

Comments of the Attorneys General of Illinois, California, New Mexico, Washington, Colorado, Oregon, Delaware, Maryland, Minnesota, Vermont, and Massachusetts

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August 31, 2026

The Honorable Ho Nieh, Chairman
Nuclear Regulatory Commission
Washington, DC 20555-0001

**Re: Modernizing Reactor Licensing, Safety Oversight, and Siting Practices,
91 Fed. Reg. 44,560 (July 16, 2026), Docket ID No. NRC-2025-0975**

Dear Chairman Nieh:

The Attorneys General of the States of Illinois, California, New Mexico, Washington, Colorado, Oregon, Delaware, Maryland, Minnesota, Vermont, and Massachusetts (“States”) respectfully submit the following comments on the Modernizing Reactor Licensing, Safety Oversight, and Siting Practices Rule, 91 Fed. Reg. 44,560 (July 16, 2026) (“Proposed Rule” or “Proposal”).

The Proposed Rule is part of the NRC’s wholesale revision of its long-standing regulations. These revisions are an undertaking of unprecedented scope for the Commission, with the Proposed Rule being just one regulatory proposal among more than two dozen others in 2026,¹ including four interrelated proposed rules issued within a two-week span this July.² The scale and speed of these changes is deeply concerning. Understandably, members of the public have repeatedly requested that the NRC extend the comment period for its proposals, including this Proposed Rule.³ The NRC has arbitrarily denied each request.⁴

As described below, the States oppose the NRC’s Proposed Rule and urge the Commission withdraw its Proposal.

¹ See Nuclear Regulatory Commission, Wholesale Revision of Regulations Under Executive Order 14300 <https://www.nrc.gov/about-nrc/governing-laws/advance-act/wholesale-revision-regs> (listing 27 completed or ongoing rulemakings as of August 30, 2026).

² In addition to the Proposed Rule, the NRC proposed three other interrelated rules within a two-week span: the Integrated Low-Level Radioactive Waste Disposal proposed rule, 91 Fed. Reg. 40,290 (July 1, 2026), the Implementation of the National Environmental Policy Act proposed rule, 91 Fed. Reg. 42,086 (July 7, 2026), and the Reforming and Modernizing the NRC’s Radiation Protection Framework proposed rule, 91 Fed. Reg. 43,456 (July 15, 2026).

³ See, e.g., NRC-2025-0975-0076 Offices of the Illinois and Massachusetts Attorneys General Request for Extension of Comment Period.

⁴ See, e.g., NRC-2025-0975-0087, Response to the Offices of the Illinois and Massachusetts Attorneys General Request for Extension of Comment Period ML 26237A192 (Aug. 26, 2026), <https://www.regulations.gov/document/NRC-2025-0975-0087>. The NRC claimed in its response that it is “unable” to grant the request. There is no legal barrier to the NRC extending a comment period and the NRC did not explain the alleged inability to do so. The NRC should reopen the Proposed Rule’s comment period to provide the extended review period so widely requested by the public and arbitrarily denied by the NRC.

Background

In 1954, Congress enacted the Atomic Energy Act (“AEA”), establishing that “[s]ource and special nuclear material, production facilities, and utilization facilities are affected with the public interest, and *regulation by the United States* of the production and utilization of atomic energy and the facilities used in connection therewith is necessary in the national interest to assure the common defense and security and *to protect the health and safety of the public.*”⁵

Congress has delegated the authority and responsibility to implement the AEA to the NRC.⁶ The NRC has exercised this authority through promulgation of implementing regulations, codified in more than fifty Parts in Title 10 of the Code of Federal Regulations. The Proposed Rule would substantively and significantly revise eight of those Parts, including those that provide the foundation and framework for all nuclear power generation in the country. The affected Parts govern the regulatory framework for commercial nuclear plants and span the entire process for licensing nuclear source material production and utilization facilities operation.

The rulemaking schedule that the NRC has pursued in calendar year 2026 alone has been overwhelming.⁷ Part 53 was codified in its entirety just over four months ago, on April 15, 2026, yet the NRC now proposes significant revisions to those new regulations. The speed and volume of the rulemakings deprives the public and the States of full awareness and opportunity to provide meaningful comment on the rapid de-regulation of an energy sector of significant public interest. Indeed, many of the States recognize the important role that nuclear power plays in meeting the nation’s growing demand for electricity and therefore have strong interests in maintaining the public’s confidence in the safety and oversight of the nuclear energy sector.

States’ Interests

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 Office of Nuclear Safety within the Illinois Emergency Management Agency and Office of Homeland Security is internationally recognized as a leader in nuclear and radiation safety, responsible for monitoring the 11 reactors, while also regulating over 470 radioactive materials licenses and 35,000 x-ray machines. Illinois has a strong interest in ensuring it remains a leader in safe nuclear energy generation, with effective regulations and procedures that maintain the public’s confidence in the safety of nuclear power through strong protection of public health, worker safety, and the environment. Illinois is also an Agreement State under the Atomic Energy Act, allowing Illinois to regulate most types of radioactive material in a manner compatible with

⁵ 42 U.S.C. § 2012(e) (emphasis added).

⁶ See 42 U.S.C. § 2201; *see also* 10 C.F.R. § 1.1(a) (“The Nuclear Regulatory Commission was established by the Energy Reorganization Act of 1974, as amended, Pub. L. 93-438, 88 Stat. 1233 (42 U.S.C. 5801 *et seq.*). This Act abolished the Atomic Energy Commission and, by section 201, transferred to the Nuclear Regulatory Commission all the licensing and related regulatory functions assigned to the Atomic Energy Commission by the Atomic Energy Act of 1954, as amended, Pub. L. 83-703, 68 Stat. 919 (42 U.S.C. 2011 *et seq.*)”).

⁷ See NRC, Wholesale Revision of Regulations Under Executive Order 14300, *supra* at n. 1.

federal regulations. Changes to the NRC regulations will affect the regulatory and enforcement programs of Agreement States like Illinois. Illinois urges the NRC to meaningfully engage with the Agreement States before making changes that have significant impacts on state programs.

Illinois supports modernization of the NRC regulatory framework and continued nuclear development. However, modernization should not weaken independent safety oversight or protection for workers, the public, and the environment. Illinois can strongly disagree with specific proposals without opposition to regulatory modernization or advanced nuclear development generally. Illinois urges the NRC to maintain independent oversight, inspection, and verification.

The state of Washington has one nuclear power plant, the Columbia Generating Station, which is the third largest single power production facility in the State.⁸ 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, PG&E's Diablo Canyon Power Plant, which is a two-unit, 2,256-megawatt pressurized water reactor complex.⁹ 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.¹⁰ 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 2022,¹¹ 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, 2045.¹²

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, where transuranic waste¹³ 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

⁸ Energy Northwest, Columbia Generating Station, <https://www.energy-northwest.com/energy-projects/columbia-generating-station> (last visited August 30, 2026).

⁹ 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).

¹⁰ 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").

¹¹ See Cal. Pub. Util. Comm'n Decision 23-12-054 (Dec. 14, 2023).

¹² See 91 Fed. Reg. 17,310 (Apr. 6, 2026).

¹³ 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.

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 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 decommissioning process for Pilgrim may take decades.

Comments

1. The NRC arbitrarily and capriciously refused to provide a legally adequate comment period.

The NRC has arbitrarily failed to provide an adequate public comment period in violation of the Administrative Procedure Act.¹⁴ Notice and sufficient time for public comment are critically important “(1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby

¹⁴ See 5 U.S.C. § 553(c).

enhance the quality of judicial review.”¹⁵ Crucially, “[t]he opportunity for comment must be a meaningful opportunity,” which means “enough time with enough information to comment.”¹⁶

Here, that is not the case. The Proposed Rule has an expansive and complex scope, significant implications for public health and safety, has been issued alongside over two dozen rulemakings since January of 2026. It also has a comment period that overlapped with three other significant proposed rules, all issued within a two-week span. To further complicate matters, several of the provisions in the Proposed Rule relate directly to proposals in other recent rulemakings. For example, the Proposed Rule discusses National Environmental Policy Act (NEPA) requirements for general licenses and component construction, while the recent NEPA implementation proposed rule involved similar matters.¹⁷ The NEPA implementation rule includes details on the license application process, which may be important for reviewing the Proposed Rule.¹⁸ Commenters needed to review both rules simultaneously to identify inconsistencies or potential concerns with the proposed procedures. The same considerations applied to reviewing the other two overlapping rules.¹⁹ This task has been nearly impossible in the arbitrarily constrained time allowed. These rules all involve matters of significant state and public interest and raise important safety concerns. In these circumstances, the 45-day comment period was woefully insufficient and unfair to the affected parties, particularly those who requested extensions.

The 45-day comment period is also inconsistent with general executive branch practice and the NRC’s historical practice.²⁰ In 2024, when the NRC proposed its Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors, it initially provided for a 60-day public comment period.²¹ The NRC, however, determined that even a 60-day comment period was insufficient for the 211-page proposed rule, and later extended it to 120 days “to allow more time for members of the public to submit their comments.”²² The NRC ultimately received 173 comments on the proposed rule. For the Proposed Rule, as of August 30, 2026, the NRC has already received nearly 100 comments.²³ The comment period also contravenes the

¹⁵ *Prometheus Radio Project v. FCC*, 652 F.3d 431, 449 (3d. Cir. 2011) (citing *Int’l Union, United Mine Workers of Am. v. Mine Safety & Health Admin.*, 407 F.3d 1250, 1259 (D.C. Cir. 2005)).

¹⁶ *Id.* at 450 (quoting *Rural Cellular Ass’n v. F.C.C.*, 588 F.3d 1095, 1101 (D.C. Cir. 2009)); see also *Connecticut Light & Power Co. v. Nuclear Regul. Comm’n*, 673 F.2d 525, 530 (D.C. Cir. 1982) (“The purpose of the comment period is to allow interested members of the public to communicate information, concerns, and criticisms to the agency during the rule-making process.”).

¹⁷ See 91 Fed. Reg. at 44,566.

¹⁸ See 91 Fed. Reg. 42,086, 42,103 (Jul. 7, 2026).

¹⁹ See 91 Fed. Reg. at 40,312; 91 Fed. Reg. at 43,456.

²⁰ See *California v. U.S. Dep’t of the Interior*, 381 F. Supp. 3d 1153, 1177 (N.D. Cal. 2019) (noting that “courts have considered the length of the comment period utilized in the prior rulemaking process” to assess the adequacy of a comment period); Executive Order No. 12866, 58 Fed. Reg. 51,735, 51,740 (Oct. 4, 1993) (comment period should be “not less than 60 days”).

²¹ See 89 Fed. Reg. 86,918 (Oct. 31, 2024).

²² 89 Fed. Reg. 92,609 (Nov. 22, 2024).

²³ NRC-2025-0975. Despite the inadequate comment period, several excellent comments have already been submitted and the States urge the NRC to fully consider their arguments. See, e.g., NRC-0205-0975-0092, Comment of Fred Schofer, <https://www.regulations.gov/comment/NRC-2025-0975-0092>. The States further note that many comments have raised valid issues beyond the scope of this comment. The States could not identify all our concerns in this comment in the limited time allowed. The States consider all meaningfully presented comments, issues, and

NRC's rulemaking policies. Management Directive 6.3, which governs the Commission's rulemaking procedures, states that "[i]n all aspects of its rulemaking, the NRC is committed to making public participation as meaningful as possible."²⁴ The NRC received over a half-dozen individual requests to extend the comment period for the Proposed Rule. The NRC denied every request. The NRC's uniform and unexplained denials of all extension requests is contrary to this policy and the law.²⁵

The NRC Office of the Secretary has delegated authority to process requests for comment period extensions for federal register notices signed by the Secretary of the Commission.²⁶ The Federal Register notice for the Proposed Rule was signed by the Secretary of the Commission, meaning the decision to deny every extension request was made by the Office of the Secretary. The communications conveying those decisions stated that the NRC was "unable" to grant the extensions.²⁷ However, the communications did not explain what legal or procedural barrier rendered the Office unable to extend the comment period. The arbitrary and capricious decision(s) to deny every comment period extension request were final agency actions that deprived the public of a fair opportunity to comment on the Proposed Rule and that failed to "mak[e] public participation as meaningful as possible."²⁸

Licensing Provisions

2. The NRC's proposed definition of "construction" violates the AEA and eliminates oversight and public involvement.

The Proposed Rule would change the regulatory definition of "construction" in a manner that dramatically narrows the ability for state regulators and other members of the public to meaningfully participate in the permitting and licensing process for a facility that would have immense environmental and public health and safety consequences for our communities. Rather than facilitating public involvement in the federal decision-making process, the Proposal could allow large parts of nuclear power plants to be built without environmental review, without community engagement, and without considering alternatives, all contrary to the AEA. Notwithstanding state and local authority over non-radiological safety aspects of constructing a nuclear power plant, which are not limited by the Proposed Rule, the NRC should retain its existing more protective licensing process.

Section 185 of the AEA provides that the NRC shall grant a construction permit if a license application is "acceptable,"²⁹ and shall issue a combined construction and operating

objections on the docket for this rulemaking to be preserved for judicial review. *See Ne. Md. Waste Disposal Auth. V. EPA*, 358 F.3d 936 (D.C. Cir. 2004).

²⁴ NRC, Management Directive 6.3, <https://www.nrc.gov/docs/ML1921/ML19211D136.pdf>.

²⁵ *See Petry v. Block*, 737 F.2d 1193, 1201 (D.C. Cir. 1984) (finding a short comment period inadequate when the proposed rule is "complex [and] based on scientific or technical data" and noting that the Administrative Conference of the United States has recommended 60 days for significant regulatory actions); *see also Prometheus Radio Project v. F.C.C.*, 652 F.3d at 453 (stating that "90 days" is the "usual" comment period).

²⁶ NRC Management Directive 6.3, *supra* n. 24.

²⁷ *See supra* at n. 4.

²⁸ NRC Management Directive 6.3, *supra* n. 24.

²⁹ 42 U.S.C. § 2235(a).

license for “sufficient” applications.³⁰ And the NRC shall “hold a hearing after thirty days’ notice and publication once in the Federal Register” for certain types of applications, and additionally must “grant a hearing upon the request of any person whose interest may be affected” in *any* AEA proceeding granting any license or construction permit.³¹

The statute does not define what constitutes construction, so the NRC has defined it by regulation. The existing regulations, most recently modified in 2007, broadly define construction as including various activities, such as subsurface preparation, driving of piles or installation of foundations for “[s]afety-related structures, systems, or components (SSCs) of a facility” and “[o]n-site emergency facilities.”³² In 2007, the NRC stated that this definition is intended to “clearly identify the SSCs that have a reasonable nexus to radiological health and safety, or the common defense and security,” while excluding “site-preparation activities” without such reasonable nexus.³³

The NRC’s Proposed Rule would further narrow that definition, stipulating that the NRC pre-construction approval is only necessary for SSCs affecting performance of “a safety-related or safety-significant function,” *i.e.*, SSCs with a “significant impact on radiological health and safety.”³⁴ Furthermore, the definition also affords “flexibility” for applicants to build safety-related SSCs without a license “when justified” and if the safety functions are not “significantly affected.”³⁵ The current definitions, the NRC asserts, “may unnecessarily restrict . . . modern construction techniques on optimized schedules,” “based on [applicants’] business needs and the lack of the SSCs’ safety significance.”³⁶

The Proposed Rule’s modified definition of construction would allow a greater proportion of a nuclear power plant to be built without prior review. The Proposed Rule recognizes that the new definition will allow applicants to construct “permanent materials left in an excavation, or even balance of plant systems[.]”³⁷ In other words, many important plant functions could be built not only before NRC review, but also well before any public disclosure or public engagement process. However, the NRC fails to explain how this new definition comports with the statute’s text or intent, and therefore it should rescind its Proposal.

First, the NRC fails to explain how it interprets the AEA’s plain meaning in a manner that would allow major plant construction activities before NRC review or public process. The Proposed Rule observes that the AEA does not define “construction” and cites to the 2007 rule, where the NRC determined that construction includes all activities that have “a reasonable nexus to radiological safety or are required for the common defense and security.”³⁸ The Proposed Rule would limit this even further, only to construction with a “significant impact on radiological

³⁰ *Id.* at § 2235(b).

³¹ *Id.* at § 2239(a)(1)(A).

³² 40 C.F.R. § 50.10, *see also* 72 Fed. Reg. 57,416 (Oct. 9, 2007).

³³ 72 Fed. Reg. at 57,419, 57,427.

³⁴ 91 Fed. Reg. at 44,565.

³⁵ *Id.*

³⁶ *Id.* at 44,564–65.

³⁷ *Id.* at 44,565.

³⁸ *Id.* at 44,564.

health and safety,” an even more limited range of activities.³⁹ However, these conditions greatly restrict an ordinary reading of the word “construction” as used in the statutory text. The Commission has no authority to restrict the statute’s meaning and purpose in this way.⁴⁰ The NRC must explain how its proposed definition and “significant impact” approach could be the best meaning of “construction” as used in the AEA.

The intent of the AEA to support robust public notice and comment⁴¹ would be undermined by the Proposal’s re-definition of construction. The public process provided by statute is intended to give residents, municipalities, and states where a nuclear power plant could be constructed an opportunity to learn about and respond to the project prior to final decisions. However, the Proposed Rule allows major aspects of plant construction to begin before the public is even notified about any NRC process—including the onsite emergency facilities that would provide important protections to the local community in case of emergency.⁴² Indeed, the more time and money that has already been invested in building a plant in a particular location before any public notice or engagement process would, in practice, restrict any opportunity for the public to meaningfully participate. Public notice and comment after-the-fact would serve only as notice of what has already taken place. In addition to having less information, the public would also have less practical ability to influence permitting outcomes if, when it comes time to comment, substantial construction activity has already taken place, locking in a certain development path.⁴³ Increasing the proportion of facility construction allowed before detailed regulatory compliance inspections occur increases the risk of potential rework and leads to substantially increased construction costs to resolve design non-compliances. Undermining the preconstruction review of new nuclear power plants would also weaken public disclosure and review of potential environmental harms. As fewer activities would meet the regulatory definition of “construction,” triggering NRC procedures, then “an environmental review under [NEPA] is not required.”⁴⁴ Thus, the proposed changes would violate not only the AEA (thus also the Administrative Procedure Act as final actions contrary to law) but they would also violate NEPA, as discussed in comment 14 below.⁴⁵ Under the AEA, the public has the right to comment on a nuclear plant’s safety. Under NEPA, the public has the right to comment on the major environmental consequences of building a nuclear power plant. The NRC must not abridge these important rights.

The Proposal also lets the license applicant decide for itself whether a particular part of the project constitutes “construction.” The NRC asserts that the “proposed change would rely on an applicant-performed analysis and categorization of the facility SSCs to those that do and those

³⁹ *Id.*

⁴⁰ See *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

⁴¹ See 42 U.S.C. 2239(a)(1)(A) (requiring public notice and hearings for many licenses, permits, and applications and requiring such process in *any* instance upon request).

⁴² 91 Fed. Reg. at 44,565.

⁴³ For example, at the Vogtle plant in Waynesboro, Georgia, construction of Units 3 and 4 was delayed when subsequent NRC inspection of early concrete pours for the plants’ structures did not comply with the plants’ standard design. The rework to resolve these compliance issues significantly contributed to the multi-year delays in Vogtle Units 3 and 4’s completion. See Power Magazine, NRC Cites Problems at Vogtle, May Increase Project Oversight (Aug. 29, 2021), <https://www.powermag.com/nrc-cites-problems-at-vogtle-may-increase-project-oversight/>.

⁴⁴ 91 Fed. Reg. at 44,565.

⁴⁵ Similarly, the proposed redefinition could create conflicts with state-level regulatory processes and impair State regulatory agencies’ ability to engage with the NRC on siting and environmental review.

that do not meet the definition of construction.”⁴⁶ This abdication of the NRC’s duty defers important regulatory decisions to the regulated entities, unwisely incentivizing them to construct as much of the plant as possible before beginning any public process. Such deference to project proponents would be riskier still for novel nuclear technologies, which have limited real-world operational data necessary to the veracity of the safety-related decisions that underlie the proposed definition of “construction.” The Proposal concedes that voluntary “pre-application engagement” between the applicant and the NRC could be appropriate.⁴⁷ At a minimum, the NRC should require pre-application engagement rather than entirely entrust the determinations to the applicant. However, at bottom, the States’ urge the NRC to withdraw the Proposed Rule and abandon its new definition of “construction.”

3. The proposed definition of “construction” could create conflict with state regulatory processes.

The NRC’s proposed definition of “construction” is much narrower than comparable state and federal definitions. For instance, the organic statute for Washington’s Energy Facility Site Evaluation Council (EFSEC) defines construction as “onsite improvements, excluding exploratory work, which cost in excess of \$250,000.”⁴⁸ This definition is generally consistent across various states, where permanent improvements to a property and building of structures are central elements of construction. For example, Oregon defines construction as “work performed on a site, excluding ... activities to define or characterize the site,” Idaho defines it as “building ... [any] structure, project, development or improvement to real property,” and Oklahoma defines it as “building ... any structure ... including facilities, utilities, or other improvements to any real property.”⁴⁹

The NRC’s definition is also inconsistent with other federal definitions of construction. The Federal Acquisitions Regulation, which is jointly issued by several federal agencies and adhered to by many more, including the Departments of Defense and the Interior, defines construction as “construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property”⁵⁰ The Department of Energy defines construction as:

*[the] combination of erection, installation, assembly, demolition, or fabrication activities involved to create a new facility or to alter, add to, rehabilitate, dismantle, or remove an existing facility. It also includes the alteration and repair (including dredging, excavating, and painting) of buildings, structures, or other real property, as well as any construction, demolition, and excavation activities conducted as part of environmental restoration or remediation efforts.*⁵¹

⁴⁶ *Id.* at 44,565.

⁴⁷ *See id.* at 44,566.

⁴⁸ Wash. Rev. Code 80.50.020(8).

⁴⁹ Or. Rev. Stat. 469.300(7), Idaho Code § 54-5203(2), Okla. Stat. tit. 61, § 202.

⁵⁰ 48 C.F.R. § 2.101.

⁵¹ 10 C.F.R. § 851.3

The NRC's proposed definition could complicate state regulatory procedures for approving new nuclear facilities due to its inconsistency with state definitions. As an example, Washington state law requires that any developer seeking to site a nuclear energy facility in the State of Washington receive a Site Certification Agreement (SCA) from EFSEC "prior to or concurrent with the construction or operation of" that facility.⁵² By statute, EFSEC can only grant an SCA upon completion of its entire administrative and state environmental review process. Once executed, an SCA can then only be amended by mutual consent between the developer and EFSEC.

With the NRC's proposed definition of construction put into place, and the use of a general license framework, the NRC's environmental review would happen much later in the licensing and siting process than it does currently. In Washington, the NRC may not complete its environmental review until months or years after EFSEC's SCA is executed. This could sever the NRC's analysis and expertise from the EFSEC process and require EFSEC to undertake its state environmental review and make siting decisions without the benefit of the NRC's project-level review, potentially extending the time needed to gather sufficient information for state environmental review and siting decisions. Delaying the NRC's full project-level review will make it difficult or impossible to incorporate into State regulatory processes, resulting in more disjointed and less thorough oversight of nuclear energy.

The NRC's delayed environmental review, occurring only after initial construction activities have already occurred, could also limit development of mitigation measures and alternative actions. If construction has already begun before environmental review, mitigation measures and alternative actions will be impossible to implement retroactively. This could result in significant environmental impacts and harm to protected species that could have otherwise been mitigated or avoided. Once an applicant breaks ground or clears an undeveloped area to begin construction, it becomes impossible at that point to avoid direct environmental impacts. It is irreversible and irretrievable. Delaying environmental review until after ground disturbing activities have already started makes a meaningful environmental review process impossible.⁵³

4. The proposal to create general licenses violates the AEA, circumvents public involvement, and precludes health and safety protections.

The NRC further proposes allowing additional parts of the plant to be constructed without a construction permit or combined license.⁵⁴ As discussed above, the change to the definition of construction would allow construction of plant components that do not significantly impact radiological health and safety. However, under the Proposed Rule, even those parts of the plant that do significantly impact health and safety can still be constructed without any NRC or public review if allowed under the proposed "general license." This approach compounds the issues with allowing construction without a construction permit or combined license, discussed

⁵² Wash. Rev. Code 80.50.020(6).

⁵³ Under NEPA, "proposal" is defined as "a proposed action at a stage when an agency has a goal, is actively preparing to make a decision on one or more alternative means of accomplishing that goal, and *can meaningfully evaluate its effects*." 42 U.S.C. § 4336e(12) (emphasis added).

⁵⁴ A combined license is the NRC authorization to both construct and conditionally operate a nuclear power plant. See 10 C.F.R. § 52.71 *et seq.*

above, and introduces several other fundamental public participation and process concerns. The NRC should withdraw its general licensing proposal.

The Proposed Rule's expanded use of "general licenses" would apply to the construction of important components of certain commercial nuclear plants, provided for under Section 109 of the AEA.⁵⁵ The Proposed Rule's changes, if finalized, would grant general licenses to allow construction of important component parts at the time a permit application is merely docketed, before any substantive NRC review.⁵⁶ These important component parts include any part of the plant "except for the reactor vessel, the reactor coolant system, and associated reactivity control and heat removal mechanisms."⁵⁷

General licenses would be available where an operating license applicant requests the NRC to "make a finding on generic finality."⁵⁸ Such request would be announced in a public notice and then a "hearing opportunity" would be provided to the public.⁵⁹ When making a decision on generic finality, the NRC must include conditions that protect "the health and safety of the public and common defense and security" and ensure "an appropriate level of environmental review."⁶⁰ If the plant that was granted generic finality is constructed and enters into operation, then future applicants can rely on that generic license to begin construction without NRC review.

The Proposal's stated purpose is to "enable rapid deployment strategies for advanced reactor technologies" and "to accommodate the business models for new reactor designs some prospective vendors are proposing."⁶¹ Broadening regulatory provisions to allow construction of parts of a nuclear reactor with significant impact on radiological health and safety without NRC review or public participation is a major concern for all the reasons discussed above, but also additional reasons.

After one reactor with a new design is built and begins to operate anywhere in the country, projects with that type of plant design could begin construction anywhere in the country, and indeed could nearly complete construction of an entire plant including key safety-related parts, before the public has had any opportunity to learn about or comment upon it. Once a plant is built and given generic finality, the public participation rights are broadly curtailed. So, the Proposal would unreasonably require residents to track nationwide nuclear licensing projects and scrutinize each one before one could conceivably be constructed in their backyard.⁶² Removing

⁵⁵ 42 U.S.C. § 2139(a).

⁵⁶ 91 Fed. Reg. at 44,567.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 44,568.

⁶⁰ *Id.* at 44,567.

⁶¹ 91 Fed. Reg. at 44,565.

⁶² The Proposal stipulates that it would enable a petitioner "whose property, financial, or other interests would not be directly affected by the issuance . . . to intervene" in a general finality proceeding before the NRC. 91 Fed. Reg. at 44,568. However, this does not address whether such petitioner would have the right to challenge the NRC's decision on generic finality before a court. The NRC must address whether this approach to generic finality would restrict indirect intervenors from having standing to challenge a decision before a court.

public participation would violate the law and would be a concern for any type of large project of this nature, but in particular for novel reactor types.

Furthermore, the Proposal's general license provisions inadequately examine potential harm to the environment. The NRC asserts that a general license would "include conditions to address environmental considerations" and that a generic finality finding would either qualify for a categorical exclusion from NEPA review or result in a finding of no significant impact.⁶³ Therefore, according to the Proposal's logic, any environmental impacts from a subsequently constructed plant under a general license "would not exceed those of the approved plant and would be acceptable."⁶⁴ This Proposal illegally predetermines the outcome of future NEPA analyses by assuming that either a categorical exclusion or FONSI would be appropriate and eliminating an EIS from consideration. It also completely ignores the need to consider site-specific environmental conditions as part of the environmental review. It is impossible to determine that a proposed facility's impacts "would not exceed those of the approved plant" without first conducting a site-specific review for the new proposed project.

The Proposal stipulates that activities taken under a general license "would be entirely at the risk of the general licensee" and would not affect "the issuance of a license" and would require a "plan of redress of any adverse environmental impact . . . should such redress be necessary."⁶⁵ However, these provisions are entirely inadequate for several reasons. As noted above, generic findings and generalized conditions will not account for site-specific environmental conditions. Additionally, the Proposed Rule does not identify or assess any potential general license conditions that would supposedly prevent significant environmental impacts. It is unclear whether the NRC envisions some future process by which it will assess a range of general license conditions. If that is the vision, then the NRC must do so through a notice and comment rulemaking process. It cannot circumvent public awareness of the potential environmental impacts and must give the public an opportunity to review the range of proposed conditions and submit comments. It is wholly insufficient to apply one-size-fits-all general license conditions that ignore site-specific circumstances and deprive the local community of information and an opportunity to participate.

Similarly, simply requiring a plan of redress or disclaiming liability cannot substitute for appropriate prior analysis, where an environmental catastrophe could cause immense damage. Furthermore, a future generic licensee can simply decide for itself whether its new use would qualify for the pre-existing NEPA categorical exclusion or warrant a Finding of No Significant Impact. The NRC cannot fully delegate this determination to the applicant's complete discretion. The NRC's mandate under the AEA requires it to affirmatively regulate to protect health and safety.⁶⁶ The general license proposal violates that mandate. For these and other reasons, the general license proposal should be withdrawn from further consideration.

⁶³ *Id.* at 44,567.

⁶⁴ *Id.*

⁶⁵ *Id.* at 44,567.

⁶⁶ 42 U.S.C. § 2012(e).

5. The proposals to prolong license terms and eliminate permit expiration will circumvent public participation and impact public confidence, health, and safety.

As with the NRC's proposal to revise the definition of "construction" and expand general licenses, the NRC's proposals to prolong license periods and remove permit expiration dates limit public participation and impact public safety. The Proposed Rule would extend reactor manufacturing licenses from a maximum of 15 years to 40 years with possible renewals of additional 40 years, increasing the potential lifespan by 65 years: long enough to burden multiple generations in the immediate area.⁶⁷ Similarly, the Proposed Rule would extend reactor operating licenses by allowing 40-year renewal periods, a 100% increase from the current 20-year limit.⁶⁸ The rule would also remove fixed terms for early site permits.⁶⁹ These provisions would lock in siting and licensing decisions for extended periods, depriving surrounding communities of the ability to participate in decisions to minimize the ongoing burden or retain leverage to ensure promised benefits are provided.

As discussed above, public participation is a crucial and longstanding component of the NRC licensing process. These protections are particularly important where communities are already overburdened by existing pollution sources or lack critical emergency planning and management resources. License renewal provides communities with a critical voice and the ability to ensure decisionmakers are informed by the experience of workers and residents living in proximity to nuclear facilities—sometimes for decades.

Communities in proximity to nuclear facilities are the most affected by licensing procedures. This country's commercial nuclear fleet has an average reactor age of more than 40 years and, without proper maintenance and oversight, this aging infrastructure is at an increased risk of leaks and contamination events.⁷⁰ Communities with environmental concerns, overburdened communities, and vulnerable populations, in particular, often lack resources for emergency planning and management, putting them at great risk in the event of a catastrophic event.⁷¹ Many of these communities are already constrained in their ability to weigh in on the impacts of nuclear siting and licensing, particularly due to the NRC's longstanding constraints on environmental justice analyses.⁷² Concurrent rulemakings by the NRC have exacerbated these concerns, notably the NRC's amendments to its NEPA regulations, which eliminate consideration of indirect and cumulative effects, climate change, and environmental justice, while curtailing

⁶⁷ 91 Fed. Reg. at 44,645.

⁶⁸ *Id.* at 44,600.

⁶⁹ *Id.* at 44,597.

⁷⁰ Eric Jantz, *Environmental Racism with a Faint Green Glow*, 58 NAT. RES. J. 247, 254 (2017) (citing Kyne and Bolin).

⁷¹ *Id.* at 254–55.

⁷² For instance, in deciding whether to renew the operating license for two nuclear reactors at the Indian Point nuclear power plant, New York, in 2015, although impacted communities provided updated evidence to the Licensing Board "that poverty and site-specific community characteristics like language barriers, presented obstacles to emergency evacuation in the event of a serious nuclear accident," the NRC concluded that the safety findings presented in a generic Environmental Impact Statement from 1996 (which did not include site specific environmental justice considerations) was sufficient to proceed with the renewal. *See Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 & 3), 81 N.R.C. 340, 350–51 (2015).

public participation.⁷³ The Proposed Rule will further limit opportunities for the public to weigh in on the licensing and renewal of facilities.

Extended operating licenses – especially those that would result from the truncated, expedited, and incomplete review processes under the Proposed Rule – would raise risks to public and environmental safety, decrease transparency, and impair public trust. Automatically extended operations of nuclear facilities also would guarantee more spent fuel is generated when no permanent storage solution presently exists. The States urge the NRC to withdraw the proposal for extended license periods from further consideration.

6. The Proposed Rule inappropriately expands alternative compliance and deviations from established standards.

The AEA allows for flexibility in federal oversight.⁷⁴ However, the degree to which the NRC proposes to allow deviations from standards and alternative compliance methods risks destabilizing the industry and undermining public confidence in the safety and reliability of nuclear power. The States urge the NRC to maintain its independent oversight, inspection, and verification authority and procedures.

While alternative compliance is relatively common in regulatory systems, the Proposed Rule would expand the concept to a degree that may substantially increase the safety risks when applied to unproven companies in the same manner as well-established companies with proven track records for safety. Regulatory flexibility may be appropriate at times for large, sophisticated companies with the institutional capacity for flexibility and capability to devise alternative solutions to advance their objectives. However, alternative compliance is a more fraught option for smaller companies that lack established records of safe operation and have fewer resources for quality assurance when attempting to use new or alternative technology or procedures.

Overreliance on alternative forms of compliance, or deviations from established standards, also violates notice and comment rulemaking requirements by circumventing the regulatory process. When an agency routinely grants exceptions to regulatory requirements (via alternative compliance or deviations), the exceptions swallow the rule and result in de facto rescissions of regulatory requirements without revising the regulation through notice and comment rulemaking. This obscures the public eye from seeing how the nuclear industry is being regulated in reality, making it more difficult to identify what safeguards are in place to protect their health, safety, and environment. Removing the stability of a clearly defined regulatory program will undermine public confidence in reliable oversight and risks backlash to the secretive removal of public protections for the benefit of private interests.

⁷³ See NRC-2025-0478-0911 (Comments of Attorneys General of Washington, California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Mexico, Oregon, and Vermont, and Harris County, Texas). NRC Docket ID No. NRC-2025-0478 (Implementation of the National Environmental Policy Act, 91 Fed. Reg. 42,086 (July 7, 2026)).

⁷⁴ See, e.g., 42 U.S.C. §§ 2233, 2237.

The availability of any flexible compliance pathway should be tied to demonstrated and well-established performance records and follow a transparent decision-making process. The NRC should establish performance standards that must be met before it may approve any alternative compliance or deviation requests.⁷⁵ In addition, any approval of alternative equipment or procedures, or deviations or exceptions from established requirements, should be expressly subject to conditions that protect worker and public health and safety, and the environment. If the NRC issues a final rule, it should include, at a minimum, that the NRC will undertake a transparent process to establish site-specific protective conditions for all licenses, and commit to disclose all alternative compliance or deviation requests on a publicly available website, to be updated on a regular basis. The NRC should similarly make available any approval decisions and provide annual statistics of all types of alternative or deviation requests and conditions of approval. Any final rule should include a regulatory provision that expressly reserves the NRC's authority to impose conditions of approval on any such authorization.

Safety Oversight Provisions

7. The NRC's revisions to quality assurance requirements improperly shifts oversight to licensees contrary to the NRC's mission.

The Proposed Rule includes revisions to the quality assurance requirements for novel nuclear facilities, referred to as "Nth of a Kind" technology, and appears to shift oversight onto the licensees to self-regulate in violation of the NRC's mission.

The NRC's Proposed Rule offers a new streamlined "performance-based" "graded" approach to satisfying Quality Assurance (QA) program requirements that licensees could apply to new nuclear reactors/fuel reprocessing facilities that are based on previously approved designs, i.e., the "nth of a kind (NOAK)" facilities.⁷⁶ The Proposed Rule also foreshadows the NRC's desire to rely exclusively on NOAK licensees to audit their vendors and third-party, which would be unwise.

While these changes could satisfy industry's calls for more flexibility and help satisfy the Administration's goal of rapid deployment of new, mass-produced NOAK technologies, the approach improperly shifts regulatory oversight from the NRC to the licensee in allowing the licensee to decide what structures, systems, and components should be subject to QA rigor. The NRC should not delegate its regulatory decision-making responsibilities to its licensees, and it must not sacrifice public and environmental safety in offering licensees greater oversight flexibility.

The NRC should require greater QA program oversight and accountability requirements for the bespoke QA programs for NOAKs. Those requirements must provide sufficient assurance that the QA programs do not overlook safety risks. The NRC also should not remove direct oversight of vendors or third-party suppliers considering the history and ongoing risk of

⁷⁵ It would be helpful for the NRC to clarify the differences between an Alternative Compliance option and a License Exemption Request, to better understand the definition of an Alternative Compliance option.

⁷⁶ 91 Fed. Reg. at 44,575–44,580.

counterfeit parts, as documented by the NRC’s Office of Inspector General’s 2022 report.⁷⁷ The risks that novel nuclear technologies pose to public and environmental safety are too great to take the “first approved, all approved” without QA oversight approach that the NRC proposes.

8. The NRC’s proposal to streamline “Nth of a Kind” quality assurance programs would create unwarranted risk.

The proposed streamlining of NOAK QA programs introduces significant risk. QA programs at a nuclear power or reprocessing plant ensure the facility’s structures, systems and components operate safely.⁷⁸ “[S]ystematic QA [i]s essential to ensure nuclear safety, especially given the complexity and potential hazards of nuclear technology.”⁷⁹ And it is essential for good reason: “[i]ncidents and near-misses” in the 1970s compelled the Atomic Energy Commission to “establish minimum QA requirements for safety-related structures, systems and components” and “ensure” that these structures, systems and components “are designed, fabricated, constructed, and tested to perform their intended safety functions.”⁸⁰ The NRC requires currently operating facilities to demonstrate how the plant’s QA program satisfies what the NRC calls the “foundational” prescriptive list of safety criteria spelled out in Appendix B.⁸¹

However, the NRC now proposes that Appendix B apply only to existing and “first of a kind (FOAK)” plants, citing industry criticism that the current framework is inflexible and outdated, especially as to new technologies. In particular, the NRC notes criticism by “suppliers, especially non-nuclear vendors” who are unfamiliar with the requirements, creating “challenges” for licensees in obtaining products and services.⁸²

The Proposed Rule would create an alternative to the prescriptive requirements of Appendix B that would apply to NOAK plants.⁸³ A NOAK plant is “any subsequent implementation of a FOAK reactor design or technology or fuel reprocessing plant design after the FOAK plant has been designed, constructed, and operated.”⁸⁴ The alternative “Appendix T” would require the NOAK’s QA program to ensure that the “safety-related” and “safety-significant” structures, systems and components were “designed, fabricated, erected, and tested to quality standards *commensurate with the importance of the safety functions* those [structures, systems and components] perform.”⁸⁵ The Proposed Rule would condition the use of Appendix T instead of Appendix B on the licensee pointing to an approved “reference” FOAK plant and

⁷⁷ NRC Office of the Inspector General, Special Inquiry into Counterfeit, Fraudulent, and Suspect Items in Operating Nuclear Power Plants (Feb. 9, 2022), <https://www.nrc.gov/docs/ML2204/ML22040A111.pdf> (“OIG Report”); *see also*, Reuters, Counterfeit parts found in U.S. nuclear plants -inspector general, (Feb. 10, 2022), <https://www.reuters.com/business/energy/counterfeit-parts-present-many-us-nuclear-power-plants-inspector-general-2022-02-10/>.

⁷⁸ 91 Fed. Reg. 44,575.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ 10 C.F.R. Part 50, Appendix B (“Appendix B”). 91 Fed. Reg. 44,575.

⁸² *Id.*

⁸³ *Id.* at 44,576.

⁸⁴ *Id.*

⁸⁵ *Id.* at 44,577 (emphasis added).

asserting that “any departures” from the FOAK plant “would not result in a change to the classification, design, and method of manufacture, construction and operation of SSCs.”⁸⁶

Thus, instead of showing how a QA program satisfies Appendix B’s foundational prescriptive list of safety criteria for a NOAK (*i.e.*, a reproduction plant), a licensee would phase down the QA requirements for structures, systems and components that, in the licensee’s view, perform less-important safety functions.⁸⁷

This approach, as proposed, is risky. The NOAKs the Proposed Rule contemplates include the relatively novel and yet-to-be-tested advanced nuclear technologies intended to be deployed as quickly as possible. Simultaneously expanding the use of novel nuclear technologies while streamlining and deferring safety-risk decisions to the regulated community threatens to increase risk. Decisions about which structures, systems, and components indeed present a low safety risk must be audited by the NRC in its oversight role to ensure the licensee is not prioritizing deployment at the expense of safety.

The States urge the NRC to retain its proper regulatory role and augment the Proposed Rule. The NRC should mandate that internal audits be submitted for NRC review, including a comparison of QA programs generated under Appendix T to Appendix B requirements to ensure the same level of operational safety checks exist for novel technology. In particular, the NRC must review NOAK QA programs to confirm that structures, systems, and components the licensee deems low-risk (and thus have fewer QA requirements) indeed present a low risk to safety. The States also request the NRC include specific continued auditing and confirmation requirements to ensure that the licensee’s representations about consistency are accurate and remain so throughout the operational life of a NOAK plant. This is especially important given that much of the licensee’s decision-making about NOAKs will have limited real-world operational data, thus will be based on computer modeling and limited laboratory testing (likely claimed to be business confidential, thus not subject to peer or public review).

9. The NRC’s proposed elimination of direct oversight of vendors and third-party suppliers creates concerning safety risks.

The NRC should not remove its direct oversight for vendors and third-party suppliers or shift such oversight to licensees. Under the Proposed Rule, a licensee relying on Appendix T’s requirements would need to explain, among other things, that its QA program includes measures to verify and validate that the products and services from vendors “meet the technical and quality requirements of the procured products and services” and that the licensee would audit its vendors and suppliers.⁸⁸ These, and the other proposed requirements applicable to vendors and third-party suppliers, are laudable. However, the NRC believes that the proposed Appendix T and NOAK concept generally would make its direct oversight of vendors and suppliers – including software vendors and suppliers – unnecessary.⁸⁹ During the licensing review for a FOAK plant, the NRC inspects the applicant’s vendors to confirm that the design and as-built systems,

⁸⁶ *Id.* at 44,576.

⁸⁷ *See id.* at 44,577, 44,688 (describing the “graded approach” to QA efforts).

⁸⁸ *Id.* at 44,577.

⁸⁹ *Id.* at 44,576.

structures, and components satisfy technical and quality requirements.⁹⁰ The NRC believes that “because a NOAK applicant could reference design details and QA procedures developed during the FOAK licensing, these additional QA activities, such as vendor inspections, may be unnecessary.”⁹¹

The States urge the NRC not to withdraw from direct oversight of vendors or third-party suppliers at NOAK plants on the assumption that its prior review of those vendors applies unequivocally to the FOAK plant. Put simply, the safety risks – including potential national security risks – from counterfeit parts require direct NRC oversight of vendors or third-party suppliers. The nuclear industry has wrestled with counterfeit parts for years, and, as recently as 2022, the NRC’s Inspector General discovered counterfeit parts at a plant in the Midwest, and noted reports of component failures at plants in the Northeast that the plant operators had determined involved counterfeit parts.⁹² The Inspector General found that the Department of Energy staff identified “more than 100 incidents involving [counterfeit, fraudulent, and suspect items] in FY 2021 alone, including 5 incidents involving safety-significant components in its nuclear facilities.”⁹³ The OIG Report noted that, although “the NRC maintains that licensees have corrective action programs that track deficient components that fail, we found that three out of the four licensees we sampled *did not track* [counterfeit, fraudulent, and suspect items] in their corrective action programs.”⁹⁴ The Inspector General “also learned that some licensees do not use the word ‘counterfeit’ in their corrective action programs” and that “licensee investigations into failed parts are not automatic and are infrequently pursued.”⁹⁵ The Inspector General concluded that the NRC “may be underestimating” the number of counterfeit, fraudulent and suspect items in plants, and such items “present nuclear safety and security concerns that could have serious consequences.”⁹⁶ This risk of counterfeit components alone should cause the NRC to withdraw its proposed changes to oversight of vendors and third-party suppliers. If anything, the NRC must strengthen, not lessen, its oversight.

10. The Proposed Rule’s expansion of “streamlining” and “performance-based” approaches would be an abdication of the NRC’s safety mandate.

The NRC should not expand “streamlining” and “performance-based” approaches to currently operating and FOAK nuclear facilities. While the Proposed Rule would limit the option of satisfying the streamlined Appendix T to NOAK plants referencing a FOAK plant, the NRC solicited comments about how it could “expand the applicability of appendix T to FOAK plants and existing licensees.”⁹⁷ This portends the NRC taking an even greater step away from directly regulating nuclear facilities. The States caution the NRC against proceeding down that road. Novel nuclear technologies must demonstrate safe operations based on actual operational data, and in the meantime, there must be more direct oversight by the NRC, not less. This should include NRC inspections and review of performance information to ensure the accuracy of

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² OIG Report, *supra* n. 79, at pp. i, 4.

⁹³ *Id.*

⁹⁴ *Id.* at 5 (emphasis added).

⁹⁵ *Id.* at 6.

⁹⁶ *Id.* at 12.

⁹⁷ 91 Fed. Reg. at 44,644.

licensee's representations about its "safety-related" and "safety-significant" systems, structures and components, and NRC inspections of vendors and third-party suppliers.

The federal government should not prioritize rapid nuclear build-out over public safety. The NRC admits these proposed "modernization" revisions are to promote flexibility and cost savings for industry. However, this must not come at the expense of public and environmental safety. The States urge the NRC not to abdicate its mandate of regulating safe operation of nuclear facilities. The NRC must help maintain the public's confidence in the safety of nuclear energy.

11. The proposed expansion of the "performance-based" emergency preparedness framework will hinder transparency and joint decision-making.

The Proposed Rule makes concerning changes to the emergency preparedness framework, including as applied to operating nuclear power plants. The Proposed Rule would allow expansion of the "performance-based" emergency preparedness framework, but offsite response infrastructure is a critical component of incident response in the event of a catastrophic accident at a power plant. The NRC's proposal to expand the "performance-based" emergency preparedness framework risk replacing mandatory state or local offsite emergency plans with vague descriptions of "interaction with response organizations." The emergency plans are binding agreements that describe the specific requirements and expectations of all parties. The Proposed Rule would allow this to be replaced with vague "coordination descriptions," leaving state and local response agencies without an agreed-upon mechanism for emergency planning and response, possibly including radiological monitoring, interagency communications infrastructure, exercise schedules, or personnel readiness and training.

To be clear, data-driven and risk-based emergency planning are valuable approaches, and state-led emergency teams evaluate risks to our States based on modeling scenarios reviewed over decades of emergency planning exercises. The most critical aspects of any proposed change to emergency planning frameworks, including emergency planning zones (EPZs), are transparency and joint decision-making in an open public process. Any changes to EPZs or offsite preparedness should include meaningful involvement from State and local response organizations. Similarly, any changes should not shift responsibilities or costs from licensees to state or local governments without full coordination or support. The NRC should include a specific framework for how consequential changes to emergency plans, including EPZs, are processed. Affected offsite response organizations and the public should have access to appropriate and relevant data and modeling used in requesting such a change, and there must be public meetings and hearings with shared information. And while some information is likely to remain appropriately sensitive and not available for public review, the NRC should minimize what is withheld. Transparency in government decision making is a core value to the States and our agencies. The NRC should share these values. In addition, affected governments, not only the NRC, should be given appropriate authority to sign off on any proposed changes to emergency plans that shift to any new 'performance-based' standards and that dramatically change EPZs or offsite response requirements. The Proposed Rule would open the door for the NRC to seemingly transfer the operational and financial burden of offsite radiological preparedness and response programs onto state or local taxpayers while depriving state and local

agencies of facility operator support housed under a comprehensive emergency preparedness program. Without further revisions that address the above concerns, these changes to the emergency preparedness framework should be withdrawn.

Siting Provisions

12. The NRC should withdraw its proposal to allow development in greater population density areas.

The Proposed Rule offers a new standard for how the NRC will make siting decisions specifically to allow for siting nuclear reactors “in areas of greater population density.”⁹⁸ The NRC proposes to allow siting in more densely populated areas when “justified by an assessment comparing the societal risks and societal benefits of siting reactors in those areas.” This standard is highly subjective and the rule contains no context for how the NRC would apply it in the future. The NRC does not say what it will consider a “societal risk” or a “societal benefit” in any particular area or whether the standard may result in disproportionately siting new reactors in already overburdened areas, thus “benefiting” some in society by avoiding impacts in a less burdened area, or “benefiting” an economically distressed community by offering some employment opportunities.⁹⁹ The initial siting decision creates risks and burdens for the surrounding community. When considered in the context of how long a license may last, and without regulatory tools for public engagement and influence after a siting decision has been made, the surrounding community will be subject to ongoing cumulative harms for generations. This standard is prone to discriminatory application and must be withdrawn and eliminated from any final rule.

13. The Proposal raises significant concerns about public confidence, public health and safety, and impacts on vulnerable populations and overburdened communities.

The Proposed Rule would drastically reduce NRC oversight at multiple junctures of the licensing and siting processes, with significant impacts on public confidence, public involvement, and protection of public health and safety, all contrary to the NRC’s mission. The proposed changes would increase risks that will fall most heavily on already vulnerable populations and overburdened communities and undermine the very public awareness and engagement that mitigate those risks.

Robust oversight is particularly important to maintain public confidence in the safety of nuclear power and reduce fear of catastrophic accidents. For local communities, catastrophic events are a paramount concern. Failures like the core-meltdown accidents at Chernobyl and Fukushima can cause acute and long-term injuries from radiation exposure,¹⁰⁰ as well as

⁹⁸ *Id.* at 44,604.

⁹⁹ Jantz, *supra* note 70 (presenting evidence that site selection process improperly included subjective quality of life assessments, for example, a prospective site was rejected because it was near a lake with “nice homes” and arguing that site selection criterion requiring that the enrichment facility not be located near hospitals, schools or nursing homes was inherently biased because impoverished communities of color often lack these basic necessities).

¹⁰⁰ S. Yamashita et al., *Comprehensive Health Risk Management after the Fukushima Nuclear Power Plant Accident*, 28 CLINICAL ONCOLOGY 255–262 (2016),

immediate and lasting social, economic, and physical and mental health impacts from the experience of disaster, evacuation, and displacement.¹⁰¹ Risk of catastrophic events can be elevated by the significant age of the United States' reactor fleet if not subject to rigorous inspection, monitoring, and maintenance.¹⁰² Nuclear workers also bear risks of severe impacts. Exposure to radioactive materials is associated with cancer risks, including blood cancers, such as lymphoma or leukemia, cancers of the esophagus, stomach, colon, liver, lung, and urinary bladder, as well as female breast, brain, thyroid, and non-melanoma skin cancer,¹⁰³ as well as reproductive complications and birth defects.¹⁰⁴ Occupational studies of nuclear workers extend back decades, and large contemporary studies using individual radiation-monitoring data have found increasing cancer risk with increasing cumulative exposure, including at low doses.¹⁰⁵ These risks are well known and the NRC must adhere to its mandate to protect the health and safety of these communities and workers.

The Proposed Rule, alongside the proposed revisions to the NRC's NEPA regulations, also further degrades the NRC's already weak environmental justice processes,¹⁰⁶ creating further risk for environmental justice communities. These communities, who face cumulative impacts from other environmental and non-environmental harms that make them increasingly

<https://www.sciencedirect.com/science/article/pii/S0936655516000042#bib6>; V. Saenko et al., *The Chernobyl Accident and its Consequences*, 23 *Clinical Oncology* 234–243 (2011), <https://doi.org/10.1016/j.clon.2011.01.502>.

¹⁰¹ A. Hasegawa et al., *Emergency Responses and Health Consequences after the Fukushima Accident; Evacuation and Relocation*, 28 *CLINICAL ONCOLOGY* 237–244 (2016), <https://www.sciencedirect.com/science/article/pii/S0936655516000054>.

¹⁰² Mycle Schneider Consulting, *The World Nuclear Industry: Status Report 2024* at 230 (Sep. 2024), <https://www.worldnuclearreport.org/IMG/pdf/wnisr2024-v4.pdf> (“Despite two new reactor startups between July 2023 and April 2024, the U.S. fleet continues to age, with a mid-2024 average of 42.7 years, making it amongst the oldest in the world: 54 units have operated for 41 years or more (of which 15 for more than 51 years) and all but four for 31 years or more[.]”).

¹⁰³ Nat'l Academies of Scis., *Health Risks from Exposure to Low Levels of Ionizing Radiation: BEIR VII Phase 2*, The Nat'l Academies Press (2006), <https://www.nationalacademies.org/publications/11340>; see also World Health Org., *Ionizing Radiation and Health Effects* (July 27, 2023), <https://www.who.int/news-room/fact-sheets/detail/ionizing-radiation-and-health-effects>.

¹⁰⁴ Salma Akter et al., *Assessing the Risks of Prenatal Radiation: Effects on Pregnancy and Neonatal Development*, 17 *J. of Pharmacy & BioAllied Scis.* 1 (2025), <https://pmc.ncbi.nlm.nih.gov/articles/PMC12563580/>; Brianna Frangione et al., *Low-dose Ionizing Radiation and Adverse Birth Outcomes: A Systematic Review and Meta-Analysis*, 96 *Int'l Archives of Occupational and Env't Health* 77–92 (2022), <https://link.springer.com/article/10.1007/s00420-022-01911-2>; Canadian Nuclear Safety Commission, *Health Effects of Ionizing Radiation on Children* (May 16, 2024), <https://www.cnsccsn.gc.ca/eng/resources/radiation/effects-of-radiation-on-children/#sec4>.

¹⁰⁵ Thomas F. Mancuso et al., *Radiation Exposures of Hanford Workers Dying from Cancer and Other Causes*, 33 *HEALTH PHYSICS* 369–385 (1977), <https://www.ovid.com/jnls/health-physics/abstract/00004032-197711000-00002~radiation-exposures-of-hanford-workers-dying-from-cancer-and?redirectionsource=fulltextview>; INWORKS studies-- Richardson et al 2023 (<https://pubmed.ncbi.nlm.nih.gov/37586731/>) and Leuraud et al 2024 (<https://pubmed.ncbi.nlm.nih.gov/39222647/>).

¹⁰⁶ For instance, in approving an early permit for two nuclear reactors connected to the North Anna Nuclear Power plant in Louisa County, Virginia, the NRC overruled an NRC Licensing Board determination that technical staff had failed to sufficiently analyze the environmental justice impacts of the planned construction, concluding that, although the analysis “was ‘rather cursory,’ ‘thin,’ and ‘terse,’ it was nevertheless sufficient to satisfy the NRC’s environmental justice policy and guidance because...the environmental justice impacts would be ‘small.’” Dominion Nuclear N. Anna, LLC (Early Site Permit for N. Anna Esp Site), 66 N.R.C. 215 (2007), <https://www.nrc.gov/reading-rm/doc-collections/commission/orders/2007/2007-27cli.pdf>; see also Jantz, *supra* note 70, at 267.

vulnerable, have diminished political and socioeconomic power in siting and licensing proceedings and emergency preparedness, and have access to fewer resources to respond to and recover from catastrophic events. Distributional and procedural justice issues, related to site selection processes, emergency preparedness capabilities, and public participation in license renewal processes, are exacerbated by the Proposed Rule.

Indeed, many present and historic facilities under the NRC's oversight are located in or near to Tribal land or Indigenous communities, communities of color, and low-income communities.¹⁰⁷ These communities bear cumulative burdens affecting their health, environmental quality, and cultural and historic resources. Population-based studies have found that legacy uranium pollution has resulted in disproportionate rates of immune dysregulation and inflammation among Navajo communities, particularly among Navajo women, living near uranium mining and milling sites, which further exacerbates underlying health disparities.¹⁰⁸ In addition, these communities generally lack emergency response resources and face slower clean-up response than non-minority, affluent communities with similar uranium and nuclear development.¹⁰⁹ This is seen in New Mexico where various facilities are located in predominantly Hispanic and Indigenous communities and communities experiencing high poverty rates.

Historic siting decisions by the NRC have contributed to these cumulative harms. The NRC has consistently constrained the Licensing Board from analyzing environmental justice impacts and rejected concerns about bias in site selection criteria,¹¹⁰ even prior to the rescissions of the NRC's environmental justice policy and strategy documents.¹¹¹

The rapid, expanded development of nuclear power plants will also increase nuclear waste, underscoring the need for long-term planning and adequate protocols. Commercial nuclear waste, currently stored on-site, can remain radioactive and dangerous to human health for thousands of years.¹¹² Expanded nuclear waste generation could exacerbate the decades-long

¹⁰⁷ Mary Alldred & Kristin Shrader-Frechette, *Environmental Injustice in Siting Nuclear Plants*, 2 ENV'T JUST. 85, 91–96 (2009), <https://journals.sagepub.com/doi/10.1089/env.2008.0544>.

¹⁰⁸ Esther Erdei et al., *Metal Mixture Exposures and Multiplexed Autoantibody Screening in Navajo Communities Exposed to Uranium Mine Wastes*, 6 J. TRANSLATIONAL AUTOIMMUNITY 1 (2023), <https://doi.org/10.1016/j.jtauto.2023.100201>; Molly Harmon et al., *Residential Proximity to Abandoned Uranium Mines and Serum Inflammatory Potential in Chronically Exposed Navajo Communities*, 27 J. OF EXPOSURE SCI. & ENV'T EPIDEMIOLOGY 365 (2017), <https://doi.org/10.1038/jes.2016.79>.

¹⁰⁹ Jantz, *supra* note 70, at 259; *see also* In the Matter of Louisiana Energy Servs., L.P. (Claiborne Enrichment Ctr.), 47 N.R.C. 77, 100 (Apr. 3, 1998) (“‘Disparate impact’ analysis is our principal tool for advancing environmental justice under NEPA.”).

¹¹⁰ Jantz, *supra* note 70, 257–59, 266–68.

¹¹¹ Memorandum from Carrie Safford, Secretary, NRC, to Brooke Poole Clark, General Counsel, NRC (April 10, 2025), <https://www.nrc.gov/docs/ML2510/ML25100A106.pdf>; Memorandum from Hugh Thomposon, NRC Member, Env't Just. Interagency Working Group, to Carol Browner, Chair, Env't Just. Interagency Working Group (Mar. 24 1995), <https://www.nrc.gov/docs/ML2008/ML20081K602.pdf> (NRC Environmental Justice Strategy, ML20081K602); *see also* NRC, *Environmental Justice Background and Chronology* (Mar. 29, 2022), <https://www.nrc.gov/docs/ML2203/ML22031A067.pdf> (ML22031A067); Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions, 69 Fed. Reg. 52,040 (Aug. 24, 2004).

¹¹² Iodine, for example, is a common byproduct of nuclear power plants. Radioactive iodine is known to disperse rapidly in air and water and I-129, if released, can remain in the environment for millions of years.¹¹² Exposure to iodine can affect the thyroid gland and increase the risk of cancer or other thyroid problems. *See* U.S. Energy Info.

problem of where to store such waste and add to the cumulative environmental and human health impacts of past, present, and future nuclear development and waste disposal in states like New Mexico, which hosts the Waste Isolation Power Plant.

14. The NRC has not complied with the National Environmental Policy Act.

The Proposed Rule is a major federal action with potentially significant impacts on the environment, requiring an environmental impact statement.¹¹³ The NRC has prepared only an environmental assessment for the Proposed Rule based on the faulty premise that the rule “would not have a significant impact on the environment,” because “[t]he proposed requirements would be administrative in application or matters of procedure or provide an equivalent level of safety as existing requirements [and] therefore there would be similar environmental impacts from the implementation of the regulations in this proposed rule as there are for existing requirements.”¹¹⁴

To the contrary, the Proposed Rule is not administrative in application; it is a proposal that would have immediate environmental impacts without equivalent protections as those provided in the current regulations.¹¹⁵ The Proposed Rule redefines construction to allow immediate environmental impacts and creates an entirely new authorization—the general license—that will allow construction to begin immediately upon submission of an application for a license. The Proposed Rule would allow immediate, on-the-ground environmental impacts without further agency approval and without site-specific environmental review, an alternatives analysis, or conditions of approval. The NRC has long relied on license conditions to ensure environmental compliance before breaking ground and to ensure adequate safety plans. The proposed general license framework, which would eliminate license conditions prior to breaking ground, alone requires an environmental impact statement. The failure to complete an impact statement will violate NEPA.

Conclusion

For these reasons, the States urge the NRC to consider the above comments and withdraw the Proposed Rule accordingly.

Admin., *Nuclear Explained: Nuclear Power and the Environment* (last accessed Aug. 24, 2026), <https://www.eia.gov/energyexplained/nuclear/nuclear-power-and-the-environment.php>.

¹¹³ See generally 42 U.S.C. §§ 4332, 4336.

¹¹⁴ 91 Fed. Reg. at 44,684.

¹¹⁵ NEPA defines a “proposal” as “a proposed action at a stage when an agency has a goal, is actively preparing to make a decision on one or more alternative means of accomplishing that goal, and can meaningfully evaluate its effects.” 42 U.S.C. § 4336e(12).

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