General and our residents are injured by the effects of environmental degradation resulting from ill-informed agency actions. The Attorneys General also have a quasi-sovereign interest in preventing harm to the health of our natural resources and ecosystem in seeking redress for environmental harms within our borders.[23]

The NRC codified its NEPA implementing regulations at 10 C.F.R. § 51.10-51.125 in March 1984.[24] The regulations have been updated several times since, most recently in March of this year, when the NRC published a final rule expanding and reorganizing its categorical exclusions at 10 C.F.R. § 51.22.[25] That rulemaking eliminated the "no significant hazards consideration" proxy that had governed routine reactor license amendments since 1986 and added new exclusions to environmental review under NEPA for a broad range of licensing and administrative actions the Commission determined to have no individually or cumulatively

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[19] *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).
[20] *Id.*
[21] 42 U.S.C § 4332(C)(i), (iii).
[22] *Andrus v. Sierra Club*, 442 U.S. 347, 350 (1979) (quoting S. Rep. No. 91-296, at 19 (1969)); *see also Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) ("Simply by focusing the agency's attention on the environmental consequences of a proposed project, NEPA ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.").
[23] *Massachusetts v. EPA*, 549 U.S. 497, 520 (2007).
tion" and "about 15% of the state's clean energy").
[24] *See* Cal. Pub. Util. Comm'n Decision 23-12-054 (Dec. 14, 2023).
[25] Categorical Exclusions from Environmental Review, 91 Fed. Reg. 15,519 (Mar. 30, 2026) (final rule, effective Apr. 29, 2026) (amending 10 C.F.R. § 51.22), corrected by 91 Fed. Reg. 18,772 (Apr. 13, 2026) (correcting conflicting amendatory instructions for § 51.22 arising from simultaneous publication of Part 53 final rule). The companion Part 53 final rule is Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors, 91 Fed. Reg. 15,696 (Mar. 30, 2026).

significant environmental effect.

## II. FACTUAL BACKGROUND

### A. Nuclear Energy in the United States

Nuclear energy is an important part of the energy mix in many of the States. For instance, Washington State has one nuclear power plant, the Columbia Generating Station, which is the third largest single power production facility in the State.[26] The Washington State Legislature allocated $25 million in 2025 to advance the development of small modular reactors for power generation.

California has one operating nuclear facility in California, PG&E's Diablo Canyon Power Plant, which is a two-unit, 2,256-megawatt pressurized water reactor complex.[27] Diablo Canyon's twin reactors generate approximately 18,000 gigawatt-hours (GWh) of electricity annually, which is about 9% of California's total in-state electricity generation and roughly 15% of the State's carbon-free power supply.[28] Originally scheduled for retirement in 2024 and 2025 under a 2016 closure agreement, Diablo Canyon's operating life was extended by California legislation signed in 2022,[29] and on April 2, 2026, the NRC issued Renewed Facility Operating License Nos. DPR-80 and DPR-82, extending federal authorization for Unit 1 through November 2, 2044, and Unit 2 through August 26, 2045.[30]

Connecticut also has a significant stake in nuclear energy policy and regulation. The State is home to two operating commercial nuclear power reactors, Units 2 and 3 of the Millstone Nuclear Power Station in Waterford, which together provide approximately 40 percent of Connecticut's in-state electricity generation and more than 90 percent of its carbon-free electricity. Connecticut has also experienced the full lifecycle of commercial nuclear power. In addition, Connecticut hosts two independent spent fuel storage installations (ISFSIs): one located at the Millstone site in Waterford, which stores spent fuel generated by the operating Millstone units, and a second at the former Connecticut Yankee Nuclear Power Plant site in Haddam Neck, where spent nuclear fuel continues to be stored following completion of reactor and site decommissioning.

Illinois leads the nation in nuclear power generation, with six nuclear power plants and 11 operating reactors that produce over half of the electricity generated in the state. The Illinois Emergency Management Agency's Office of Nuclear & Radiation Safety is internationally recognized as a leader in safety, responsible for monitoring the 11 reactors and regulating over 750 radioactive materials licenses and 35,000 x-ray machines. Illinois has a strong interest in maintaining radiation and nuclear energy safety and environmental protection through effective

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[26] Energy Northwest, *Columbia Generating Station | Nuclear Power for a Carbon-Free Future*, https://www.energy-northwest.com/energy-projects/columbia-generating-station (last visited March 3, 2026).

[27] *See* NRC, *Pacific Gas & Electric Co.; Diablo Canyon Nuclear Power Plant, Units 1 and 2; License Renewal and Record of Decision*, 91 Fed. Reg. 17,310 (Apr. 6, 2026) (NRC Docket Nos. 50-275 and 50-323).

[28] *See* U.S. Energy Info. Admin., *The United States operates the world's largest nuclear power plant fleet* (April 24, 2025), https://www.eia.gov/todayinenergy/detail.php?id=65104; U.S. Dep't of Energy, *Civil Nuclear Credit Award Cycle 1*, https://www.energy.gov/node/4819016 (last visited Aug. 20, 2026) (noting Diablo Canyon "provides 9% of the total California power generation" and "about 15% of the state's clean energy").

[29] *See* Cal. Pub. Util. Comm'n Decision 23-12-054 (Dec. 14, 2023).

[30] *See* 91 Fed. Reg. 17,310 (Apr. 6, 2026).

regulations and procedures. Illinois therefore urges the NRC to rescind any proposed revisions to its NEPA procedures that may reduce public confidence in the safety and security of nuclear power.

Although New Mexico does not generate nuclear power, it is the only State which handles nuclear material from cradle to grave. In addition to legacy impacts from the Manhattan Project and uranium mining and milling, New Mexico hosts the Waste Isolation Pilot Plan ("WIPP"), where transuranic waste[31] is interred, as well as two National Laboratories which conduct significant nuclear weapons and energy research. Any fast-track environmental review of licensing of nuclear reactors, whether in a categorical exclusion or not, would likely accelerate the accumulation of additional nuclear waste in New Mexico. Further, New Mexico has been identified as a potential location for the "interim" storage of spent nuclear fuel from reactors. The license for a future interim storage facility to be constructed and managed by Holtec International lists New Mexico as its host State.

The potential increase in deployment of nuclear reactors that the Proposed Rule would facilitate is likely to create much more nuclear waste, adding to the decades-long problem of where to store such waste. Developers are proposing to use advanced nuclear reactors in New Mexico for the desalination of produced water in oil and gas fields and from deep, ancient aquifers to combat drought. New Mexico has also become the chosen State for several large data center projects, which have also proposed the possibility of using small nuclear reactors as power sources. All heat-based power generation requires water to operate, and any advanced nuclear reactors would necessarily have impacts on New Mexico's scarce water resources. The cumulative environmental and human health impacts of past, present, and future nuclear development and waste disposal in New Mexico are already extremely high. Authorizing licensing of nuclear reactors with little or no environmental review would allow developers to completely sidestep analysis of the impacts of nuclear power generation and waste storage on New Mexico's already burdened population and environment.

The Attorneys General are also well aware of the legacy of environmental impacts from the past use of nuclear technologies. In Washington State, reactors located at the Hanford site produced plutonium for America's defense program for forty years. Now, the site hosts 14,000 workers cleaning up the hazardous waste left behind. In California, the San Onofre Nuclear Generating Station, shut down in 2013 due to leaks of radioactive steam, retains over 1,650 tons of irradiated fuel on site, waiting for a permanent disposal solution. In Massachusetts, the nuclear power plant at the Yankee Rowe Nuclear Power Station was shut down prematurely and decommissioned due to reactor pressure vessel embrittlement concerns, with spent fuel waste stored in an 80-acre cask storage facility onsite. Massachusetts is also home to Pilgrim Nuclear Power Station, which closed in 2019. The decommission process for Pilgrim is expected to take decades.

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[31] Transuranic waste is waste that contains manmade elements heavier than uranium on the periodic table. It is produced during nuclear fuel assembly, nuclear weapons research and production, and during the reprocessing of spent nuclear fuel. *See* EPA, *What is Transuranic Radioactive Waste?*, https://19january2021snapshot.epa.gov/radiation/what-transuranic-radioactive-waste_.html.

## THE ATTORNEYS GENERAL'S COMMENTS ON THE PROPOSED RULE

### III. The Proposed Rule Would Violate the APA if Finalized

The Proposed Rule, if enacted, would violate the procedures and standards established by the APA and would fail to comply with NEPA's text and purpose. Under the APA, an agency action is unlawful if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with [the] law" or "without observance of procedure required by law."[32] The Proposed Rule reflects arbitrary and capricious agency action because (1) the agency has not provided any reasoned explanation for the Rule's changes; (2) the Proposed Rule is contrary to NEPA; (3) the Proposed Rule did not provide a rational connection between the facts found and the choice made; and (4) the Proposed Rule ignores serious reliance interests engendered by the regulations. Additionally, the Agency promulgated the Proposed Rule without observance of procedure required under the APA, curtailing public participation in the rulemaking process.

#### A. The Proposed Rule does not comply with NEPA

The Agency's promulgation of the Proposed Rule is contrary to law, and thus violates the APA,[33] because the Proposed Rule does not comply with the requirements of NEPA. The Proposed Rule violates NEPA in two ways: first, the NRC fails to conduct a NEPA analysis of the Proposed Rule; and second, the Proposed Rule is inconsistent with NEPA.

The National Environmental Policy Act supports informed decision-making by federal agencies by asking federal agencies to look before they leap. NEPA thus has "twin aims": an agency must "consider every significant aspect of the environmental impact of a proposed action" and "inform the public that it has indeed considered environmental concerns in its decisionmaking process."[34] Where an agency does not follow this mandate to consider reasonably foreseeable environmental effects before taking action, irreparable environmental harm can follow. In order to avoid this, NEPA provides for a public and meaningful environmental review process. Rather than follow this measured approach, the NRC's rulemaking does not meet the transparency and informed decision-making mandates in NEPA.

##### i. The NRC has not conducted an environmental analysis of the Proposed Rule, thus failing to assess the reasonably foreseeable environmental impacts from streamlined environmental reviews

NEPA requires federal agencies to assess the "reasonably foreseeable environmental effects of the proposed agency action."[35] In doing so, the agency must take a "hard look" at the environmental impacts.[36] The agency "may not rely on incorrect assumptions or data" in its analysis and ultimate finding of no significant effects.[37] Put plainly, the agency action must be "reasonable and reasonably explained."[38]

[32] 5 U.S.C. § 706(2)(A), (D).
[33] 5 U.S.C. § 706(2)(A).
[34] *Balt. Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 97 (1983).
[35] 42 U.S.C. § 4332(C)(i).
[36] *Env't Def. Ctr. v. Bureau of Ocean Energy Mgmt.,* 36 F.4th 850, 872 (9th Cir. 2022).
[37] *Id.* (citing *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 964 (9th Cir. 2005)).
[38] *Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colorado,* 605 U.S. 168, 180 (2025).

The NRC includes no environmental analysis of the Proposed Rule, rather, it asserts incorrectly that it need not conduct a NEPA analysis of its NEPA implementing procedures based on a single case from the Seventh Circuit, *Heartwood v. U.S. Forest Service*, 230 F.3d 947 (7th Cir. 2000).[39] Contrary to the NRC's assertions, this case does not state that "NEPA does not require agencies to prepare a NEPA analysis before establishing or updating" their NEPA regulations.[40] Rather, the *Heartwood* case held that the Forest Service was not compelled by NEPA to conduct an EA in promulgating a single CE.[41] Because the NRC does far more here than promulgate a single CE, the *Heartwood* case is inapposite. Yet, even under the logic of *Heartwood* case, the Proposed Rule would require a NEPA analysis because it consists of regulations, which the *Heartwood* court recognized, pursuant to CEQ's then existing regulations, would require a NEPA analysis.[42]

Notably, the NRC's own regulations do not include a CE exempting promulgation of regulations from NEPA review. In fact, they include a CE for "Amendments to the regulations in this chapter that are corrective or of a minor or nonpolicy nature and do not substantially modify existing regulations."[43] This is not a corrective or minor amendment to a regulation. The Proposed Rule contains substantial modifications to existing regulations, and so does not fit within the defined boundaries of this CE. A separate CE exempts proposed changes to amendments to several parts of NRC's regulations. The NRC's proposed amendments in the Proposed Rule do not fall within any of these exempted parts.[44] Thus, under NRC's own regulations this action to promulgate revised regulations does not fit within any existing CE.

The NRC fails to justify its decision to avoid NEPA review of its NEPA implementing regulations. In the final rule the NRC must conduct a NEPA analysis of the reasonably foreseeable environmental effects of implementing the proposed regulatory revisions.

**ii. The NRC has not provided or considered reasonable alternatives**

NEPA requires federal agencies to consider reasonable alternatives to a proposed action when developing an EIS.[45] The NRC incorporates this requirement into its own NEPA implementing regulations when conducting an EA.[46] The NRC considered no alternatives to its proposed regulations.

The Proposed Rule is contrary to law because the NRC fails to consider the obvious alternative[47] of adopting CEQ's NEPA implementing regulations. CEQ has rescinded those regulations but, the NRC can and should incorporate language previously codified at 40 C.F.R. §§ 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508 into NRC's regulations. This would be consistent with past agency practice in that NRC's regulations currently incorporate

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[39] *See* Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,098.
[40] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,098.
[41] *Heartwood, 230 F.3d* at 954.
[42] *Id*.
[43] 10 C.F.R. § 51.22(a)(1)(vi)
[44] 10 C.F.R. § 51.22(a)(3).
[45] 42 U.S.C. § 4332(2)(C)(iii).
[46] 10 C.F.R. § 51.30(a)(1)(ii).
[47] *Yakima Valley Cablevision, Inc. v. FCC*, 794 F.2d 737, 746 & n.36 (D.C. Cir. 1986) (the "failure of an agency to consider obvious alternatives has led uniformly to reversal") (collecting cases); *see, e.g., State Farm*, 463 U.S. at 48 (failure to "even consider the possibility" of an "alternative way of achieving the objectives of the Act" was arbitrary and capricious).

CEQ's prior by reference.[48] The NRC could incorporate all of CEQ's prior regulations or selected portions.

The NRC must consider the benefits of adoption CEQ's NEPA implementing regulations, and costs that would result from their failure to incorporate the CEQ regulations. Until recently, NEPA has been a remarkably stable area of law. For example, while NRC points to *Seven County* as a basis for its amendments,[49] that decision relied on decades of settled NEPA law. In *Seven County*, the Supreme Court discussed the deference afforded to agencies in determining whether an environmental impact statement complies with NEPA with citations to NEPA cases decided in 1978 and 1980, *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978) and *Strycker's Bay Neighborhood Council, Inc.* v. *Karlen*, 444 U.S. 223, 227-228 (1980).[50] Other foundational NEPA cases are primarily from the 1970s and 1980s,[51] and there have been relatively few Supreme Court cases interpreting NEPA over the past forty-five years.

CEQ's regulations issued in 1978[52] were durable and effective, with only a few minor revisions made over the following four decades prior to 2020. In 2020, CEQ updated their NEPA implementing regulations.[53] The changes made in 2020 were not the result of caselaw developments, but were designed to improperly narrow environmental review under NEPA, threaten meaningful public participation, and impermissibly restrict judicial review of agency actions.[54] The amendments to the CEQ regulations during the Biden Administration were similarly not made in response to caselaw developments. Instead, the rulemakings largely

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48 16 C.F.R. § 1.81.

49 Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,087-88.

50 *See generally Seven Cnty.*, 605 U.S. 168.

51 *See Andrus v. Sierra Club*, 442 U.S. 347, 357-358 (1979) (upholding CEQ's construction of NEPA through its regulations and stating "CEQ's interpretation of NEPA is entitled to substantial deference"); *Robertson*, 490 U.S. at 351-356 (recognizing that the "requirement" to include a discussion of mitigation measures flows in part from CEQ's implementing regulations, and finding a revision to CEQ's regulations was "entitled to substantial deference"); *see also Marsh v. Oregon Natural Resources Council*, 490 U.S. 360 (1989); *Baltimore Gas & Elec. Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87 (1983); *Kleppe v. Sierra Club*, 427 U.S. 390 (1976); *Department of Transportation v. Public Citizen*, 541 U.S. 752, 757 (2004). Nearly every Federal Circuit Court of Appeals followed the Supreme Court and endorsed NEPA regulations. *See, e.g., Found. on Econ. Trends v. Lyng*, 817 F.2d 882, 884 n.6 (D.C. Cir. 1987); *Massachusetts v. Watt*, 716 F.2d 946, 948 (1st Cir. 1983), *abrogated on other grounds by Marsh v. Or. Nat. Res. Council*, 490 U.S. 360 (1989); *Brodsky v. U.S. Nuclear Regul. Comm'n*, 704 F.3d 113, 120 n.3 (2d Cir. 2013); *N.J., Dep't of Env't Prot. & Energy v. Long Island Power Auth*., 30 F.3d 403, 409 n.9 (3d Cir. 1994); *Sugarloaf Citizens Ass'n v. FERC*, 959 F.2d 508, 512 n.3 (4th Cir. 1992); *Sierra Club v. Sigler*, 695 F.2d 957, 964 (5th Cir. 1983); *Kentucky Riverkeeper Inc. v. Rowlette*, 714 F. 3d 402, 407 (6th Cit. 2013); *Rhodes v. Johnson*, 153 F.3d 785, 787 (7th Cir. 1998); *Goos v. Interstate Com. Comm'n*, 911 F.2d 1283 n.2 (8th Cir. 1990); *In re Operation of Mo. River Sys. Litig.*, 516 F.3d 688, 693 (8th Cir. 2008); *Friends of Boundary Waters Wilderness v. Dombeck*, 164 F.3d 1115, 1125-1127 (8th Cir. 1999). *Trustees for Ala. v. Hodel*, 806 F.2d 1378, 1382 (9th Cir. 1986); *Sierra Club v. Hodel*, 848 F.2d 1068, 1093 (10th Cir. 1988), *overruled on other grounds by Vill. of Los Ranchos de Albuquerque v. Marsh*, 956 F.2d 970 (10th Cir. 1992); *Defs. of Wildlife, Earth Island Inst. v. Hogarth*, 330 F.3d 1358, 1369 (Fed. Cir. 2003).

52 National Environmental Policy Act-Regulations: Implementation of Procedural Provisions, 43 Fed. Reg. 55,978 (Nov. 29, 1978).

53 Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43,304 (July 16, 2020).

54 *See* Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. at 43,304.

addressed CEQ's 2020 revisions that did not support the statutory purposes of NEPA.[55] In 2022, the CEQ regulations were revised again to restore key provisions of the 1978 regulations, requiring analysis of all reasonably foreseeable effects of a major federal action.[56] In 2023, the CEQ regulations were revised a third time to restore most of the remaining provisions of the 1978 regulations, strengthen analysis of climate change and human health impacts, including environmental justice concerns, strengthen public participation, and implement amendments to the NEPA statute enacted in the 2023 Fiscal Responsibility Act, Pub. L. No. 118-5, 137 Stat.10 ("FRA").[57]

Prior to their recission, the CEQ's NEPA regulations embodied decades of settled law and NEPA procedure, reflecting the expert agency's best interpretation of the NEPA statute and decades of judicial precedent. The CEQ regulations were also updated to incorporate amendments from the FRA, which is one of the rationales posited by the NRC for proposing the current Rule.[58] The NRC should accordingly incorporate the CEQ regulations previously relied upon by the NRC in its regulations, as updated to implement the FRA, or at least consider so doing as an alternative.

By failing to consider these alternatives, the NRC has failed to meet one of the core requirements of NEPA and its own regulations.[59] The NRC should conduct a robust alternatives analysis of reasonable alternatives to the proposed action.

**iii. The proposed definition of effects is inconsistent with NEPA and lacks justification**

The NRC proposes an extreme narrowing of the scope of its environmental reviews by changing the definition of effects. The NRC proposes to constrain its future environmental review to those that exist within "the limits of its regulatory authority" which in its view are limited to effects "with a reasonable nexus to radiological health and safety or the common defense and security." [60] The proposed new definition of "effects" also would specifically exclude effects that are "remote in time, geographically remote, or the product of a lengthy causal chain."[61] Such a limitation is both contrary to case law and inappropriate in light of extended life cycle impacts of nuclear facilities.

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[55] *See* Deadline for Agencies to Propose Updates to National Environmental Policy Act Procedures, 86 Fed. Reg. 34,154 (June 29, 2021); National Environmental Policy Act Implementing Regulations Revisions, 86 Fed. Reg. 55,757 (October 7, 2021) (Proposed Phase 1 Rule).

[56] National Environmental Policy Act Implementing Regulations Revisions, 87 Fed. Reg. 23,453 (Apr. 20, 2022) (Final Phase 1 Rule).

[57] *See* National Environmental Policy Act Implementing Regulations Revisions Phase 2, 88 Fed. Reg. 49,924 (July 31, 2023) (proposed Phase 2 Rule); National Environmental Policy Act Implementing Regulations Revisions Phase 2, 89 Fed. Reg. 35,442 (May 1, 2024) (final Phase 2 Rule).

[58] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,087.

[59] *Yakima Valley Cablevision* 794 F.2d at 746 & n.36 (the "failure of an agency to consider obvious alternatives has led uniformly to reversal") (collecting cases); *see, e.g., State Farm*, 463 U.S. at 48 (failure to "even consider the possibility" of "alternative way of achieving the objectives of the Act" was arbitrary and capricious).

[60] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,105 (proposed 10 C.F.R. § 51.4).

[61] Implementation of the National Environmental Policy Act, 91 Fed. Reg. 42,105 (proposed 10 CFR 51.4) ("Effects should generally not be considered if they are remote in time").

The NRC justifies the changes in its NEPA regulations as being required to implement the Supreme Court's decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*.[62] But *Seven County* does not support the proposed changes.

*Seven County* does not support the NRC's proposal to ignore all environmental impacts except those "with a reasonable nexus to radiological health and safety or the common defense and security."[63] The NRC recognizes that its statutory authority includes the issuance of construction permits, which result in "non non-radiological impacts—such as dust, noise, non-radiological water and air quality impacts, non-radiological ecological impacts, etc., during construction." It further recognizes that these "associated effects may have a close-causal relationship" with its actions. Indeed, the NRC's regulations provide that construction permits "may include conditions to protect the environment during construction."[64] The NRC thus concedes that these are reasonably foreseeable effects of its actions. As such, the NRC must analyze them under NEPA.[65]

But in spite of NRC's clear duty to consider these effects, it says it need not do so because it disclaims any legal authority to prevent or mitigate them, citing Justice Sotomayor's concurrence in *Seven County*.[66] But that assertion is not supported by what the Court held in *Seven County*, or even what the concurrence sought to add to the Court's decision.

Nor does the concurrence in *Seven County* provide support for the NRC's proposal to ignore reasonably foreseeable impacts as required under the text of NEPA.[67] The point of the concurrence, as stated by Justice Sotomayor, was to emphasize that the federal agency that conducted the NEPA analysis at issue lacked the statutory authority to reject an application on the basis of "harms third parties would cause" and "harms caused by the oil industry" that would result from entirely separate projects under the jurisdiction of different agencies.[68] Again, that is not the case for harms that could result from the very project over which the NRC has jurisdiction.

What the Court actually stated when it discussed the bounds that an agency's jurisdiction may place on its NEPA analysis is that courts should not require that agencies in their NEPA analyses "address[] effects from another project that is separate in time or place from the project at hand—particularly when it would require the agency to speculate about the effects of a separate project that is outside its regulatory jurisdiction."[69] Here, in contrast, the NRC seeks to ignore effects of its own actions, not a project "separate in time or place." And the NRC's

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[62] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,087 (citing *Seven Cnty.,* 605 U.S. 168).
[63] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,088; 91 Fed. Reg. 42,105, proposed to be codified at 10 C.F.R. § 51.
[64] 10 C.F.R. 50.36(b)
[65] 42 U.S.C. § 4332(C)(i).
[66] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42089 (asserting that the "NRC may not have legal authority to prevent or mitigate effects and therefore, will not consider those effects" based on Justice Sotomayor's statement that "NEPA requires consideration of environmental impacts only if such consideration would result in information on which the agency could act.")
[67] *See* 42 U.S.C. § 4332(2)(C)(i), (ii).
[68] *Seven Cnty.*, 605 U.S. at 193 (Sotomayor, J., concurring).
[69] *Id.* at 188-89 (citing *Public Citizen*, 541 U.S. at 767-768 (citing Aberdeen & Rockfish R. Co., 422 U.S. 289, 325 (1975))).

licensing action, which will cause the effects, is most certainly not "a separate project that is outside its regulatory jurisdiction."[70] *Seven County* thus provides no support for the NRC's attempt to abdicate its duty to address the reasonably foreseeable impacts of its actions.

And while *Seven County* did limit the "reasonably foreseeable" impacts an agency must consider in conducting NEPA environmental review to some extent, it did not hold that an agency need not ever consider indirect or cumulative impacts of a major federal action. Rather, the opinion acknowledges that an agency may have to consider indirect or cumulative impacts from a proposed action, if there exists a reasonable causal nexus:

> To be clear, the environmental *effects* of the project at issue may fall within NEPA even if those *effects* might extend outside the geographical territory of the project or might materialize later in time—for example, run-off into a river that flows many miles from the project and affects fish populations elsewhere, or emissions that travel downwind and predictably pollute other areas. Those so-called indirect effects can sometimes fall within NEPA . . . .[71]

The Court further recognized that "other projects may be interrelated and close in time and place to the project at hand—a residential development next door to and built at the same time as a ski resort, for example" and thus require analysis in a NEPA document for a project.[72] *Seven County* accordingly does not excuse agencies from NEPA's command to consider "reasonably foreseeable" impacts, including indirect and cumulative impacts.

The proposed new definition of "effects" would specifically exclude effects that are "remote in time," a category of impacts that is of particular importance when evaluating nuclear facilities.[73] This definition directly conflicts with NEPA's "reasonably foreseeable standard" for radiological impacts. Many radiological impacts occur over a long time period such as spent fuel accumulation, long-term liabilities from decommissioning, treatment, storage and disposal of spent highly enriched nuclear fuel types and nuclear waste. These will have significant impacts on future generations and the environment. This proposed definition conflicts with existing scientific findings that recognize million-year analytical timeframes being necessary for Iodine-129, Cesium135, Neptunium-237, and Techniciim-99. This concern is firmly grounded in the known peak dose risk potential, longevity risk potential, and mobility risk potential for each of these isotopes. This fact is compounded by the proposed rule allowing use of highly enriched fuel forms for these different advanced reactor types that would be using conventional LWR data as a baseline and standard for comparison despite the clear differences across new reactors and fuel types and the incompatibility of applying conventional LWR data to designs and projects that it was never designed to represent. Furthermore, Iodine-129, Cesium135, Neptunium-237, Techniciim-99, etc. are not characterized in any table within the proposed rule or material that it relies. These four isotopes are known to cause the most severe and long-term biological and ecological damage and risk to human and environmental health and safety. This oversight must

[70] *Id.* at 189.
[71] *Seven Cnty.*, 605 U.S. at 187 (emphasis in original).
[72] *Id.* at 190.
[73] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,105 (proposed 10 C.F.R. § 51.4) ("Effects should generally not be considered if they are remote in time").

be corrected by including these impacts within the NRC's definition of effects if the NRC pursues finalization of the Proposed Rule.

For these reasons, the NRC should remove the "remote in time" exclusion in order to comply with the statutory reasonably foreseeable standard.

*Seven County* additionally provides no support for the NRC's proposal to remove regulatory text that currently requires that it consider impacts on "water availability and competing water demands, the flow of the river, and related impacts on stream (aquatic) and riparian (terrestrial) ecological communities," "fish and shellfish resources resulting from impingement mortality and entrainment and thermal discharges," "groundwater," "federal protected ecological resources" such as endangered species, "public health from thermophilic organisms in [] affected water," "the potential shock hazard from [] transmission lines," "potentially affected historic and cultural resources and historic," disproportionally impacted communities, "other past, present, and reasonably foreseeable actions occurring in the vicinity of the nuclear plant that may result in a cumulative effect," and "effects of any observed and projected changes in climate on environmental resource areas that are affected by license renewal."[74]

The Proposed Rule's exclusion of the analysis of reasonably foreseeable effects of NRC actions is made worse because it fails to identify any other agency that would be required to analyze these impacts. Apparently, from the NRC's view, because the reasonably foreseeable public health risk from, for example, thermophilic bacteria caused by a nuclear facility are not in its bailiwick, they do not need to be assessed at all. The exclusion of nonradiological effects also ignores the effects of heavy metals occurring alongside uranium during the mining and milling process. This compounds the deleterious effects of other provisions of the Proposed Rule, including the removal of environmental justice provisions, as tribal communities, particularly Navajo communities, already face underlying health disparities due to decades of uranium mining and milling.[75] The *Seven County* decision provided guidance on the scope of the court's reviews of agency NEPA documents; it did not instruct agencies to put their heads in the sand when confronted with reasonably foreseeable impacts of their actions.

While reasonably foreseeable impacts may not all be radiological in nature, the NRC undoubtedly can and should act on information gleaned from analyzing those impacts. The NRC can act by denying a license, and for many of these impacts the NRC could place conditions on a license. For example, if a nuclear facility is proposed to be located on top of a site of great historic, cultural and religious significance, the NRC cannot exclude this impact from its NEPA documents merely because they are not radiological in nature. Even if this impact would be assessed elsewhere, such as through the National Historic Preservation Act Section 106 process, NEPA still requires that it be included in a NEPA environmental review. Neither NEPA nor *Seven County* allows willful ignorance.

The Proposed Rule is accordingly contrary to law, specifically NEPA, which expressly requires agencies, in conducting environmental review of a proposed action, to consider all

[74] 10 C.F.R. pt 51.53(c)(3)(ii)(A-C), (E-K), (M)-(O), (Q).
[75] Eric Jantz, *Environmental Racism with a Faint Green Glow*, 58 NAT. RES. J. 247, 251-53 (2017). Available at: https://digitalrepository.unm.edu/nrj/vol58/iss2/12.

"reasonably foreseeable" environmental impacts that would result from a proposed action.[76] The plain language, purpose, and legislative history of the NEPA statute make clear that reasonably foreseeable impacts an agency must consider include the broader environmental context. [77]

Consequently, courts have long recognized—and continue to recognize—that the reasonably foreseeable impacts an agency must consider include the direct, indirect, and cumulative impacts of its proposed actions.[78] The final rule should therefore include language affirmatively recognizing NRC's duty to consider all reasonably foreseeable impacts consistent with NEPA and *Seven County*.

#### iv. Limiting alternatives analysis is contrary to the text of NEPA and lacks justification

The Proposed Rule would limit the NRC to considering only two alternatives in most cases by redefining the scope of the agency action. The agency action would be "the regulatory or licensing decision (e.g. whether to issue an operating license)."[79] The NRC states that "in most cases, the reasonable range of alternatives to the NRC regulatory or licensing decision would be defined as and limited to the no-action alternative (e.g., not issuing the license) because not engaging in regulatory or licensing decision is the only reasonable alternative to the agency action."[80]

This would "significantly" streamline the NEPA process by evading NEPA's statutory mandate to consider reasonable alternatives.[81] The alternatives analysis is considered the heart of NEPA and drives the development of less impactful alternatives. Taking this approach would open up the NRC and project applicants to litigation risk from challenges to the failure to consider reasonable alternatives.[82]

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[76] 42 U.S.C. § 4332(C)(i)-(ii).

[77] *See id.* § 4331(a) (announcing policy to preserve the environment for "present and future generations"); *id*. § 4332(I) (directing agencies to "recognize the worldwide and long-range character of environmental problems"); S. Rep. No. 91-296, at 5 (1969) ("Important decisions concerning the use and the shape of man's future environment continue to be made in small but steady increments which perpetuate rather than avoid the recognized mistakes of previous decades.").

[78] *See, e.g., Kleppe*, 427 U.S. at 410 (interpreting NEPA to require consideration of "cumulative or synergistic environmental impact."); *NRDC v. Hodel*, 865 F.2d 288, 298 (D.C. Cir. 1988) (stating "NEPA, as interpreted by the courts, and CEQ regulations both require agencies to consider the cumulative impacts of proposed actions"); *Ctr. for Biological Diversity v. U.S. Bureau of Land Mgmt.*, 141 F.4th 976, 993, 999 (9th Cir. 2025) ("NEPA . . . requires that a federal agency consider every significant aspect of the environmental impact of a proposed action. . . . NEPA requires agencies to evaluate the direct and indirect effects of the proposed action.") (internal quotations and citations omitted).

[79] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,090.

[80] *Id.*

[81] *See* Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,087; 42 U.S.C. § 4332(2)(C)(iii).

[82] See, e.g., *Yakima Valley Cablevision*, 794 F.2d at 746 & n.36 (the "failure of an agency to consider obvious alternatives has led uniformly to reversal") (collecting cases); *see, e.g., State Farm*, 463 U.S. at 48 (failure to "even consider the possibility" of an "alternative way of achieving the objectives of the Act" was arbitrary and capricious).

The NRC has in the past complied with NEPA by evaluating alternatives to applicant licensing proposals that considered different sites and alternative energy sources. This occurred at the Alvin W. Vogtle Electric Generating Plant in Georgia which came online in 2023. This made Georgia the first state to have sited a new commercial nuclear power plant in the last 30 years. During the Combined License application review for Vogtle Units 3 and 4 in Georgia, the NRC considered alternative energy sources and three different site locations.[83] If the NRC chooses to finalize this rule, it must justify its reversal of this long-standing practice.

#### v. Removing analysis of environmental justice impacts is contrary to NEPA and lacks justification

NRC proposes to remove all references to environmental justice from its regulations.[84] NRC provides no rationale for this beyond reference to another NRC document, SRM-COMSECY-25-0007.[85] SRM-COMSECY-25-0007 points only to several Executive Orders.[86] However, none of those executive orders compels the erasure of environmental justice from NRC's regulations. Executive Order 14148 directs agencies to "end Federal implementation of unlawful and radical DEI ideology."[87] Executive Order 14173 orders agencies to "terminate all discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements."[88] Executive Order 14151 calls for the "termination of all discriminatory programs."[89]

However, these Executive Orders do not provide a basis for the NRC's proposal to remove the regulations targeted in the Proposed Rule. The consideration of communities with environmental justice concerns, including "minority and low-income populations and communities (by race and ethnicity) and Indian Tribes in the vicinity of the nuclear power plant that could be disproportionately affected" is neither strictly prohibited by the cited executive orders nor is it unlawful.[90] To the contrary, NEPA requires agencies to consider "any reasonably foreseeable adverse environmental effects.[91] NEPA also states it is the responsibility of the Federal Government "to use all practicable means" to "assure for *all* Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings,", and states "that each person should enjoy a healthful environment."[92] The mandates to protect all Americans and ensure each

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[83] NRC, *Final Environmental Impact Statement for an Early Site Permit at the Vogtle Electric Generating Plant Site*, NUREG-1872 (2008), https://www.nrc.gov/docs/ML0822/ML082260190.html.
[84] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,095.
[85] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,095.
[86] Memorandum from Carrie M. Safford to Brooke Poole Clark and General Counsel (Apr. 10, 2025), *COMSECY-25-0007 – Withdrawing the Environmental Justice Policy Statement and Environmental Justice Strategy*, https://www.nrc.gov/docs/ML2510/ML25100A106.pdf; Initial Rescissions of Harmful Executive Orders and Actions, Exec. Order No. 14148, 90 Fed. Reg. at 8,237 (Jan. 20,2025); Ending Illegal Discrimination and Restoring Merit-Based Opportunity, Exec. Order No. 14173, 90 Fed. Reg. 8,633 (Jan. 21, 2025); Ending Radical and Wasteful Government DEI Programs and Preferencing, Exec. Order No. 14151, 90 Fed. Reg. 8,339 (Jan. 21, 2025).
[87] Initial Rescissions of Harmful Executive Orders and Actions, Exec. Order No. 14148, 90 Fed. Reg. 8240 (Jan. 20, 2025).
[88] Ending Illegal Discrimination and Restoring Merit-Based Opportunity, Exec. Order No. 14173, 90 Fed. Reg. 8633 (Jan. 21, 2025).
[89] Ending Radical and Wasteful Government DEI Programs and Preferencing, Exec. Order No. 14151, 90 Fed. Reg. 8339 (Jan. 21, 2025).
[90] 10 C.F.R. § 51.53(c)(3)(ii)(N).
[91] 42 U.S.C. § 4332)(C)(ii).
[92] 42 U.S.C. § 4331(b)(2)(emphasis added), (c).

person enjoyment of a healthful environment requires analysis of how a proposed federal action might disproportionately impact the "quality of the human environment," for some Americans more than others, including due to preexisting vulnerabilities or existing environmental and health burdens faced by a particular population.[93] Thus, under NEPA, an agency must consider the effects to *all* Americans.

Environmental justice impacts are highly relevant to environmental review of nuclear facilities as their location poses environmental and health risks, which can often exacerbate existing risks to already vulnerable populations and overburdened communities.[94] Indeed, many present and historic facilities under NRC's oversight are located in or near to Tribal land or Indigenous communities, communities of color, and low income communities. In addition to bearing disproportionate burdens affecting their public health, environmental quality, and cultural, historic and religious resources, these communities generally lack emergency response resources and face slower clean-up response than non-minority, affluent communities with similar uranium and nuclear development. [95] In New Mexico, for example, various facilities under NRC's jurisdiction are located in predominantly Hispanic and tribal communities and other communities experiencing extremely high poverty rates. The NRC's Proposed Rule provides no justification for removing language referencing these types of impacts.

In the final rule, the NRC should keep these provisions that ensure NEPA's statutory mandate continues to provide environmental analysis of impacts to all Americans.

#### vi. The Proposed Rule's Categorical Exclusions are inconsistent with NEPA and lack justification

A categorical exclusion "means a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment."[96] "[C]ategorical exclusions, by definition, do not have a significant effect on the quality of the human environment."[97] The NRC proposes to create multiple new categorical exemptions from NEPA review in 10 C.F.R. 51.22(f)-(k). These range from issuance of standard design certifications and manufacturing licenses, to "[a]ctions related to the possession of special nuclear material for an activity at a permanent site."[98] The NRC provides support for these CEs in "U.S. Nuclear Regulatory Commission Written Record of Support of Proposed Amendments to 10 C.F.R. § 51.22 in Accordance with Executive Order 14300 and SRM-SECY-24-0046."[99]

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[93] 42 U.S.C. § 4332(c).

[93] Dean Kyne & Bob Bolin, Emerging Environmental Justice Issues in Nuclear Power and Radioactive Contamination, 13 INT'L J. ENVTL. RES. & PUB. HEALTH 700, 703 (2016).

[95] Eric Jantz, *Environmental Racism with a Faint Green Glow*, 58 NAT. RES. J. 247, 252-53 (2017). Available at: https://digitalrepository.unm.edu/nrj/vol58/iss2/12.

[96] 42 U.S.C. § 4336(e)(1).

[97] *Sierra Club v. Bosworth*, 510 F.3d 1016, 1025 (9th Cir. 2007) (citations and internal quotation marks omitted).

[98] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,109 (proposed 10 C.F.R. § 51.22).

[99] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,091; available at https://www.nrc.gov/docs/ML2617/ML26176A427.pdf.

### *a. The license renewal CE improperly excludes consideration of severe accidents*

The NRC proposes to promulgate a CE for "actions related to renewed licenses under part 54."[100] If this CE is applied going forward it will eliminate important aspects of NEPA review of license renewals. The NRC previously required that environmental impacts of severe accidents (and the development of severe accident mitigation alternatives, or SAMAs) be both analyzed and submitted for public comment as part of environmental reviews in license renewal. Under the NRC's proposed CE, that analysis would not occur.

### *b. Applying a CE obscures environmental review from the public in violation of NEPA's information sharing purposes*

The NRC shifts the bulk of environmental review of these actions approved via a CE from a public EIS or EA process to a purely internal examination of potential environmental impacts listed as factors in each CE.

NEPA has long been central to informed and transparent agency decision-making and allowed for meaningful public participation in developing and reviewing proposed federal actions.[101] These legal requirements have significant practical benefits to the implementing agency. For example, in a public NEPA process, State and tribal governments and local communities may have information about potential impacts and can share them with the project sponsor and responsible agency. Recently, the NRC produced an EIS for a power plant license renewal and noted that it considered public feedback from the public, including "Federal, State, and Tribal governments, and public comments received during the EIS scoping process and draft EIS public comment period."[102]

However, if a project proceeds on a CE there will be no opportunity for public input to bring these potential impacts to light prior to the NRC making a decision. The Attorneys General will not have the statutorily required opportunity to provide comments to NRC as part of an EIS process.[103] Additionally, without the transparency of a public NEPA process, it is harder for the public to identify, and the NRC to rectify, potential errors or omissions in analysis made by NRC.

### *c. Application of a CE means there will be no alternatives analysis*

NEPA requires federal agencies to consider reasonable alternatives to a proposed action when developing an EIS.[104] The alternatives analysis, as informed by public comment, can identify impacts of the project on the environment such as nearby sensitive habitats, wetlands, and vernal pools. The alternatives analysis can also be used to avoid natural conditions that could impact the project. These impacts could include the location of seismic faults, the contours of a lahar zone of volcanic mudflow, or other unstable geologic features. However, when an agency applies a CE to develop a project, it goes through no such process. Because of this, the NRC will

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Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,109 (proposed 10 C.F.R. § 51.22(j)).

[101] *See Robertson*, 490 U.S. at 349.

[102] *See* NRC*, Environmental Impact Statement for the License Renewal of the Columbia Fuel Fabrication Facility in Richland County, South Carolina*, xiv (July 2022), https://www.nrc.gov/docs/ML2220/ML22201A131.pdf.

[103] 42 U.S.C. § 4332(C).

[104] 42 U.S.C. § 4332(C)(iii).

not have to look at alternate sites for a proposed reactor, alternate project sizes, or any other reasonable alternative that would change the impacts to the human environment.

#### *d. Promulgation of CEs via a website rather than notice and comment rulemaking provides insufficient notice and public participation*

The NRC proposes a new method for development and promulgation of CE's – via its website, and potentially at the request of an applicant.[105] The NRC states it is taking this approach because it "recognizes that the current process for establishing categorical exclusions by regulation might pose some challenges."[106] The "challenges" this process poses include ensuring the public knows of the proposed CE through publication in the Federal Register, allowing for public comment on the CE, and responding to the public comments in the final CE. The proposed process requires the NRC to "consider" stakeholder perspectives and to provide "public notice in the Federal Register of the NRC's establishment or revision of any categorical exclusion."[107] However, this process does not require the agency to seek public comment or to consider feedback from the public. The NRC states it will incorporate via rulemaking these online CEs "at appropriate intervals."[108] However, that rulemaking process will involve formalizing a CE that the NRC has already decided to adopt. The formal rulemaking comes too late in the process to ensure meaningful public participation.

#### *e. NRC Invites Applicants to develop customized CEs*

Additionally, the NRC proposes to invite applicants to develop customized CEs via the petition for rulemaking in 10 C.F.R. § 2.802.[109] In this way, each applicant can try to develop a CE that is tailored to its circumstances. This conflicts with the very idea of a categorical exclusion, in that it applies to a "category of actions" as opposed to a particular action.[110] This invitation is even more concerning because the NRC proposes to allow these applicant-proposed CEs to be approved and applied prior to any public rulemaking. Additionally, this proposal conflicts with NEPA's requirement to "identify to the public the categorical exclusion that the agency plans to use for its proposed actions."[111] By doing so, the NRC would provide applicants with a scheme that would vitiate NEPA's requirements for public participation.

### vii. The NRC unlawfully curtails the public participation at the heart of the NEPA process

Public participation is one of the "twin aims" of NEPA.[112] The process is rooted in statutory obligations that a federal agency "consider every significant aspect of the environmental impact of a proposed action" *and* "inform the public that it has indeed considered

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[105] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,107 (proposed 10 C.F.R. § 10.51.22).
[106] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,091.
[107] NRC, *Draft Environmental Review Guidance for U.S. Nuclear Regulatory Commission Actions*, NUREG 2270 at A-3 (2026).
[108] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,091.
[109] *Id.*
[110] 42 U.S.C. § 4336(e)(1).
[111] 42 U.S.C. § 4336(c)(3).
[112] *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983).

environmental concerns in its decision-making process."[113] Thus, NEPA requires that agencies prepare environmental impact statements to disclose and address potentially significant environmental effects of a project; and, as stated above, one purpose of this document is to "make available to the public, information of the proposed project's environmental impact and encourage public participation in the development of that information."[114]

Public comment on draft NEPA documents, and the requirement that the NRC respond to those comments, provides the means whereby the NRC can ensure that public input about environmental impacts of proposed actions, including on vulnerable populations and communities, are considered and addressed in final environmental documents. Public comment on draft NEPA documents is necessary to effectuate NEPA's "twin aims" of requiring that federal agencies "consider every significant aspect of the environmental impact of a proposed action" and ensuring the agency "inform[s] the public that it has indeed considered environmental concerns in its decision making process."[115]

In contrast, the Proposed Rule would require solicitation of public comment only on the notice of intent to prepare an EIS, the minimum required under the NEPA statute, and would not require that the NRC respond to public comments, thereby increasing the chance that significant environmental impacts would be overlooked or disregarded.[116] The NRC proposes to eliminate two important points of public participation in the NEPA process: issuing a draft finding of no significant impact and issuing a draft EIS.[117] Both of these points in the NEPA process provide a valuable opportunity for the public, including States, to provide information and feedback on the more fully fleshed out action. Providing for public comment only at the early stage of publishing a notice of intent (NOI) is not sufficient to meet NRC's responsibilities under NEPA because the information available to the public at that early stage is minimal, providing no analysis of potential impacts to environment. The scoping stage does not give the public a chance to know what the agency itself actually thinks about the impacts and alternatives – so there is no analysis for the public to comment on.

By curtailing opportunities for public involvement, the Proposed Rule if enacted strikes at the heart of NEPA's purpose and environmental review requirements, in violation of NEPA and, accordingly, the APA.

Additionally, NRC provides an insufficient rationale for this change in position. The NRC's only justification for this change is that "NEPA does not require the preparation and publication of draft EISs."[118] "Agencies are free to change their existing policies," but they must "provide a reasoned explanation for the change."[119] "Reasoned decision making…necessarily requires the agency to acknowledge and provide an adequate explanation for its departure from

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[113] *Id.* (internal citation omitted).

[114] *Save Lake Washington v. Frank*, 641 F.2d 1330, 1334 (9th Cir. 1981) (quoting *Trout Unlimited v. Morton*, 509 F.2d 1276, 1287 (9th Cir. 1974)).

[115] *Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1066 (9th Cir. 2002) (citing *Baltimore Gas & Elec. Co. v. Natural Resource Def. Council, Inc.*, 462 U.S. 87, 97 (1983)).

[116] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,093.

[117] *Id.*

[118] *Id.*

[119] *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) (citing *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981-82 (2005)); *see also Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020).

established precedent."[120] The NRC has not met this standard in the its proposal to depart from established precedent of providing for public notice and comment on draft EISs and FONSIs.

### B. The Proposed Rule Reflects Arbitrary and Capricious Agency Action

Under the APA, a "reviewing court shall … hold unlawful and set aside" federal agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[121] The agency must make a "rational connection between the facts found and the choice made."[122] An agency action is "arbitrary and capricious" under the APA where "the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[123] "Agencies are free to change their existing policies," but they must "provide a reasoned explanation for the change."[124] In this rulemaking, the NRC has failed to provide any reasoned explanation for the Proposed Rule, , fails to assert a rational connection between the facts found and the proposed action, proposes an action that will run counter to the evidence before the agency, and fails to consider important aspects of the problem. If the NRC finalizes the rulemaking, it must correct these deficiencies in a final rule.

#### i. The Proposed Rule relies on outdated data

The Proposed Rule relies on data that is over 50 years old and no longer representative of the current nuclear landscape. The NRC relies on Tables S-3 and S-4 in the Proposed Rule.[125] Table S-3 provides outdated uranium fuel cycle data and Table S-4 provides outdated transportation data. These data do not represent the range and variety of new advanced reactor types and their more enriched fuel forms that applicants will be pursuing across the country. NRC states that this issue of outdated data will be addressed in separate rulemaking at an unknown time in the future. Beyond outdated data, Table S-3 also does not provide relevant and important information. Table S-3 explicitly excludes quantified values for Iodine-129, Cesium135, Neptunium-237, and Techniciim-99 releases and acknowledges in the footnote that "the amount and significance of Rn-222 releases from the fuel cycle and Tc-99 releases from waste management or reprocessing activities" remain unresolved and "may be the subject of litigation in the individual licensing proceedings."[126] But, this information is relevant to assessing the environmental impacts of not only the Proposed Rule, but also the environmental impacts of proposed nuclear facilities. The NRC must use updated and appropriate data to determine the environmental impacts of the Proposed Rule.

Furthermore, any new advanced reactor licensed using the outdated tables and assumptions would generate known, extremely dangerous, and long-lived spent nuclear fuel and nuclear waste products (e.g., Technetium-99 and Iodine-129, Cesium-135, etc.) that will last for

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[120] *Dillmon v. NTSB*, 588 F.3d 1085, 1089-90 (D.C. Cir. 2009) (citing *Fox Television Stations*, 566 U.S. at 515).
[121] 5 U.S.C. § 706(2).
[122] *Burlington Truck Lines, Inc. v. United States,* 371 U. S. 156, 168 (1962).
[123] *State Farm*, 463 U.S. at 43.
[124] *Encino Motorcars*, 579 U.S. at 221 (citing *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981-82 (2005); *see also Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020).
[125] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,113-115.
[126] *Id.* at 42,114.

hundreds of thousands to millions of years and impact future generations and the environment. This duration is not insignificant, should not be overlooked in a passive way, and requires that NRC evaluate these impacts in its NEPA regulations. Instead, NRC points to generic assumptions and outdated data to create a new rule.

#### ii. The Proposed Rule relies on generic data in the context of new reactor types.

The Proposed Rule assumes that generic findings from LWR-derived datasets are applicable to different enriched fuel forms and severe accident analysis.[127] The NRC does not explain how these assumptions and data apply to new and relatively untested advanced reactor types with unique designs and operations, new and uncharacterized highly enriched fuel forms, altered and different nuclear waste products and inventories, different waste streams, different severe accident probabilities, lack of real-work use, lack of analysis on co-location and lumping of facilities, shared resource dependence, nor emergency response, among other differences. The NRC must show how these generic LWR derived data apply to new reactor types, or provide updated analysis if it finalizes the Proposed Rule.

#### iii. The Proposed Rule does not justify its determination that SMALL impacts are not significant

The Proposed Rule states that "SMALL" environmental impacts pose no significant impact.[128] This is a substantial change from how "SMALL" was used previously (i.e., as a tool for <u>comparing</u> licensing renewals). Now the NRC proposes to use a "SMALL" designation for <u>determining</u> the threshold of where NEPA applies. For instance, SMALL designation does not address independent significance criteria that involve cumulative impacts, data and science uncertainty, unidentified and unique risks, and precedence-setting impacts. This proposed new approach substitutes one single factor of a multi-factor analysis for the entire required significance assessment without addressing the remaining important factors independently. In the Proposed Rule the NRC provides no reasoning or method for how they verified that this new criterion meets or exceeds the previous use and purpose. If the NRC chooses to finalize this determination, it must provide a strongly supported technical and pragmatic basis that clearly shows how and why this new category is being used in a final rule.

### C. The NRC Fails to Provide a Reasoned Explanation for Excluding Fundamental NEPA Requirements

The NRC thus far has failed to provide an explanation or basis for the exclusion of certain requirements that were included in CEQ's NEPA implementing regulations and that had guided the Commission for decades. Previously, the NRC incorporated and adopted all of CEQ's NEPA regulations into its own NEPA regulations.[129] One of the core tenets set forth in *State Farm* is that "an agency changing its course…is obligated to supply a reasoned analysis for the change."[130] "Reasoned decision making…necessarily requires the agency to acknowledge and provide an

[127] *Id.* at 42,113-114.
[128] *Id.* at 42,095.
[129] 16 C.F.R. § 1.81.
[130] *State Farm*, 463 U.S. at 42 (finding agency acted arbitrarily and capriciously in revoking the requirement that new motor vehicles include passive restraints).

adequate explanation for its departure from established precedent."[131] The NRC has not provided a reasoned explanation for excluding fundamental NEPA requirements, which the NRC had followed for decades as part of the CEQ regulations incorporated by reference at 16 C.F.R. § 1.81.

In the Proposed Rule, the NRC provides no reasoned explanation for certain proposed changes to its NEPA requirements, including the following: redefining effects, removing express direction to analyze cumulative and indirect effects, removing express direction to assess disproportionate effects on communities with environmental justice concerns, omitting express direction to consider climate change impacts, and removing public comment standards. The NRC retains the discretion to keep these analytical requirements and should do so.

**i. The NRC fails to provide a reasoned explanation for removing and excluding the consideration of Cumulative and Indirect Effects, climate change related effects, and effects on communities with environmental justice concerns**

The NRC has up to this point failed to provide a reasoned explanation for excluding core NEPA requirements through a redefinition of the term "effects". The prior CEQ regulations included "direct, indirect, and cumulative effects" in the definition of effects,[132] and clarified that "[e]ffects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, such as disproportionate and adverse effects on communities with environmental justice concerns, whether direct, indirect, or cumulative. Effects also include effects on Tribal resources and climate change-related effects, including the contribution of a proposed action and its alternatives to climate change, and the reasonably foreseeable effects of climate change on the proposed action and its alternatives."[133] The NRC provides no explanation, much less a reasoned or rational one, for excluding "indirect" and "cumulative" from the "effects" definition it now imposes. The inclusion of "indirect" and "cumulative" impacts in the effects definition originated in CEQ's 1978 Regulations, which the NRC incorporated into its NEPA regulations.[134] The Proposed Rule now states: "Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include those effects that the agency has no ability to prevent due to the limits of its regulatory authority, or that would occur regardless of the proposed action, or that would need to be initiated by a third party."[135] This definition of "effects" fails to expressly include cumulative and indirect effects, in violation of NEPA's plain language, which requires federal agencies to

[131] *Dillmon v. NTSB*, 588 F.3d 1085, 1089-90 (D.C. Cir. 2009) (citing *Fox Television Stations*, 566 U.S. at 515.

[132] 40 C.F.R. § 1508.1(i), as amended in 2022 by 87 Fed. Reg. at 23,453, 23,469-70.

[133] 40 C.F.R. § 1508.1(i)(4), as amended in 2024 by 89 Fed. Reg. at 35,442, 35,575.

[134] CEQ has long recognized the need to consider indirect and cumulative effects under NEPA. CEQ recognized in NEPA guidance issued in 1973—less than four years after NEPA was enacted—that indirect or "secondary" effects "may often be even more substantial than the primary effects of the original action itself." Preparation of Environmental Impact Statements: Guidelines, 38 Fed. Reg. 20550, 20553 (Aug. 1, 1973). And even before that, CEQ recognized that the effects of many decisions can be "individually limited but cumulatively considerable." Council on Environmental Quality, Statements on Proposed Federal Actions Affecting the Environment, 36 Fed. Reg. 7,724-29 (Apr. 23, 1971) (The 1971 Guidelines were later revised in 1973 (38 Fed. Reg. 20,550-62 (Aug. 1, 1973)) (codified at 40 C.F.R. § 1502)). More recently, CEQ reaffirmed that "cumulative effects analysis is essential to effectively managing the consequences of human activities on the environment." CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act* (Jan. 1997) [hereinafter Considering Cumulative Effects], https://nepa.gov/reports-publications/considering-cumulative-effects-under-national-environmental-policy-act.

[135] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,105..

consider all "reasonably foreseeable" effects,[136] and to address impacts to future as well as present generations.[137] Notwithstanding the Court's determination in *Seven County* that indirect effects must not be improperly attenuated from the proposed action, this statutory mandate cannot be met without analyzing cumulative and indirect effects. Moreover, since prior to CEQ's promulgation of its 1978 Regulations, courts have consistently affirmed agencies' legal obligation to consider these effects.[138] Therefore, the NRC must, at a minimum, explain why it is excluding the indirect and cumulative impact definitions.

NEPA's statutory mandate also requires federal agencies to consider "disproportionate and adverse effects on communities with environmental justice concerns" and "climate-change related effects," as set forth in the 2024 Rule.[139] Yet the NRC has not provided any explanation, much less a reasoned or rational one, for removing references to environmental justice and climate change in its own NEPA implementing regulations.[140] Consistent with section 102(2)(C) of NEPA, consideration of environmental justice and climate change-related effects has long been part of NEPA analysis. "The impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct."[141] With respect to environmental justice, NEPA makes it the federal government's responsibility to "assure for *all* Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings,"[142] and states "that *each person* should enjoy a healthful environment."[143] Consideration of how a proposed federal action might disproportionately affect *some* Americans more than others is thus a highly relevant consideration under the statute. NEPA's focus on "the quality of the *human* environment,"[144] is also a concern advanced by analyzing the distribution of environmental burdens in the human environment. Courts have also reviewed NEPA analyses to determine if they appropriately considered environmental justice impacts.[145]

Lastly, the NRC's narrow redefinition of what effects should be considered does not follow the *Seven County* decision. In fact, the Supreme Court explicitly recognized that "environmental *effects* of the project at issue may fall within NEPA even if those *effects* might extend outside the geographical territory of the project or might materialize later in time—for example, run-off into a river that flows many miles from the project and affects fish populations

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[136] 42 U.S.C. § 4332(C)(i)-(ii).
[137] 42 U.S.C. §§ 4321, 4331.
[138] *See, e.g.*, *Kleppe*, 427 U.S. at 410 (interpreting NEPA to require consideration of "cumulative or synergistic environmental impact.");*NRDC v. Hodel*, 865 F.2d at 297-98 (stating "NEPA, as interpreted by the courts, and CEQ regulations both require agencies to consider the cumulative impacts of proposed actions," and holding that NEPA required the Secretary of the Interior to consider the cumulative impacts of offshore development in different areas of the Outer Continental Shelf).
[139] 40 C.F.R. § 1508.1(i)(4), as amended in 2024 by final Phase 2 rule.
[140] The NRC proposes to remove a reference to climate change currently in the regulations at 51 C.F.R. § 51.53(c)(3)((ii)(Q).
[141] *Ctr. for Biological Diversity v. Nat'l Highway Transportation Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008); *see also* final Phase 2 rule at 35,452 n.58; *WildEarth Guardians v. U.S. Bureau of Land Mgmt*., 870 F.3d 1222 (10th Cir. 2017) (invalidating an EIS and Record of Decision for coal leases for failing to consider climate change).
[142] 42 U.S.C. § 4331(b)(2) (emphasis added).
[143] *Id*. § 4331(c) (emphasis added).
[144] *Id*. § 4332(c) (emphasis added).
[145] *See, e.g.*, *Mid States Coal. for Progress v. Surface Transp. Bd*., 345 F.3d. 520, 541 (8th Cir. 2003); *Sierra Club v. Fed. Energy Regul. Comm'n.,* 867 F.3d 1357, 1370 (D.C. Cir. 2017).

elsewhere, or emissions that travel downwind and predictably pollute other areas."[146] The Supreme Court also noted that other projects may still be "interrelated and close in time and place to the project at hand" and require analysis under NEPA.[147]

#### *a. The NRC has not Provided a Reasoned Explanation for Curtailing Public Comment During the NEPA Process*

Public involvement by States and our residents is critical to identifying and evaluating public health and environmental issues of local or statewide concern that may result from federal actions. Public participation further provides a critical tool for identifying alternatives that improve a proposed action or reduce its environmental impacts, identifying shortfalls in the agency's analyses, spotting missing issues, and providing additional information that the agency may not have known existed. For these reasons, NEPA prioritizes democratic values by providing a central role for public participation in the environmental review process.[148]

Consistent with the above principles, the NRC's existing NEPA regulations required federal agencies to request comments on draft environmental impact statements.[149] In contrast, the Proposed Rule only requires the NRC to solicit public comments at the notice of intent stage and do not require publication of a Draft EIS at all.[150] This elimination of public participation opportunities vitiates one of the core purposes of an EIS under NEPA, which is to "make available to the public, information of the proposed project's environmental impact and encourage public participation in the development of that information."[151] If the public is not allowed to review and comment on the draft EIS—the NRC's assessment of environmental effects and rationale for its findings—before it is finalized, then the public's ability to engage in the development of information will be so limited as to be essentially non-existent. The NRC provides no reasoned or rational explanation for virtually eliminating the public's ability to engage in the NEPA decision-making process in this manner.

To the extent the NRC seeks to justify this change by citing the need for streamlining environmental reviews under NEPA,[152] the NRC has provided no reasoned or rational explanation for how it has chosen to balance the aims of efficiency and public participation. It does not assess how much time this step added in the past or how much time it anticipates will be saved by removing it. Public participation serves a valuable role and often impacts the contours of the final project through inclusion of additional mitigation measures.[153] Therefore, to comply

[146] *Seven Cnty.*, 605 U.S. at 187 (emphasis in original).
[147] *Id.* at 190.
[148] *Kleppe*, 427 U.S. at 409 (quoting Conference Report on NEPA, 115 Cong. Rec. 40416 (1969) (internal quotations omitted)).
[149] 10 C.F.R. § 51.70.
[150] *See, e.g.,* 7 C.F.R. § 1b.7(b)(1)(viii); 7 C.F.R. § 1b.7(d)(2) (providing that a subcomponent "may" solicit public comment on an EIS, but not requiring it).
[151] *Save Lake Washington v. Frank*, 641 F.2d 1330, 1334 (9th Cir. 1981) (quoting *Trout Unlimited v. Morton*, 509 F.2d 1276, 1287 (9th Cir. 1974)).
[152] Implementation of the National Environmental Policy Act, 91 Fed. Reg. 42,088.
[153] *See, e.g.,* Ashley Stava et al., *Quantifying the substantive influence of public comment on United States federal environmental decisions under NEPA*, 20 Env't Rsch. Letters 074028 (2025), https://iopscience.iop.org/article/10.1088/1748-9326/addee5.

with the APA, the NRC must explain why it is no longer requiring the solicitation of public comment during the preparation of EISs, and how this decision is consistent with the underlying goals and principles of NEPA.

#### ii. NRC bifurcates the collection of environmental information, doubling work running contrary to the stated goal of streamlining NEPA reviews

Because the Proposed Rule removes so many necessary analyses of environmental impacts in the NEPA process, applicants going through the applicant prepared draft environmental documents process will now be required to provide this required analysis separately.[154] The NRC retains the ability to request information from an applicant concerning impacts to threatened and endangered species, marine life, Historic and Cultural properties, air, and water. This information was previously "integrated with the NRC's NEPA procedures."[155] This meant the EIS or EA would include information about impacts also covered by other environmental laws. However, under the NRC's proposed Rule this information would not be included in an applicant-prepared draft EIS. Rather, this information would have to be provided separately so the NRC could fulfill its obligations under other environmental statues. Rather than streamlining the licensing process, the Proposed Rule now creates additional work and the production of two information streams. Provision of statutorily mandated environmental analysis in a NEPA document is a more efficient process.

### D. The NRC Has Not Considered Important Aspects of the Problem

Moreover, the NRC fails to consider multiple important issues in the Proposed Rule. An agency action is "arbitrary and capricious" under the APA where "the agency has…entirely failed to consider an important aspect of the problem [or] offered an explanation for its decision that runs counter to the evidence before the agency."[156] Thus, when an agency amends its regulations, it must demonstrate by reasoned explanation that it has considered the context and intent behind the original regulation.[157] The NRC must address these issues if it wishes to proceed with the rulemaking.

#### i. The NRC has not assessed the potential impacts from increased generation of hazardous waste, radioactive waste, and spent nuclear fuel

The Proposed Rule contains no analysis of potential impacts resulting from increased production of hazardous waste, radioactive waste, and spent nuclear fuel as a result of streamlined environmental analysis leading to the development of more nuclear reactors and consequently more nuclear and hazardous waste. The types of potential hazardous materials that could be generated beyond radioactive waste and spent nuclear fuel are also not identified by the NRC. This makes it impossible to identify what unique concerns may exist. It is reasonably foreseeable that more hazardous waste, radioactive waste and spent nuclear fuel will be produced, yet the NRC ignores the potential impacts in violation of NEPA.

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[154] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,093.
[155] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,093.
[156] *State Farm*, 463 U.S. at 43.
[157] *See NAACP, Jefferson County Branch v. Donovan*, 765 F.2d 1178, 1185 (D.C. Cir. 1985).

The NRC also fails to mention or assess the impact of the lack of long-term nuclear waste storage facilities in the United States. Under the Nuclear Waste Policy Act of 1982 (NWPA), DOE has the responsibility for managing commercial and federal nuclear waste, as well as for planning and implementing a permanent disposal facility.[158] However, the United States does not have, and never has had, a long-term storage facility for nuclear waste.[159] There is only one operating deep geologic repository in the United States for federally generated nuclear waste, the WIPP in New Mexico. This facility is authorized only for the disposal of defense transuranic radioactive waste and is statutorily prohibited from accepting high-level waste or spent nuclear fuel.[160] In the absence of sufficient permanent disposal capacity, any waste generated by new facilities, licensed based on the NRC's proposed streamlined environmental review, would go to interim storage facilities. NRC fails entirely to assess the potential environmental impacts of increased generation of nuclear waste from facilities reviewed pursuant to this proposed action in light of the lack of long-term waste storage. The NRC must assess the impacts of the increased generation of hazardous and radioactive waste.

#### ii. The NRC has not addressed potential impacts to uniquely affected communities

The NRC fails to analyze or direct future projects to look for impacts to communities that could be uniquely affected by expanded development of nuclear power. NRC fails to analyze potential impacts to communities near a potential future reactor site or at any stage of the nuclear fuel chain—each posing its own set of environmental and public health risks. By completely omitting any analysis of this issue, the NRC has ignored an important category of potential environmental impacts. The NRC must assess these impacts if it finalizes the Proposed Rule.

#### iii. The NRC has not assessed the potential for terrorist attacks on reactors

The NRC fails to assess the potential for significant environmental impacts from terrorist, or intentional, attacks on newly approved reactors. Additionally, the NRC fails to assess the presence, or absence, of sufficient emergency response capabilities to respond to these potential attacks. However, NEPA does require the consideration of the environmental impacts of a potential terrorist attack for nuclear installations.[161] This lack of analysis comes nowhere close to an adequate explanation necessary to comply with NEPA.[162] The NRC must assess these impacts in the context of expanded nuclear development under the Proposed Rule.

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[158] 42 U.S.C. § 10155, 10222.

[159] *See* U.S. Government Accountability Office, *Commercial Spent Nuclear Fuel: Congressional Action Needed to Break Impasse and Develop a Permanent Disposal Solution* (Sept. 2021), https://www.gao.gov/products/gao-21-603.

[160] The Waste Isolation Pilot Plant Land Withdrawal Act, P.L. 102-579 (106 Stat. 4777), enacted October 30, 1992, § 12 ("The Secretary shall not transport high-level radioactive waste or spent nuclear fuel to WIPP or emplace or dispose of such waste or fuel at WIPP.").

[161] *San Luis Obispo Mothers for Peace v. U.S. Nuclear Reg. Comm'n*, 449 F.3d 1016, 1035 (9th Cir. 2006) (reversing Nuclear Regulatory Commission's "determination that NEPA does not require a consideration of the environmental impact of terrorist attacks"); *Cf. Brodsky v. U.S. Nuclear Reg. Comm'n*, 650 Fed. Appx. 804, 807 (2d Cir. 2016) (Summary Order) (holding that "NRC did consider the risks from terrorism in determining that its exemption decision would have no significant environmental impact").

[162] *See Sierra Club v. Bosworth*, 510 F.3d 1016, 1026 (9th Cir. 2007) (quoting *Alaska Ctr. for the Env't v. U.S. Forest Serv.*, 189 F.3d 851, 859.(9th Cir. 1999).).

### iv. The NRC has not considered transportation impacts

The NRC fails to consider the impacts of increased transportation associated with the increased development of nuclear power. The NRC includes no discussion of the quantity and frequency of fuel transportation through populated areas and thus has no analysis of the potential impacts from this transportation. The NRC similarly fails to analyze the cumulative impacts of repeated transport of necessary fuels. The NRC must assess these impacts.

### v. The NRC has not considered the cumulative impacts from other regulatory changes

The NRC is currently undertaking a "wholesale revision" of its regulations[163] which includes multiple recent, pending, and forthcoming regulatory changes, whose interactions the NRC has not yet fully analyzed or explained, for example:

- The Sunset Rule, 91 Fed. Reg. 553 (Jan. 8, 2026) (direct final rule);
- Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors, 91 Fed. Reg. 15,696 (Mar. 30, 2026);
- Categorical Exclusions From Environmental Review, 91 Fed. Reg. 15,519 (Mar. 30, 2026) (final rule, effective Apr. 29, 2026);
- *M*odernizing Requirements Relating to the Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material, 91 Fed. Reg. 17,893 (Apr. 9, 2026) (proposed rule);
- Licensing Requirements for Microreactors and Other Reactors with Comparable Risk Profiles, 91 Fed. Reg. 23, 628 (May 1, 2026) (proposed rule)[164];
- Implementation of the National Environmental Policy Act, 91 Fed. Reg. 42,086 (July 7, 2026) (proposed rule);
- Modernizing Reactor Licensing, Safety Oversight, and Siting Practices, 91 Fed. Reg. 44,560 (July 16, 2026);
- Reforming and Modernizing the NRC's Radiation Protection Framework, 91 Fed. Reg. 43,456 (July 15, 2026) (proposed rule);
- *Planned Rulemaking Activities – Rule: Modernizing Materials Licensing*[165] (stating that this planned rulemaking would amend numerous sections, subparts, and appendices of Title 10, Chapter 1 of the Code of Federal Regulations);
- *Planned Rulemaking Activities – Rule: In Situ Recovery Monitoring and Decommissioning Timelines*[166] (stating that "[t]his rulemaking would amend the NRC's regulations to codify risk-informed groundwater protection standards for ISR facilities and reduce post-restoration monitoring, and risk-informed decommissioning timeliness regulations and increase licensing flexibility to allow site-specific extensions for both reactors and materials facilities");

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[163] *See* https://www.nrc.gov/about-nrc/governing-laws/advance-act/wholesale-revision-regs.

[164] A comment letter from the Offices of the Attorneys General of New Mexico, California, Delaware, Illinois, Maryland, Massachusetts, Oregon, Vermont, Washington, and the District of Columbia on this rulemaking are submitted with this comment letter.

[165] https://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/active/ruledetails?id=2244.

[166] https://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/active/ruledetails?id=2248.

- *Planned Rulemaking Activities – Rule: Modernizing Security Requirements*[167] (same); and
- *Planned Rulemaking Activities – Rule: Exemptions from Materials Licensing*[168] (planned rulemaking which "aims to modernize the NRC's Schedule B exempt quantity licensing thresholds and the Department of Energy (DOE) exemptions for material use").

The States are particularly concerned that the NRC is attempting to establish generic environmental conclusions at the same time that it is materially revising the regulatory requirements and technical assumptions underlying those conclusions. Given the sheer volume and scope of the NRC's regulatory changes, the NRC must consider the impact of these overlapping and interrelated changes.

The Department of Energy has undertaken several regulatory changes in the past year as well.[169] The NRC does not assess at all how these various regulatory changes interact with and build upon each other to potentially create significant environmental effects.

### E. The NRC Must Consider Reliance Interests

The NRC does not consider any reliance interests in the Proposed Rule. Under the APA, in changing course, an agency must "assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns."[170] When an agency's "prior policy has engendered serious reliance interests that must be taken into account," it must "provide a more detailed justification [for its change in policy] than what would suffice for a new policy created on a blank slate."[171] A "summary discussion" is insufficient where decades of reliance on an agency's previous position exists.[172] An "[u]nexplained inconsistency" in agency policy is "a reason for holding an interpretation to be an arbitrary and capricious change from agency practice."[173]

CEQ may have rescinded its regulations, but the NRC has the discretion to retain and incorporate those procedures and requirements into its own regulations. NRC should exercise that discretion here and retain the regulatory requirements that have existed for nearly fifty years because the public and the States have significant reliance interests in the NRC's existing regulations. CEQ's regulations have been in place as legislative rules since 1978, and had been relied on by States, industry, and the public. At the state level, many States drafted their own state or local environmental review laws similar in purpose to NEPA in reliance on CEQ's NEPA implementing regulations providing clarity as to the content of federal environmental reviews. The States conduct environmental reviews at the state level in coordination with federal agencies' environmental reviews under NEPA. With the repeal of CEQ's NEPA implementing regulations, and the revision of the NRC's NEPA regulations, States will need to reassess not

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167 https://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/active/ruledetails?id=2242.
168 https://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/active/ruledetails?id=2251.
169 *See, e.g.* Notice of New Categorical Exclusion for Advanced Nuclear Reactors, and Request for Comment, 91 Fed. Reg. 4,550 (Feb. 2, 2026).
170 *Dep't of Homeland Security v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1914-15 (2020).
171 *Fox Television Stations*, 556 U.S. at 515.
172 *Encino Motorcars*, 579 U.S. at 222 (finding reliance by industry on an agency position in place since 1978 required more than a summary discussion of the reasoning for the change).
173 *Encino Motorcars*, 579 U.S. at 222 (quoting *Nat'l Cable & Telecom. Assn v Brand X,* 125 S.Ct. 2688 (2005)).

only their own state environmental law processes, but also the procedures applicable to and content of individual project environmental reviews to ensure they meet the statutory goals and requirements of state law. The repeal of CEQ's regulations and subsequent revision of the NRC's NEPA regulations will "necessitate systemic, significant changes" for all who interact with NEPA.[174]

Considering this reliance on longstanding CEQ's and the NRC's NEPA regulations, the NRC's lack of acknowledgment, let alone analysis, of reliance interests is wrong and renders its Proposed Rule arbitrary and capricious.

The States' and the public's reliance interests in stable and well-established NEPA regulations should not be ignored. The States rely on NEPA regulations to guide the uniform and adequate review of projects. Without comprehensive NEPA review by federal agencies, the States will be required to expend costs and resources to fill the information vacuum left by the NRCs inadequate NEPA review.[175] For instance, in Washington the Washington State Energy Facility Site Evaluation Council (EFSEC) is responsible for site evaluation, permitting, and regulating a variety of energy facilities, including the types of nuclear reactors that would be subject to these Nuclear Regulatory Commission (NRC) NEPA rules as part of the NRC licensing process. EFSEC relies on the NRC as a partner to provide subject matter expertise on a variety of environmental resources to ensure that effective mitigation can be developed for facilities that both agencies regulate. As part of this relationship, EFSEC is an agency that has traditionally looked to, and adopted, NRC NEPA documents as a valuable source of environmental review for proposed projects. If the NRC adopts the Proposed Rule, the quality of the NRC's NEPA documents may no longer meet Washington State law requirements, forcing EFSEC to conduct its own analysis.

The NRC's revisions of its NEPA regulations would disrupt environmental reviews in other states across the country, where the States already have significant resources devoted to NEPA implementation. It will also require the States to invest more resources in environmental review processes because the staff assigned in each State must familiarize themselves with the NRC's new regulations, determine what additional information is necessary to meet state law requirements, and then conduct additional analysis. This could lead to significant permitting delays as states take on this larger role without the benefit of NRC's expertise in the evaluation of environmental impacts of nuclear power facilities. The NRC's failure to consider these reliance interests would render the Proposed Rule arbitrary and capricious. The NRC must consider these reliance interests in a final rule.

## IV. The Proposed Rule Violates Statutory Notice and Public Participation Requirements

The Proposed Rule gives insufficient notice to the public given its broad scope: it contemplates significant changes to the NRC's environmental review process and the deployment of several new categorical exclusions that will completely eliminate the need for environmental review for proposed actions. Not only that, but it comes in the middle of sweeping

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[174] *Encino Motorcars*, 579 U.S. at 222.

[175] *See, e.g., Texas v. United States*, 40 F.4th 205, 227-28 (5th Cir. 2022) (finding the Department of Homeland Security did not adequately consider relevant costs to the plaintiff States or their reliance interests in the pre-existing enforcement policy).

changes to nuclear regulations from the NRC, the DOE and the DOD. These changes are ongoing and unprecedented. The Attorneys General have not had time to understand, let alone address, the many interactions and impacts of the changing nuclear regulatory landscape in general. Nor does it appear from the Proposed Rule and draft Regulatory Analysis that the NRC has a better grasp of the full impact of all these interrelated regulatory changes: the draft Regulatory Analysis includes no cumulative effects of regulation (CER) analysis as it relates to the Attorneys General for Part 51, let alone one that analyzes the comprehensive impact of the Risk-Informed Technology Inclusive Regulatory Framework, the Byproduct Materials Rule, the DOE/DOD Previous Authorization Rule, the NRC Sunset Rule, the DOE Zero-Based Regulation Rule, the DOE Advanced Nuclear Reactor Categorical Exclusion direct final rule, and the NRC Microreactors Rule.

The NRC has provided a webpage listing the regulatory changes that have come and those that are still in store, but this list, and the various rulemaking notices associated with it, lack any analysis of the ways in which these rulemakings interact with and affect each other, or indeed, how they affect the forty Agreement States, states that have entered into agreements with the NRC that give them the authority to license and inspect byproduct, source, or special nuclear materials used or possessed within their borders, and other non-industry stakeholders.[176]

The impacts from the changes to environmental review of nuclear power that Part 51 will wreak, standing by itself, merits far more consideration time than forty-five days. But taken in the context of all the other changes, the Proposed Rule presents a significant burden to the Attorneys General in terms of regulatory analysis. The Attorneys General also have to assess whether conforming changes to state rules and regulations are necessary. The NRC Sunset Rule and the DOE Zero-Based Regulation Rule will introduce complexity and call into question the validity of numerous State Agreement programs. To ask Agreement States to comment on these changes—which each constitute major federal actions—in such a short period of time is inconsistent with the APA and NEPA.

On August 12, 2026, Illinois and Massachusetts requested that the NRC extend the comment period from forty-five days to ninety days.[177] Illinois and Massachusetts pointed out then the significant burden and volume of work necessary to review the NRC's Proposed Rule and provide meaningful input from all State stakeholders. Illinois and Massachusetts were not alone in this opinion. Several commenters requested an extension of the comment period. However, the NRC denied these requests without providing any legal reason why they were "unable" to grant the requests.[178]

### A. APA Notice Concerns

Under the APA, a notice of proposed rulemaking must describe "the terms or substance of the proposed rule or a description of the subjects and issues involved."[179] A rule is arbitrary

[176] NRC, *Wholesale Revision of Regulations Under Executive Order 14300*, https://www.nrc.gov/about-nrc/governing-laws/advance-act/wholesale-revision-regs.
[177] Comment on FR Doc # 2026-13687, NRC-2025-0478-0001, from Offices of the Attorneys General of Illinois and Massachusetts, Comment # NRC-2025-0478-0028.
[178] *See* Email from Kimyata Savoy (NRC) to Tanya Ridgle, Chairperson, and Lisa Bruedigan, Executive Director (CRCPD), August 8, 2026, re: Request for Ext of the Comment Period for the Implementation of the National Environmental Policy Act (ML26218A109) Comment # NRC-2025-0478-0024.
[179] 5 U.S.C. § 553(b)(3).

and capricious if it fails to give interested parties adequate notice of the agency's proposed course and a fair opportunity to comment.[180] "In cases involving the repeal of regulations, courts have considered the length of the comment period utilized in the prior rulemaking process as…well as the number of comments received during that time-period" in determining whether an agency has afforded sufficient time for comment. *California v. U.S. Dep't of Interior*, 381 F. Supp. 3d 1153, 1177 (N.D. Cal. 2019) (citing *North Carolina Growers' Ass'n*, 702 F.3d at 770).

The Proposed Rule fails the APA's notice requirements because it provides only a forty-five day comment period for a rulemaking of unprecedented scope at a time when Agreement States are simultaneously processing at least six other major nuclear regulatory changes.

The NRC has determined that this rule is significant and that Executive Order 12866 applies.[181] Therefore, the NRC is required to abide by the terms of that executive order, which states that "each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days. Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking."[182]

### B. The Proposed Rule Gives Insufficient Notice Under NEPA

Public involvement by States, Local Governments, and our residents is critical to identifying and evaluating public health and environmental issues of local or statewide concern that may result from the NRC's licensing of reactors based on an incomplete environmental review. Public participation provides a critical tool for identifying shortfalls in the agency's analyses, spotting missing issues, and providing additional information that the agency may not have known existed. For these reasons, NEPA prioritizes democratic values by providing a central role for public participation in the environmental review process. [183] The Proposed Rule is a major federal action, and is thus subject to NEPA's mandate.

The NRC's process for proposing to revise Part 51 fails to provide the level of public participation required by NEPA's forty-five-day comment period is not sufficient to solicit meaningful public comment on the proposal, particularly given the many new categorical exclusions proposed. Forty-five days is an insufficient amount of time for public commenters to collect this information and provide it to the NRC.

Additionally, the NRC proposes this rulemaking along with rulemakings such as the DOE's categorical exclusion for advanced nuclear reactors, which can be adopted by the NRC pursuant to the DOE/DOD Previous Authorization Rule. This makes the scope of impacts from the proposed rule potentially very broad. A forty-five-day comment period is insufficient time for the public to submit meaningful and comprehensive comments on the potential cumulative impacts of these regulatory changes, especially in light of the lack of analysis on these impacts from the NRC.

Because the Proposed Rule provides for several new categorical exclusions for various NRC actions, those future actions would go without a public NEPA review; therefore, it is only

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[180] *Int'l Union v. MSHA*, 626 F.3d 84, 94-95 (D.C. Cir. 2010).
[181] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,099.
[182] Exec. Order No. 12866 at Sec. 6(a), 58 Fed. Reg. 51,735 (Oct. 4, 1993).
[183] *See, e.g.,* 42 U.S.C. § 4332(2)(C).

during this comment period that a commenter can provide information to NRC prior to the Commission making a decision.

A minimum of ninety days should have been provided for the public to comment on the significant legal and factual issues implicated by the Proposed Rule. Without this additional time, the public cannot meaningfully or comprehensively comment on the potential cumulative impacts of the Proposed Rule.

## V. The Proposed Rule Fails to Analyze Costs, Risks, and Economic Burdens to the States, Tribes, and Local Governments.

The NRC prepares regulatory analyses consistent with Office of Management and Budget (OMB) Circular A-4, "Regulatory Analysis," document.[184] OMB Circular A-4 provides that the analysis should be "transparent and consistent.[185] However, the NRC does not do this in the Proposed Rule. If the NRC proceeds with the rulemaking it must conduct this analysis in the final rule.

The RA here notes costs and benefits to industry, the NRC, and other federal agencies. RA at 6-7. But the RA does not explain what kinds of costs will be incurred by States, tribes, and other local governments as a result of the streamlined approval of more nuclear reactors.

The RA also notes that there could be a loss of public confidence in "the safety and security of the nuclear sector" if the NRC finalizes the Proposed Rule. RA at 15. However, the NRC never addresses this factor in the Proposed Rule.

The RA recognizes that the cost savings to the NRC "would be partially offset by a transfer of burden to Other Federal Agencies." RA at 9. The NRC anticipates this may be a problem, but, rather than addressing it in the Proposed Rule, it instead seeks comment on the whether there are "unintended consequences or increases in regulatory uncertainty from the Proposed Rule, including the need to do NEPA reviews at other agencies."[186] This indicates that any cost savings realized by the NRC may result in costs being incurred elsewhere.

The NRC fails to analyze how the Proposed Rule could actually reduce regulatory certainty rather than increase it. Eliminating or narrowing NRC environmental review does not ensure that the underlying environmental issues disappear. Instead, those issues may be addressed through separate Federal, State, or Tribal processes, potentially involving different analytical approaches, additional information requests, and additional permitting or consultation requirements. The proposed approach also risks producing a patchwork of State environmental reviews. Where the NRC previously developed a common federal environmental analysis that could inform State decision-making, States may instead be required to develop their own technical analyses and methodologies. This could lead to inconsistent treatment of similar facilities across jurisdictions, increase burdens on State agencies, and reduce rather than increase predictability for applicants. The result may be greater uncertainty for applicants and affected communities, not greater certainty.

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[184] *See* Notice, Regulatory Analysis Guidelines; Regulatory Analysis Technical Evaluation Handbook; Withdrawal and Resolution of Public Comments, 91 Fed. Reg. 45,833 (July 21, 2026) (withdrawing the NRC's own guidance on regulatory analyses and stating it will conduct regulatory analysis consistent with OMB Circular A-4.)

[185] OMB Circular A-4 at p. 27.

[186] Implementation of the National Environmental Policy Act, 91 Fed. Reg. at 42,097.

The NRC should also evaluate the regulatory burden created when its multiple concurrent rulemakings interact. The Commission's analysis should also account for the cumulative effects of its numerous concurrent rulemakings. Applicants, States, Tribal Nations, and members of the public have limited resources to identify interactions among these proceedings and determine whether changes in one regulatory framework affect assumptions or requirements established in another. The Commission should not assume that streamlining one proceeding reduces overall regulatory burden where other concurrent rulemakings may create additional analytical, implementation, or compliance requirements.

The NRC needs to provide a robust cost benefit analysis to address these and other concerns.

## CONCLUSION

The Attorneys General of Washington, California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Mexico, New York, Oregon, and Vermont and the Harris County Attorney submit these comments as the chief legal officers of Agreement States that regulate radioactive materials licensees across the country. Our States have facilities and workers that will be directly affected by the deployment of nuclear reactors under the environmental review framework this proposed rule would establish. We insist that the NRC discharge the statutory duty Congress gave it: to ensure that the utilization of special nuclear material will provide adequate protection to the health and safety of the public before, not after, reactors are licensed and deployed.

The proposed rule does all of this against a backdrop of at least seven other concurrent or pending major nuclear regulatory changes—the Part 53 final rule, the Byproduct Materials rule, the DOE/DOD Previous Authorization rule, the NRC Sunset rule, the DOE Zero-Based Regulating rule, and the DOE Advanced Nuclear Reactor Categorical Exclusion—none of which the Proposed Rule analyzes for cumulative effect. Agreement States cannot assess compatibility obligations, emergency planning responsibilities, or byproduct material licensing interfaces without knowing how these rules interact.

In light of the above, the Attorneys General respectfully request that the NRC withdraw the Proposed Rule. If the NRC proceeds with this rulemaking, however, it must revise the Proposed Rule to meet its statutory obligations, including its obligations to protect the environment and the public and provide sufficient analysis and justification of the changes it wishes to make.

The Attorneys General stand ready to work constructively with the Commission to develop an environmental review framework that promotes innovation and energy security while honoring the Commission's statutory obligation to protect the public. That framework does not yet exist. Until it does, the Proposed Rule should not be finalized.

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