

**COMMENTS OF ATTORNEYS GENERAL OF WASHINGTON, CALIFORNIA,
ILLINOIS, MARYLAND, MASSACHUSETTS, MINNESOTA, NEW MEXICO, NEW
YORK, NEVADA, OREGON, VERMONT, AND THE DISTRICT OF COLUMBIA**

March 4, 2026

Via www.regulations.gov and Electronic Mail

Carrie Abravanel, Acting Director
Office of NEPA Policy and Compliance
Department of Energy
askNEPA@hq.doe.gov

**RE: Notice of New Categorical Exclusion for Advanced Nuclear Reactors, and Request
for Comment, 91 Fed. Reg. 4,550 (Feb. 2, 2026)
Docket ID No. DOE-HQ-2025-0405**

Dear Ms. Abravanel:

The Offices of the Attorneys General of Washington, California, Illinois, Maryland, Massachusetts, Minnesota, New Mexico, New York, Nevada, Oregon, Vermont, and the District of Columbia (OAGs and Local Governments) submit these comments on the Department of Energy's (Department or DOE)'s Notice of New Categorical Exclusion for Advanced Nuclear Reactors, and Request for Comment, 91 Fed. Reg. 4,550 (Feb. 2, 2026) (the Notice), which the Department published in the Federal Register on February 2, 2026.¹ On February 24, 2026, the Attorney General of Washington submitted a written request to the Department for a 30-day extension of the March 4, 2026 deadline for public comments, in light of the novel issues raised by the Notice.² Nuclear power generation is both an important part of many states' power generation portfolios and a technology with a long history of environmental impacts. In order to support the informed and transparent development of nuclear power, DOE must meet its obligations for analysis of environmental impacts under the National Environmental Policy Act (NEPA) in promulgating a categorical exclusion that would exempt advanced nuclear reactors from environmental review.

DOE's Notice stated that the Department has adopted a new categorical exclusion (CE) to exempt the development of advanced nuclear reactors from environmental review under NEPA.³ The Notice and the Written Record of Support (Supporting Documentation) do not provide the meaningful environmental analysis that NEPA and DOE regulations require to find that the development of advanced nuclear reactors "do not normally have a significant effect on the human environment."⁴ The Notice and Supporting Documentation fail to fully address multiple potential impacts and fail to address certain impacts at all, including the cumulative

¹Notice of New Categorical Exclusion for Advanced Nuclear Reactors, and Request for Comment, 91 Fed. Reg. 4,550 (Feb. 2, 2026).

²Letter from Office of the Attorney General of Washington to Carrie Abravanel re: Notice of New Categorical Exclusion for Advanced Nuclear Reactors, and Request for Comment, (February 24, 2026), <https://www.regulations.gov/comment/DOE-HQ-2025-0405-0129>.

³ 91 Fed. Reg. at 4,550.

⁴42 U.S.C. § 4336(e)(1), 10 C.F.R. § 1021.102(a).

impact of this expansion of nuclear power generation. DOE must provide additional analysis to assess whether there could be significant impacts from an advanced nuclear reactor developed under this CE. DOE also exceeds its statutory authority in proposing to apply the CE to “power production and industrial applications” because authority over those types of facilities rests with the Nuclear Regulatory Commission, not DOE.⁵ Finally, DOE’s rulemaking process is unlawful and arbitrary and capricious by reaching a predetermined outcome before receiving and reviewing public comments.

I. Background

The development of nuclear technologies and the use of nuclear power have a long history in the United States. Congress first addressed the development of nuclear energy with the Atomic Energy Act of 1946, Pub. L. 79–585. Congress has updated the Atomic Energy Act and passed several other laws to address nuclear power as the country’s needs have changed and technologies have developed. Both the Department of Energy and the Nuclear Regulatory Commission have a role in ensuring the safe and effective use of nuclear power in the United States.

a. Statutory Authority

The Energy Reorganization Act of 1974 (as amended) provides that the Nuclear Regulatory Commission (NRC or Commission) has licensing and regulatory authority for commercial nuclear reactors, “production facilities for industrial or commercial purposes” and for reactors operated “for the purpose[s] of demonstrating the suitability for commercial application of such a reactor.”⁶ In contrast, the NRC does not have regulatory and licensing authority for “[a]ny facility under a contract with and for the account of the Department of Energy ... that is utilized for research, development, demonstration, testing, or analysis purposes.”⁷ That authority resides in the Department of Energy. The Department of Energy Organization Act provides that DOE has authority to enter transactions to carry out research, development and demonstration projects.⁸

In sum, this statutory structure means that the NRC has regulatory and licensing control for commercial or industrial reactors, including reactors operated for demonstrating commercial viability, while DOE has authority over research and development reactors on DOE property or under DOE’s control.

The term advanced nuclear reactor is defined by statute to cover several types of reactors:

⁵91 Fed. Reg. at 4,552.

⁶42 U.S.C. § 2133(a) (“The Commission is authorized to issue licenses to persons applying therefor to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of an agreement for cooperation arranged pursuant to section 2153 of this title, utilization or production facilities for industrial or commercial purposes.”); 42 U.S.C. § 5842(2) (the Nuclear Regulatory Commission shall ... have licensing and related regulatory authority ... as to ... Other demonstration nuclear reactors--...--when operated as part of the power generation facilities of an electric utility system, or when operated in any other manner for the purpose of demonstrating the suitability for commercial application of such a reactor.”)

⁷42 U.S.C. § 5842(5).

⁸42 U.S.C. § 7256(g)(1)-(2).

“The term “advanced nuclear reactor” means— (A) a nuclear fission reactor, including a prototype plant (as defined in sections 50.2 and 52.1 of title 10, Code of Federal Regulations (or successor regulations)), with significant improvements compared to reactors operating on December 27, 2020 , including improvements such as— (i) additional inherent safety features; (ii) lower waste yields; (iii) improved fuel and material performance; (iv) increased tolerance to loss of fuel cooling; (v) enhanced reliability or improved resilience; (vi) increased proliferation resistance; (vii) increased thermal efficiency; (viii) reduced consumption of cooling water and other environmental impacts; (ix) the ability to integrate into electric applications and nonelectric applications; (x) modular sizes to allow for deployment that corresponds with the demand for electricity or process heat; and (xi) operational flexibility to respond to changes in demand for electricity or process heat and to complement integration with intermittent renewable energy or energy storage; (B) a fusion reactor; and (C) a radioisotope power system that utilizes heat from radioactive decay to generate energy.”⁹

b. DOE’s stated authority for promulgation of the CE

DOE states it promulgated this CE pursuant to Executive Order 14299, *Deploying Advanced Nuclear Reactor Technologies for National Security*.¹⁰ This Executive Order provides:

The Secretary of Defense and the Secretary of Energy shall consult with the Chairman of the Council on Environmental Quality regarding: (a) applying the Department of Defense’s and the Department of Energy’s established categorical exclusions under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., for the construction of advanced nuclear reactor technologies on certain Federal sites within the United States and for any other appropriate measures for the purposes of implementing this order; (b) adopting other executive departments and agencies’ (agencies) categorical exclusions for the same purposes; (c) establishing new categorical exclusions for the same purposes; (d) seeking to utilize other agencies’ emergency and other permitting procedures for the siting and construction of advanced nuclear reactor technologies; and (e) developing alternative arrangements for compliance with NEPA in emergency situations as appropriate for the same purposes.

Additionally, DOE begins the Notice by quoting from EO 14301 *Reforming Nuclear Reactor Testing at the Department of Energy* (May 23, 2025), which directs the Secretary of Energy to create “categorical exclusions as appropriate for reactors within certain parameters.”¹¹ EO 14301 also finds “that design, construction, operation, and disposition of [advanced nuclear] reactors under the auspices of the Department—and not to produce commercial electric power—would be for research purposes rather than ‘for the purpose of demonstrating the suitability for commercial application of ...a reactor’ within the meaning of 41 U.S.C § 5842”.¹² EO 14301

⁹42 U.S.C. § 16271(b)(1).

¹⁰91 Fed. Reg. at 4,550, Supporting Documentation at 1; Exec. Order No. 14299, 90 Fed. Reg. 22,591 (May 23, 2025).

¹¹ Exec. Order No. 14301 at Sec. 6(b), 90 Fed. Reg. 22,591 (May 23, 2025).

¹² Exec. Order No. 14301 at Sec. 3, 90 Fed. Reg. 22,591.

also directs the Secretary of Energy to streamline environmental reviews and eliminate or expedite environmental reviews, including by developing CEs.¹³

c. The Advanced Nuclear Reactor Categorical Exclusion

DOE promulgated a new CE which the Notice stated was immediately effective on February 2, 2026.¹⁴ DOE's CE B5.26 exempts from NEPA review the:

Authorization, siting, construction, operation, reauthorization, and decommissioning of advanced nuclear reactors, provided DOE determines that:

(1) the project's attributes, including potential fission product inventory, fuel type, reactor design, and operational plans, reduce sufficiently the risk of adverse offsite consequences from the release of radioactive or hazardous materials, and

(2) the project demonstrates that any hazardous waste, radioactive waste, or spent nuclear fuel generated by the project can be managed in accordance with applicable requirements.

For the purposes of this category, a project may include multiple reactors within a nuclear facility.¹⁵

DOE promulgated this CE to its NEPA implementing procedures maintained outside of the Code of Federal Regulations.¹⁶ DOE had previously promulgated CEs as part of a rulemaking process to be published in the Code of Federal Regulations.¹⁷ DOE's process to promulgate this CE included no public participation in advance of the effective date in the Notice, but rather DOE stated the CE was effective on the same day it was initially published.¹⁸ DOE further notes that while previous advanced reactor projects were "for solely experimental, testing and demonstration purposes," reactors developed for "power production and industrial applications are [] appropriate for this categorical exclusion."¹⁹

II. Nuclear Energy in the United States

Nuclear energy is an important part of the energy mix in many 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.²⁰ The Washington State Legislature allocated \$25 million in 2025 to advance the development of small modular reactors for power

¹³Exec. Order No. 14301 at Sec. 6, 90 Fed. Reg. 22,591.

¹⁴91 Fed. Reg. 4,552.

¹⁵*Id.*

¹⁶91 Fed. Reg. at 4,551.

¹⁷*See, eg.* 10 C.F.R. § 1021 Appendix B.

¹⁸91 Fed. Reg. at 4,552("[T]he new categorical exclusion is effective on February 2, 2026.")

¹⁹*Id.*

²⁰Energy 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).

generation.²¹ California similarly hosts a nuclear power plant that provides approximately nine percent of its current in-state generation.²² New York State is home to four operating civilian commercial nuclear power reactors at three sites which provide approximately 20 percent of the State’s electricity. In June 2025, Governor Kathy Hochul directed the New York State Power Authority (NYPA) to develop and construct new advanced nuclear energy capacity of no less than one gigawatt of electricity, which NYPA is pursuing.²³ On January 13, 2026, Governor Hochul directed State agencies to establish a clear pathway towards a Nuclear Reliability Backbone of 8.4 gigawatts of nuclear generation for New York’s grid, comprising 3.4 GW of existing nuclear capacity, 1 GW of advanced nuclear development currently underway by the New York Power Authority (NYPA), and a further incremental 4 GW announced by the Governor in her State of the State address. The New York Power Authority has recently published a Request for Information (RFI) “to solicit input on actionable project concepts and business models in developing advanced nuclear projects in Upstate New York.”²⁴

Massachusetts is not currently host to any nuclear power plants, and state law requires a majority vote by ballot initiative, as well as legislation by the General Court, for the approval of any new nuclear power plant.²⁵ Nevertheless, in planning for potential fallout risks, the Commission requires nuclear power reactors to prepare Emergency Plans that consider the impacts of radiological exposure in emergency planning zones (EPZs).²⁶ Radiological ingestion pathway EPZs consist of an area approximately fifty (50) miles in radius.²⁷ Massachusetts is America’s seventh-smallest state by land area, bordered by five different states, and nearly the entirety of Massachusetts’ population lives within fifty (50) miles of the state border. As such, Massachusetts has a strong interest in commenting on this CE to protect its residents from the potential impacts of a radiological exposure from an emergency at a nuclear power plant just across its borders.

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, New Mexico hosts the Waste Isolation Pilot Plan (“WIPP”), where transuranic waste is interred, as well as two National Laboratories which conduct significant nuclear weapons and energy research.²⁸ Any categorical exclusion touching on nuclear energy would likely accelerate the development of such technology in New Mexico. Further, New

²¹Washington State Institute for Public Policy, *State Policies Supporting the Implementation of Small Modular Reactor* (Dec. 2025) at 19, available at https://www.wsipp.wa.gov/ReportFile/1842/Wsipp_State-Policies-Supporting-the-Implementation-of-Small-Modular-Reactors_Report.pdf.

²²California Energy Commission, *Diablo Canyon Power Plant Extension – CEC Analysis of Need to Support Reliability*, (March 1, 2023), <https://www.energy.ca.gov/publications>.

²³See N.Y. Power Auth., RFQ Q25-7713KK: Developer/Partners to support NYPA’s Advanced Nuclear Power Project, <https://rfp.nypa.gov/#/bid-details?rfqId=6372> (last visited March 3, 2026) (Request for Information “to solicit input on actionable project concepts and business models in developing advanced nuclear projects in Upstate New York”).

²⁴New York Power Authority, *Request for Information (RFI)* (Oct. 13, 2025), <https://rfp.nypa.gov/#/bid-details?rfqId=6372>.

²⁵Mass. Gen. Laws Ann. ch. 164 App., § 3-3.

²⁶10 C.F.R. § 50.47.

²⁷*Id.* at § 50.47(c)(2).

²⁸Alicia Inez Guzmán, *New Mexico Rebukes Federal Agency Over Nuclear Waste at Los Alamos*, N.Y. TIMES (Feb. 12, 2026), <https://www.nytimes.com/2026/02/11/us/new-mexico-los-alamos-nuclear-waste-fines.html>.

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 exponential increase in deployment of nuclear reactors that this rule would incentivize 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.²⁹ New Mexico has also become the chosen state for several large data center projects, which have also proposed the possibility of using nuclear reactors.³⁰ 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 categorical exclusions for the development of advanced nuclear reactors 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.

Like New Mexico, Nevada does not generate nuclear power. However, Nevada oversees a mixed waste disposal facility, at the Nevada National Security Site, for waste generated or stored within the Department of Energy’s nationwide complex. In addition, even though the project has been nearly universally opposed by the State of Nevada, Yucca Mountain, Nevada remains the only statutorily-designated high-level nuclear waste and spent nuclear fuel repository site in the nation.

At the same time, 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.³¹ Now, the site hosts 14,000 workers cleaning up the hazardous waste left behind.³² 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.³³ Similarly, Oregon still hosts the spent nuclear fuel from the long-decommissioned and demolished Trojan Nuclear Plant, a result of the lack of a permanent

²⁹See, e.g., Natura Resources, *Natura Resources Collaborates with NGL Energy Partners to Enable Large-Scale Produced Water Treatment with Small Modular Nuclear Reactors in the Permian Basin* (Feb. 3, 2026), <https://www.naturaresources.com/natura-resources-collaborates-with-ngl-energy-partners-to-enable-large-scale-produced-water-treatment-with-small-modular-nuclear-reactors-in-the-permian-basin>.

³⁰See, e.g., Power, *Nuclear, Natural Gas Power Generation Planned for Massive New Mexico Data Center Site* (Nov. 7, 2025), <https://www.powermag.com/nuclear-natural-gas-power-generation-planned-for-massive-new-mexico-data-center-site/>.

³¹U.S. Dept. of Energy, *The Hanford Site*, <https://www.hanford.gov/page.cfm/AboutHanfordCleanup> (last visited March 3, 2026).

³²*Id.*

³³SONGS Community, *Decommissioning a Nuclear Power Plant*, Frequently Asked Questions, <https://www.songscommunity.com/decomm-digest/decommissioning-a-nuclear-power-plant-frequently-asked-questions> (last visited March 3, 2026).

national nuclear waste disposal location.³⁴ Additionally, while Oregon functionally bans nuclear power plants at this time, the state legislature has recently begun conversations around nuclear power and its potential value in meeting Oregon's future power needs. DOE's categorical exclusion proposal threatens to undermine public trust in federal nuclear safety responsibilities, and will significantly challenge the state's ability to navigate a conversation around nuclear power in Oregon.

While advanced nuclear reactors may build on decades of improved safety advancements, the fundamental nature of nuclear technology involves the risk of environmental impacts. And the technologies involved in advanced nuclear reactors pose new and different risks when compared to the earlier generations of reactors built in the United States.

III. The National Environmental Policy Act

NEPA 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. As the Supreme Court has explained, Congress intended NEPA's "action-forcing procedures" to help "[e]nsure that the policies [of NEPA] are implemented."³⁵

The OAGs and Local Governments have a strong interest in robust NEPA compliance and the significant opportunities under NEPA for public participation in order to protect their residents, property, and natural resources from ill-informed decision making at the federal levels. The OAGs and Local Governments and our residents are injured by the effects of environmental degradation resulting from ill-informed agency actions. The States 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.³⁶

IV. Promulgation of CE B5.26 Violates the Administrative Procedure Act and the National Environmental Policy Act

Under the Administrative Procedure Act (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."³⁷ 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.'"³⁸ An agency

³⁴Portland General Electric, *Trojan: The lasting legacy of PGE's atomic age* (March 25, 2021) available at https://assets.ctfassets.net/416ywc1laqmd/1oy5JcHW4rM6POffaIrPxv/85694ff9784be40df458e8f0d336d397/Trojan_History_updated_03.25.21.pdf.

³⁵*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.").

³⁶*Massachusetts v. EPA*, 549 U.S. 497, 520 (2007).

³⁷5 U.S.C. § 706(2)(A), (D).

³⁸*Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quotation omitted).

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.”³⁹ When an agency action represents a change in policy or interpretation, the agency must provide a rational explanation for that change.⁴⁰ 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.”⁴¹ The Notice and Supporting Documentation fail to meet these standards for the reasons that follow, rendering DOE’s promulgation of this CE arbitrary and capricious.

a. A CE is not appropriate for approval of untested and experimental advanced nuclear reactors

NEPA does not allow the use of a CE for this type of action. 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.”⁴² But categorical exclusions are not meant to be applied to experimental, untested technologies. Rather, “categorical exclusions by definition, do not have a significant effect on the quality of the human environment.”⁴³ It is arbitrary and capricious for the DOE to assert that advanced nuclear reactors will not have a significant effect on the environment when many, if not most, of these proposed technologies remain unbuilt, untested, currently under development, or tested only in a research, not a commercial context.⁴⁴ Applying CEs to experimental nuclear reactors is a far cry from applying it to the kinds of routine, procedural, maintenance, small-scale, or low-risk agency actions for which the categorical exclusion was intended, and for which it is predominantly used.⁴⁵ The potential impacts from the advanced nuclear reactors covered by the Notice, including those discussed below, do not permit this type of action to fit into a categorical exclusion.

i. The potential projects are too diverse to fit in a CE

The projects potentially covered by DOE’s CE and the potential site-specific impacts from their construction are too varied to fit under a single CE. The CE covers any advanced nuclear reactor that otherwise meets the requirements.⁴⁶ An advanced nuclear reactor can be any one of several reactor types.⁴⁷ To even attempt to adopt a CE for this variety of potential projects DOE would need to analyze the anticipated significant effects for each of them. As mentioned

³⁹*Id.*

⁴⁰*F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

⁴¹*Id.*

⁴²42 U.S.C. § 4336(e)(1).

⁴³*Sierra Club v. Bosworth*, 510 F.3d 1016, 1025 (9th Cir. 2007) (internal quotation marks and citations omitted).

⁴⁴*See, e.g.*, International Atomic Energy Agency, *What are Molten Salt Reactors?*

<https://www.iaea.org/newscenter/news/what-are-molten-salt-reactors>; Terrapower.com, *The Plant*,

<https://www.terrapower.com/natrium/> (last visited March 3, 2026) (explaining public-private investment in “first-of-a-kind” reactor technologies and describing “breakthrough innovation”).

⁴⁵*See generally* Council on Environmental Quality, *Categorical Exclusions: List of Federal Agency Categorical Exclusions (CE LIST)* (May 2024), available at <https://ceq.doe.gov/nepa-practice/categorical-exclusions.html>.

⁴⁶91 Fed. Reg. at 4,552.

⁴⁷42 U.S.C. § 16271(b)(1).

above, the various types of advanced nuclear designs pose unique environmental risks. DOE fails to differentiate the anticipated impacts of the various types of covered reactors or explain how a CE could cover a facility with a long history of environmental issues associated with it. DOE does not and cannot demonstrate that each of the covered types of reactors is the type of action that “normally does not significantly affect the quality of the human environment.”⁴⁸

Additionally, the CE does not limit application by specifying a maximum size of reactor, either by power output or footprint of facility, or a maximum number of reactors per CE.⁴⁹ DOE’s CEs for other energy or research facilities, such as particle accelerators, solar, wind, geothermal, and biomass includes limits on footprint size, generating capacity, and project location.⁵⁰ It is arbitrary and capricious to fail to provide a size limitation given the differences in potential environmental impacts from a small research reactor that could be pulled on the bed of a semi-truck⁵¹ to a large power generating reactor that powers whole cities. Similarly, the impacts of one reactor are compounded when more than one reactor is built.

Further, the CE ignores the fact that the construction, and not just the operation, of advanced nuclear reactors can have significant impacts caused by factors entirely apart from the nuclear technologies they employ—a fact that DOE has recently acknowledged through its participation in NEPA review of the Terrapower advanced reactor. For that project the NRC recently completed an EIS for the construction of the advanced reactor, which the Department of Energy supplemented with an Environmental Assessment, to analyze the site-specific impacts of building the reactor facility.⁵² As DOE’s recent experience with Terrapower demonstrates, a CE is simply too narrow a tool to cover the range of facilities and the varied site-specific impacts caused by construction of advanced nuclear reactors.

ii. Applying a CE obscures environmental review from the public in violation of NEPA’s information sharing purposes

DOE shifts the bulk of environmental review of a future advanced nuclear reactor from a public EIS or EA process to a purely internal examination of potential environmental impacts through the assessment of several “integral elements.”⁵³ DOE states that it will only apply the CE where the proposed project has the “integral elements” in DOE’s NEPA implementing procedures.⁵⁴ These elements include an assessment of a project having impacts on environmentally sensitive resources, endangered species, etc.⁵⁵ These are the potential environmental impacts that for decades have been and should continue to be considered as part

⁴⁸42 U.S.C. 4336(e)(1).

⁴⁹See 91 Fed. Reg. at 4,551 (“For the purposes of this category, a project may include multiple reactors within a nuclear facility.”).

⁵⁰See, e.g. 10 C.F.R. § 1021 Appendix B B3.10 Particle Accelerators, B5.16 Solar Photovoltaic Systems, B5.17 Solar Thermal Systems, B5.18 Wind Turbines, B5.20 Biomass Power Plants.

⁵¹Idaho National Laboratory, *Microreactors*, <https://inl.gov/trending-topics/microreactors/faqs> (last visited March 3, 2026).

⁵²90 Fed. Reg. 48,507 (Oct. 23, 2025).

⁵³91 Fed. Reg. at 4,551; U.S. Department of Energy National Environmental Policy Act (NEPA) Implementing Procedures, 49 (June 30, 2025).

⁵⁴91 Fed. Reg. 4,551.

⁵⁵U.S. Department of Energy National Environmental Policy Act (NEPA) Implementing Procedures, 49 (June 30, 2025).

of an EA or EIS. Significantly, one of these integral elements is that any proposal may not cause a “major expansion of waste storage, disposal, recovery, or treatment facilities.”⁵⁶ However, if this Categorical Exclusion is permitted to stand, there likely will be a major expansion of the need for nuclear waste disposal facilities.

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.⁵⁷ 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.”⁵⁸ 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 DOE making a decision. The State will not have the statutorily required opportunity to provide comments to DOE as part of an EIS process.⁵⁹ Additionally, without the transparency of a public NEPA process, it is harder for the public to identify, and DOE to rectify, potential errors or omissions in analysis made by DOE. Years of civic regret more often than not following projects built without such analysis.

iii. Newness of reactor technology means that there is little data on actual impacts

Advanced nuclear reactors often employ technologies in their early stages of development. As a result, it is premature for DOE to conclude that their construction and operation are the type of action that “normally does not significantly affect the quality of the human environment.”⁶⁰ In EO 14301, the president noted that “with some rare and arguable exceptions, no advanced reactors have yet been deployed in America.”⁶¹ Of the eight projects with environmental reviews cited by DOE in the Supporting Documentation, only a few have been built. This means that DOE has had almost no opportunity to determine if its analysis of potential impacts from the test reactors authorized so far was accurate. More tellingly, DOE does not have any information of impacts due to the very small number of advanced nuclear reactors

⁵⁶10 C.F.R. § Pt. 1021, App. B.

⁵⁷*Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

⁵⁸See United States Nuclear Regulatory Commission, *Environmental Impact Statement for the License Renewal of the Columbia Fuel Fabrication Facility in Richland County, South Carolina*, EIS pp xiii, xiv, (July 2022), <https://www.nrc.gov/docs/ML2220/ML22201A131.pdf>.

⁵⁹42 U.S.C. § 4332(2)(C).

⁶⁰42 U.S.C. § 4336(e)(1).

⁶¹Exec. Order No. 14301 at 1, 90 Fed. Reg. 22,591.

currently in operation. Given the novel nature of this technology it is premature to promulgate a blanket exemption from environmental review under NEPA.⁶²

iv. 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.⁶³ However, when an agency applies a CE to develop a project they will go through no such process. Because of this, DOE will not have to look at alternate sites for a proposed advanced nuclear reactor, alternate project sizes, or any other reasonable alternative that changes the impacts to the human environment. The alternatives analysis, as informed by public comment, can identify both 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, or other unstable geologic features. Application of a CE means DOE will not need to consider how to avoid these potentially significant impacts.

Given the complexity of these projects, the wide variety of projects that could fit under the CE, and the relatively new and experimental nature of advanced nuclear reactors, a CE is premature and inappropriate.

b. DOE's promulgation of the CE fails to take the required hard look at reasonably foreseeable environmental impacts

NEPA requires federal agencies to assess the “reasonably foreseeable environmental effects of the proposed agency action.”⁶⁴ In doing so, the agency must take a “hard look” at the environmental impacts.⁶⁵ The Agency “may not rely on incorrect assumptions or data” in its analysis and ultimate finding of no significant effects.⁶⁶ The Agency action must be “reasonable and reasonably explained.”⁶⁷ The hard look review will not happen at the time a particular project goes forward if the agency applies a CE. So, the agency must take a hard look at the potential impacts, including potential site-specific impacts, at the time it promulgates a CE.⁶⁸ The agency must adequately explain its decision to promulgate a CE to avoid NEPA review.⁶⁹

DOE failed to take a hard look in the Notice or the Supporting Documentation. DOE entirely ignores or only gives cursory review to the potential impacts of nuclear disasters or terrorist attacks on advanced nuclear reactors, increased nuclear waste generation or disposal, impacts to neighboring communities, and changes in land use. The Notice and Supporting Documentation

⁶²*Cf. Sierra Club v. U.S. Dep't of Transportation*, 125 F.4th 1170, 1183 (D.C. Cir. 2025) (vacating Department of Transportation's rule based on agency's failure to prepare an EIS, since “the record reflects that transporting [liquefied natural gas] by rail poses a low-probability but high-consequence risk of a derailment that could seriously harm the environment”).

⁶³42 U.S.C. § 4332(2)(C)(iii).

⁶⁴42 U.S.C. § 4332(C)(i).

⁶⁵*Env't Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 36 F.4th 850, 872 (9th Cir. 2022).

⁶⁶*Id.* (citing *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 964 (9th Cir. 2005)).

⁶⁷*Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colorado*, 605 U.S. 168, 180 (2025).

⁶⁸*See Bosworth* at 1027–30; *Cascadia Wildlands v. United States Bureau of Land Mgmt.*, 153 F.4th 869, 902—03 (9th Cir. 2025).

⁶⁹*See Bosworth* at 1026 (quoting *Jones v. Gordon*, 792 F.2d 821, 828 (9th Cir. 1986)).

does not consider short term effects versus long-term effects or impacts on particularly vulnerable communities. These failures cannot be remedied by providing a high-level summary of a few environmental reviews for other projects.⁷⁰ Instead, DOE must take the required hard look at all of the reasonably foreseeable environmental effects of actions covered by the CE before promulgating it.

i. DOE provides insufficient description and analysis of the safety measures

DOE make the conclusory claims that the advanced reactor projects proposed “*typically* employ inherent safety features and passive safety systems” mean the reactors “provide reasonable assurance of adequate protection to the public, workers, and the environment.”⁷¹ This allegedly “adequate protection” is provided to purportedly support DOE’s ultimate conclusion that any of the variety of advanced nuclear reactors “do not significantly affect the quality of the human environment.” *Id.* However, DOE provides no details of the types of safety features to be used, how they have worked in the past, how long those types of features have been used, or if there have been any failures. Further, the assurance that reactors “typically”—but not always—include these features is no assurance at all. This lack of analysis shows the lack of a “rational connection between the facts found and the choice made.”⁷² DOE’s assumptions must be tested through the process of preparing environmental review documents and receiving public comment on them.

ii. DOE provides insufficient description and analysis of the technologies used by advanced nuclear reactors and the risks they pose to the environment

As mentioned above, the statutory definition of advanced nuclear reactors covers a range of facilities,⁷³ and encompasses new and unproven technologies that pose unique risks. These include risks of sodium fires and explosions from sodium cooled fast reactors, the release of gaseous fission products from molten salt-fueled reactors that contain cesium-137, and the security concerns associated with the use of High-assay low enriched uranium (HALEU). But DOE provides no analysis of these risks, showing that the agency has “ignored an important aspect of the problem.”⁷⁴

For example, sodium cooled fast reactors (SFRs) have numerous safety problems that are not issues for reactors currently operating in several of our states. Sodium coolant can burn if exposed to air or water, and an SFR can experience rapid power increases with the potential for a runaway power excursion.⁷⁵ If the fuel overheats and the sodium coolant boils, an SFR’s power would likely increase rapidly rather than decrease, resulting in a positive feedback loop that could cause core damage if not quickly controlled.⁷⁶

⁷⁰See Supporting Documentation at 5-11.

⁷¹91 Fed. Reg. at 4,552 (emphasis added).

⁷²See *Motor Vehicle Mfrs.* at 43 (quotation omitted).

⁷³42 U.S.C. § 16271(b)(1).

⁷⁴*Id.*

⁷⁵Union of Concerned Scientists, Edwin Lyman, “*Advanced*” *Isn’t Always Better: Assessing the Safety, Security, and Environmental Impacts of Non-Light-Water Nuclear Reactor* (March 2021), at 5-6, included as Exhibit A.

⁷⁶*Id.* at 6.

As another example, high temperature gas-cooled reactors, offer some safety features in the form of fuel that can maintain function and integrity at high temperatures, but are nonetheless vulnerable to accidents. A recent fuel irradiation test in the Advanced Test Reactor in Idaho had to be terminated prematurely when the fuel began to release fission products at a rate high enough to challenge off-site radiation dose limits.⁷⁷

Likewise, molten salt-fueled reactors pose risks not associated with today's nuclear reactor fleet. The molten salt fuel is extremely corrosive and can heat up and destroy an MSR in a matter of minutes. In addition, in contrast to solid-fueled reactors, MSRs routinely release large quantities of gaseous fission products that must be trapped and stored. Some released gases quickly decay into radionuclides such as cesium-137, the highly radioactive isotope that caused persistent and extensive environmental contamination following the Chernobyl and Fukushima nuclear accidents.⁷⁸ With developers looking to use MSR to desalinate produced water from oil and gas production in the Permian Basin, for example, the potential damage and risk to human health and the environment could be even more catastrophic from explosions or accidents.⁷⁹

Lastly, the fuel required for many advanced nuclear designs, HALEU fuel, poses higher nuclear proliferation and nuclear terrorism risks than the lower-assay low enriched uranium used by today's reactors. Because it is more attractive for weapons use, it requires more security.⁸⁰

DOE fails to analyze any of these potential impacts from developing an advanced nuclear reactor and therefore has not given them the "hard look" required by NEPA.

iii. The scope of covered projects does not align with previously proposed projects

The Notice states that "past advanced reactor projects have been for solely experimental, testing and demonstration purposes."⁸¹ However, DOE asserts that the new CE can be used to cover "additional purposes, such as power production and industrial applications."⁸² This is a significant purported expansion of not only DOE's authority⁸³ but also the types of proposed projects that DOE may assert are covered by the CE. This mismatch leads DOE to rely on faulty assumptions in finding that there will not be significant environmental impacts. DOE's "bare assertion that its decision is informed by its experience and expertise is not a substitute for explaining the basis of its decision."⁸⁴ DOE assumes, without any support, that the impacts of any project authorized under this CE, including commercial scale power production and industrial applications that DOE has not analyzed, will have the same types of impacts and risks

⁷⁷*Id.* at 7.

⁷⁸*Id.*

⁷⁹See e.g., Human Progress, PR Newswire, *A Nuclear Solution to the Permian Basin's Water Challenge*, (Feb. 24, 2026) <https://humanprogress.org/permian-basin-turns-to-small-modular-reactors-for-water-treatment/>.

⁸⁰*Id.* at 10.

⁸¹91 Fed. Reg. at 4,552.

⁸²*Id.*

⁸³See *infra* Sec. 4.c on exceedance of statutory authority.

⁸⁴See *Cascadia* at 903–04; *Bosworth* at 1028–29.

as small experimental, testing or demonstration reactors. DOE fails entirely to “reasonably explain” this assumption.⁸⁵

iv. DOE fails to assess long term impacts

The Notice and Supporting Documentation do not consider the short-term effects versus long-term effects of expanded authorizations for advanced nuclear reactors on any resources over time. The Notice and Supporting Documentation have assessed potential impacts through the lens of the short-term authorization of a single reactor, but if the development of advanced nuclear reactors is to increase as rapidly as desired by President Trump⁸⁶, the analysis fails to reflect the proportional increase in potential long-term impacts. For instance, some impacts, such as impacts of waste disposal generated by the operation of additional reactors, may not have a significant impact until the development of additional reactors reaches a threshold requiring development of additional disposal capacity. The DOE must assess the potential for these long-term impacts from its future and long-term use of this CE.

v. DOE fails to assess the potential for Terrorist Attacks on Advanced Nuclear Reactors

DOE fails to assess the potential for significant environmental impacts from terrorist, or intentional, attacks on an advanced nuclear reactor. DOE includes one quote from a single EIS that addresses the possibility of an “intentional destructive act.”⁸⁷ This minimal three-sentence analysis is specific to the protective measures at the particular facility and does not support the much broader conclusion DOE reaches for all covered reactors.⁸⁸ However, NEPA does require the consideration of the environmental impacts of a potential terrorist attack for nuclear installations.⁸⁹ This level of borrowed analysis comes nowhere close to an “adequate explanation”⁹⁰ necessary to comply with NEPA.

vi. DOE fails to assess the potential impacts from hazardous waste, radioactive waste, and spent nuclear fuel

The Notice and Supporting Documentation contain no analysis of potential impacts resulting from increased production of hazardous waste, radioactive waste, and spent nuclear

⁸⁵*Seven County* at 180.

⁸⁶See Exec. Order No. 14301, 90 Fed. Reg. 22,591.

⁸⁷See Supporting Documentation at 8.

⁸⁸*Id.* (The potential for an intentional destructive act to occur[—]including its exact nature, location, and consequential magnitude[—]is inherently uncertain. However, DOME test bed operations would be performed within a protected area, under a high level of security at [Materials and Fuels Complex]. If an intentional destructive act involving the DOME test bed occurred, the potential consequences would be dependent on the amount of fissile material in those facilities at the time of the event and would be similar to the maximum reasonably foreseeable accident.”)

⁸⁹*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”).

⁹⁰See *Bosworth* at 1026 (quoting *Jones v. Gordon*, 792 F.2d 821, 828 (9th Cir. 1986)).

fuel. The CE itself only requires that a project demonstrate that “any hazardous waste, radioactive waste, or spent nuclear fuel generated by the project can be managed in accordance with applicable requirements.”⁹¹ The types of potential hazardous materials that could be generated beyond radioactive waste and spent nuclear fuel are not identified by DOE, making 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 DOE ignores the potential impacts.

DOE 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.⁹² DOE is currently going through a consent-based process for siting of interim waste disposal facilities because there is no long term storage option.⁹³ DOE recently issued a Request for Information (RFI) seeking input from states interested in hosting a “nuclear lifecycle Innovation Campus.”⁹⁴ A significant function of these campuses would be to “develop and implement safe and compliant disposal solutions for materials requiring long term management, as in interim storage or recycling, and permanent final disposition.”⁹⁵ The “Expected Infrastructure” of these sites would include “[g]eologically stable sites, drilling or excavation equipment, and long-term monitoring systems.”⁹⁶ The need exists for these facilities because the United States does not have, and never has had, a long-term storage facility for nuclear waste.⁹⁷ 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.⁹⁸ In the absence of sufficient permanent disposal capacity, any waste generated by the advanced nuclear reactors potentially covered by DOE’s CE would go to interim storage facilities. DOE fails entirely to assess the potential environmental impacts of increased generation of nuclear waste from facilities reviewed pursuant to this CE in light of the lack of long-term waste storage. DOE assumes that where the waste from a project “can be managed in accordance with applicable requirements” there will be no impact. This is a faulty assumption and unreasonable.

⁹¹91 Fed. Reg. at 4,551.

⁹²42 U.S.C. § 10155, 10222.

⁹³U.S. Dept. of Energy, *Consent-Based Siting Process for Federal Consolidation Interim Storage of Spent Nuclear Fuel* (April 2023), <https://www.energy.gov/sites/default/files/2023-05/Consent-Based%20Siting%20Process%20Report-0424%203.pdf>.

⁹⁴*Id.*

⁹⁵*Id.* at 3.

⁹⁶*Id.*

⁹⁷See 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>.

⁹⁸ 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.”).

vii. DOE fails to assess potential for site-specific impacts

By promulgating a CE to cover the development of advanced nuclear reactors, DOE skips the site-specific analysis of the reasonably foreseeable environmental impacts required by NEPA. DOE's "integral elements" do not substitute for the analysis of impacts required under NEPA.⁹⁹ For instance the "integral elements" do not address site specific water needs or impacts to local waters, cultural resources impacts, local air quality impacts during construction, workforce housing issues, traffic, or transportation of dangerous materials to and from the work site. While the integral elements reach some environmental impacts, they are confined in many cases to impacts to "environmentally sensitive resources."¹⁰⁰ This approach means that reasonably foreseeable environmental impacts may go unassessed in violation of NEPA.

viii. DOE ignores potential impacts to uniquely affected communities

The Notice and Supporting Documentation do not analyze or direct future projects to look for impacts to communities that could be uniquely affected by expanded development of advanced nuclear reactors. For instance, DOE only looks at projects that have historically been isolated from populated areas.¹⁰¹ DOE fails to analyze potential impacts to communities near a potential future reactor site. By completely omitting any analysis of this issue, DOE has ignored an important category of potential environmental impacts.

ix. DOE Fails to consider how recent changes to DOE's NEPA procedures and internal orders on the development of nuclear power may impact the environment

DOE has recently revised its NEPA implementing procedures.¹⁰² A coalition of attorneys general, including several of the signatories to this letter, provided comments on DOE's recent revisions to its NEPA implementing regulations detailing how these revision could lead to significant environmental impacts.¹⁰³ DOE has also taken steps to eliminate the requirement that radiation exposures be kept "as low as reasonably achievable" from DOE directives and regulations.¹⁰⁴ Additionally, DOE has reportedly taken steps to revise orders regarding DOE's regulation of nuclear reactors to "loosen protections for groundwater and the environment and eliminate at least one key safety role."¹⁰⁵ DOE does not provide any analysis of how these recent revisions to environmental and human health standards and incremental review procedures could result in significant environmental impacts through the application of this CE.

x. DOE fails to assess land use impacts

⁹⁹10 C.F.R. § 1021 Appendix B

¹⁰⁰*Id.*

¹⁰¹*See generally* Supporting Documentation.

¹⁰²Revision of Department of Energy's NEPA Implementing Regulations, 90 Fed. Reg. 29,676 (July 3, 2025); DOE-HQ-2025-0026.

¹⁰³*See* Exhibit B, Multistate Comment Letter in Opposition to DOE Nepa Revisions (July 3, 2025).

¹⁰⁴Dario Gil, Brandon Williams Memorandum for the Secretary, *Approval to Eliminate ALARA from All Department of Energy (DOE) Directives and Regulations* (Jan. 9, 2026), attached as Exhibit C.

¹⁰⁵N.P.R., *The Trump administration has secretly rewritten nuclear safety rules*, (Jan. 28, 2026)

<https://www.npr.org/2026/01/28/nx-s1-5677187/nuclear-safety-rules-rewritten-trump>.

The Notice and Supporting Documentation entirely dismiss the possibility of land use impacts, such as the development of previously undeveloped land.¹⁰⁶ This is because DOE moves analysis of impacts to land into an internal assessment of the “integral elements” of CE’s found in DOE’s NEPA Implementing Procedures.¹⁰⁷ It is foreseeable that the implementation of a CE for advanced reactors will drive development of more reactors and lead to development of more land. The DOE thus fails to take a serious look at potential environmental impacts from increased land development.

c. The DOE action is ultra vires

An agency’s rulemaking is *ultra vires* when it is “promulgated without valid statutory authority.”¹⁰⁸ Here, DOE exceeds its statutory authority to regulate nuclear reactors by purporting to promulgate a CE that could apply to nuclear reactors used for “power production and industrial applications.”¹⁰⁹ DOE only has regulatory authority over nuclear reactors for research purposes.¹¹⁰ However, DOE purports to extend its regulatory authority to nuclear reactors used for “power production and industrial applications.”¹¹¹ DOE has no authority to authorize commercial power generation or industrial application, let alone to exempt it from NEPA review.

Any reliance by DOE on EO 14301 in promulgating this CE is likewise ultra vires. EO 14301 finds, without any support or justification, that advanced reactors are only for research purposes, placing them under the control of the DOE.¹¹² Importantly, the EO specifies that this shift in regulatory authority does not apply to reactors that “produce commercial electric power.”¹¹³ DOE’s action to promulgate this CE that purports to include reactors used for “power production and industrial purposes” falls outside of the scope of projects covered by EO 14301.

This exceeds DOE’s statutory authority and is thus ultra vires.

d. DOE improperly limited public participation

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 federal actions such as DOE’s promulgation of this CE. 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

¹⁰⁶See generally Notice, Supporting Documentation.

¹⁰⁷U.S. Department of Energy National Environmental Policy Act (NEPA) Implementing Procedures June 30, 2025, at 49.

¹⁰⁸*Iowa League of Cities v. EPA*, 711 F.3d 844, 876 (8th Cir. 2013).

¹⁰⁹91 Fed. Reg. at 4,552.

¹¹⁰42 U.S.C. § 5842(5).

¹¹¹91 Fed. Reg. at 4,552.

¹¹²Exec. Order No. 14301, 90 Fed. Reg. 22,591.

¹¹³*Id.*

in the environmental review process.¹¹⁴ DOE’s process for adopting this CE has failed to provide the public participation required by NEPA.

i. DOE should have considered comments *before* deciding

DOE entirely sidesteps NEPA’s public participation values by determining that a large category of potential actions does not normally affect the quality of the human environment without any public involvement prior to making a decision. The CE states it was effective upon publication.¹¹⁵ While DOE notes that it “may make revisions to this categorical exclusion, if DOE’s review of any comments submitted suggests that further revisions are warranted,” this is not a guarantee that DOE will undertake a review or revise the CE.¹¹⁶ Most importantly, DOE did not have the benefit of this input while deciding that a CE is even appropriate for this type of action. DOE had previously provided notice and an opportunity to comment *before* promulgating new CEs.¹¹⁷ DOE points to the rescission of CEQ’s NEPA regulations making the “historical practice” of seeking public comment prior to promulgating a CE no longer applicable.¹¹⁸ However, DOE does not explain why, even in the absence of CEQ’s regulations, it is better to exclude the public from the decision-making process. The rescission of CEQ’s regulations does not prohibit agencies from considering public input prior to making a decision. It could and should have done so here.¹¹⁹

ii. A thirty-day comment period is insufficient

Even if the DOE “may make revision to this categorical exclusion” following review of comments, a thirty-day comment period is not sufficient to solicit meaningful public comment given the novelty of advanced nuclear reactors.¹²⁰ As noted above, advanced nuclear reactors are a diverse group of reactors with diverse fuel sources and the potential for environmental impacts.¹²¹ Because very few of these reactors have been built in the United States there is not much data available on their potential environmental impacts. Thirty days is an insufficient amount of time for public commenters to collect this information and provide it to DOE. Because application of this CE means that a future proposed advanced nuclear reactor would go without a public NEPA review, this comment period is the only time a commenter can provide information to DOE prior to the agency making a decision about an advanced nuclear reactor.

A minimum of sixty days should be provided for the public to comment on the significant legal and factual issues implicated by the new CE, consistent with the February 24, 2026 request

¹¹⁴*Kleppe v. Sierra Club*, 427 U.S. 390, 409 (1976) (quoting Conference Report on NEPA, 115 Cong. Rec. 40416 (1969) (internal quotations omitted)).

¹¹⁵91 Fed. Reg. at 4,550.

¹¹⁶*Id.* at 4,552.

¹¹⁷*Id.* at 4,552 n.4.

¹¹⁸*Id.* at 4,552.

¹¹⁹ Even the Idaho National Laboratory, in an April 2025 report with recommendations on improving nuclear licensing, stated that broadening NEPA categorical exclusions for construction and operation of new nuclear reactors “requires legislative change or *rulemaking* by DOE or NRC”. Idaho National Laboratory, *Recommendations to Improve Nuclear Licensing*, at 21 (April 2025) (emphasis added).

¹²⁰91 Fed. Reg. at 4,552.

¹²¹*See supra* Sec. 4.b.ii.

FOR THE STATE OF CALIFORNIA
ROB BONTA
Attorney General

By: /s/ Keith Bauerle
KEITH BAUERLE
Deputy Attorney General
VANESSA MORRISON
Supervising Deputy Attorney General
Environmental Justice and Protection Section
1515 Clay Street, 20th Floor
Oakland, California 94612
(510) 879-1300
Keith.Bauerle@doj.ca.gov

FOR THE STATE OF ILLINOIS
KWAME RAOUL
Attorney General

By: /s/ Joanna K. Brinkman
JOANNA K. BRINKMAN
Complex Litigation Counsel
Office of the Illinois Attorney General
115 South LaSalle
Chicago, Illinois 60603
(312) 814-3033
Joanna.Brinkman@ilag.gov

FOR THE STATE OF MARYLAND
ANTHONY G. BROWN
Attorney General

By: /Steven Goldstein
STEVEN J. GOLDSTEIN
Assistant Attorney General
Office of the Attorney General of Maryland
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
410-576-6414
sgoldstein@oag.maryland.gov

FOR THE COMMONWEALTH OF MASSACHUSETTS
ANDREA JOY CAMPBELL
Attorney General

By: /s/ Edwin J. Ward IV
EDWIN J. WARD IV
Assistant Attorney General
Massachusetts Office of the Attorney General
Energy and Environment Bureau
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 727-2200
edwin.ward@mass.gov

STATE OF MINNESOTA
KEITH ELLISON
Attorney General

By: /s/ Ryan Pesch
RYAN PESCH
Special Assistant Attorney General
Minnesota Attorney General's Office
445 Minnesota Street, Suite 600
St. Paul, MN 55101
(651) 728-7116
ryan.pesch@ag.state.mn.us

FOR THE STATE OF NEW MEXICO
RAÚL TORREZ
Attorney General

By: /s/ J. Spenser Lotz
J. SPENSER LOTZ
Assistant Attorney General
Environmental Protection Bureau
201 Third St. NW, Suite 300
Albuquerque, NM 87102
(505) 616-7560
slotz@nmdoj.gov

FOR THE STATE OF NEVADA
AARON D. FORD
Attorney General

By: / Gregory Cloward

J. GREGORY CLOWARD
Senior Deputy Attorney General
CARSON A. THOMAS
Deputy Attorney General
State of Nevada
Office of the Attorney General
1 State of Nevada Way, Suite 100
Las Vegas, NV 89119
T: (702) 486-3378
E: jcloward@ag.nv.gov

FOR THE STATE OF OREGON
DAN RAYFIELD
Attorney General

By: /s/ Paul Garrahan

PAUL GARRAHAN
Attorney-in-Charge, Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
(503) 947-4540
Paul.Garrahan@doj.oregon.gov

FOR THE STATE OF VERMONT
CHARITY R. CLARK
Attorney General

By: / Mark Seltzer

MARK SELTZER
Assistant Attorney General
Environmental Protection Unit
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609
(802) 828-6907

FOR THE DISTRICT OF COLUMBIA
BRIAN L. SCHWALB
Attorney General

By: /s/ Lauren Cullum

LAUREN CULLUM
Special Assistant Attorney General
Office of the Attorney General
for the District of Columbia
400 6th Street, N.W., 9th Floor
Washington, D.C. 20001
Email: lauren.cullum@dc.gov