



March 4, 2026

Office of NEPA Policy and Compliance  
U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, DC 20585

Subject: “Categorical Exclusion for Advanced Nuclear Reactors” [DOE–HQ–2025–0405]

To all concerned:

The following represent the combined comments of the New York State Energy Research and Development Authority, New York State Department of Environmental Conservation, New York State Department of Public Service, New York State Department of Health, and New York State Department of State (“New York agencies”). The New York agencies appreciate the opportunity to review the U.S. Department of Energy’s (DOE) categorical exclusion from environmental impact review for the authorization, siting, construction, operation, reauthorization, and decommissioning of advanced nuclear reactors (DOE-HQ-2025-0405) published in the *Federal Register* on February 2, 2026. The *Federal Register* notice indicates that the new categorical exclusion went into effect on February 2, 2026, but that DOE may make revisions to the categorical exclusion if DOE determines they are warranted based on public comments. The comment period closes on March 4, 2026.

**New York’s Direct and Substantial Interest in this Action**

New York State has a direct and substantial interest in this action. The State is home to four operating civilian commercial nuclear power reactors at three sites which provide approximately 20 percent of the State’s electricity. The potential for additional well-designed and professionally operated advanced nuclear reactors to serve as a

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dispatchable, emissions-free resource is currently under strong consideration in New York as the State pursues economic growth through increased in-State activities as well as attracting new commercial and industrial activity to New York, all as the State advances legislated policies for a zero-emission electric grid. In June of 2025, New York Governor 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. Then, in January 2026, the Governor called for a nuclear reliability “backbone” program to be developed through the deployment of an additional four gigawatts of new nuclear energy. In parallel, New York is currently developing a New York Master Plan for Responsible Advanced Nuclear Development and is co-chairing the Advanced Nuclear First Mover Initiative, a multi-state initiative on nuclear energy focused on risk-sharing and driving down costs. New York’s commitment to advanced nuclear deployment is both ambitious and concrete.

It is in this context—as a state actively pursuing advanced nuclear energy development to simultaneously support economic expansion and build public confidence in new technologies—that the New York agencies submit these comments. The New York agencies believe that maintaining rigorous environmental and public safety standards is critical to achieving the nation’s goal of accelerated deployment of these emerging technologies. While the New York agencies support the goal of streamlining regulatory processes for advanced nuclear reactors, the agencies have concerns regarding the scope, legal basis, and practical implications of the categorical exclusion as adopted. The New York agencies appreciate all opportunities to provide input to DOE on initiatives affecting nuclear power and offer the following feedback.

### **NEPA Provides Important Benefits to DOE and Stakeholders**

The National Environmental Policy Act (NEPA) provides important benefits to DOE decisionmakers and interested stakeholders. It ensures that DOE takes a “hard look” at a range of options to meet its goals and the environmental impacts associated with those options, including impacts to natural resources such as ground and surface waters, tidal and freshwater wetlands, threatened and endangered species, wild, scenic, and recreational rivers, floodplains, solid and hazardous waste, associated site contamination, and air quality and the emissions from equipment and infrastructure associated with such facilities. This “hard look” also encompasses environmental considerations beyond natural resources, including the analysis of impacts to archaeological sites, ambient noise levels, visual changes, community character, amongst many others that are of critical importance to New Yorkers.

NEPA's emphasis on a deliberative decision-making process and a public engagement process improves the quality of decisions while educating stakeholders and building public support for DOE's efforts. As the Council on Environmental Quality explained in its previous regulation, "NEPA's purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment."

NEPA's benefits are particularly clear in the context of advanced nuclear reactors. Fulsome environmental reviews of planned reactors foster public confidence in and understanding of new technologies. Without adequate environmental reviews, the market development for new technologies and designs should be anticipated to be adversely impacted by increased local scrutiny of projects and community concerns about a lack of assurance that those technologies have been examined through the NEPA process. This is particularly relevant as the Department of Environmental Conservation's jurisdiction for environmental review includes delegated and federally approved programs for these projects—which pertain largely to water quality—without a robust assessment on project impacts to other natural resources or environmental priorities. This could result in reduced community support or increased risk of litigation, both of which would slow deployment. Insufficient environmental reviews could also hinder the ability of nuclear reactor vendors to sell reactors abroad if the U.S. regulatory review is not viewed as robust. America's reputation as the gold standard in international nuclear regulation benefits American designs and is a key part of the value proposition offered by U.S. vendors.

### **New York Agencies' Recommendation**

The New York agencies recommend that DOE not proceed with the broad categorical exclusion for advanced reactors, as it creates gaps in environmental review that may not be able to be covered by states. In our view, other approaches can better deliver efficient, innovative environmental reviews. For example, once the U.S. Nuclear Regulatory Commission (NRC) finalizes its Generic Environmental Impact Statement (GEIS) for Licensing of New Nuclear Reactors, DOE could adopt that tool or use NRC's GEIS as a model for its own advanced reactor GEIS. NRC has invested years of effort in developing the GEIS (NUREG-2249), which uses a technology-neutral plant parameter envelope and site parameter envelope to evaluate environmental impacts that are common to many reactor projects. Rather than eliminating the environmental reviews detailed earlier, the GEIS approach streamlines licensing by resolving key environmental issues when a project meets pre-established entry criteria for particular resource areas. This approach would

allow DOE to efficiently authorize new reactors while realizing NEPA's benefits of informed decision-making and increasing public confidence in agency determinations, as well as providing American nuclear developers with a competitive advantage over developers in other countries.

### **New York Agencies' Concerns**

The New York agencies have several significant concerns about DOE's proposed categorical exclusion for advanced nuclear reactors. In our view, the categorical exclusion would be counterproductive to achieving our shared goal of increased deployment and export of advanced reactors with strong public support.

#### The Categorical Exclusion Is Very Broad

First, the proposed categorical exclusion is very broad. It would apply to 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.<sup>1</sup>

As DOE indicates in the *Federal Register* notice, the term "advanced nuclear reactors" includes "microreactors, small modular reactors, and Generation IV and Generation III+ reactors."<sup>2</sup> Moreover, DOE asserts that the scope of the categorical exclusion goes beyond reactors used for "experimental, testing and demonstration purposes" because "reactors in this category developed for additional purposes, such as power production and industrial applications, are also appropriate for this categorical exclusion."<sup>3</sup> As a result, the categorical exclusion could apply to everything from first-of-a-kind microreactors to gigawatt-scale light-water reactors that previously would have been evaluated with full Environmental Impact Statements. This broad scope represents an unprecedented application of the categorical exclusion tool.

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<sup>1</sup> Department of Energy, "Categorical Exclusion for Advanced Nuclear Reactors," Fed. Reg. 4550 (Feb. 2, 2026).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 4552.

This scope is also in tension with NRC’s authority. Under the Energy Reorganization Act of 1974, NRC has licensing and regulatory authority for commercial nuclear reactors, “production facilities for industrial or commercial purposes” and for reactors operated “for the purposes of demonstrating the suitability for commercial application of such a reactor.”<sup>4</sup> DOE’s regulatory and licensing authority, on the other hand, extends only to “[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.”<sup>5</sup>

#### The Categorical Exclusion’s Conditions Set a Very Low Bar

Second, instead of appropriately bounding the categorical exclusion, the conditions included by DOE set a very low bar. DOE’s NEPA implementing procedures state that a project must meet the listed “integral elements” to be eligible for any of the categorical exclusions in the appendix, including the new advanced reactors categorical exclusion. However, the “integral elements” do not substantially limit the categorical exclusion. As long as the project does not disturb preexisting hazardous substances or have the potential to cause significant impacts to environmentally sensitive resources, the categorical exclusion can be used. DOE determines whether an impact is potentially “significant,” and DOE’s notice of the new categorical exclusion strongly indicates that it views the impacts of advanced nuclear reactors as non-significant. The “integral elements” also state that a categorical exclusion cannot be used for a project “requiring the siting and construction or major expansion of waste storage or disposal facilities.” Although every reactor is going to produce radioactive waste, it is unlikely that DOE would view the addition of one or more dry casks as a “major expansion” of any existing dry cask storage. Doing so would render the categorical exclusion essentially unusable.

Because the “integral elements” are not very limiting, a reactor that passes a safety evaluation and meets the applicable regulations, as legally required, would likely meet the categorical exclusion conditions. To qualify for the categorical exclusion, the reactor’s attributes must “reduce sufficiently the risk of adverse offsite consequences from the release of radioactive or hazardous materials.” But DOE does not provide a specific standard for determining whether risks have been “reduced sufficiently.” Presumably, meeting DOE’s baseline safety standards would be sufficient. That, of course, means that a design that would previously have received both detailed safety and environmental reviews would effectively be receiving only a detailed safety review.

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<sup>4</sup> 42 U.S.C. § 2133(a); 42 U.S.C. § 5842(2).

<sup>5</sup> 42 U.S.C. § 5842(5).

The other condition gives short shrift to the generation and storage of radioactive waste. To forgo an environmental review of the impacts of the radioactive waste and spent nuclear fuel, the project need only demonstrate that it “can be managed in accordance with applicable requirements.” Regardless of NEPA, any reactor would need to meet the legal requirements for waste management. Doing so, however, does not provide the decision-making or public participation benefits of an environmental review.

This approach of not analyzing radioactive waste storage impacts is also at odds *New York v. NRC*.<sup>6</sup> As the D.C. Circuit Court of Appeals explained in *New York v. NRC*, conclusory statements about the future availability of radioactive waste storage do not constitute a “hard look” at the potential environmental effects of spent nuclear fuel and high-level radioactive waste. When considering NRC’s Waste Confidence Determination, the Court noted, “[w]ith full credit to the Commission’s considerable enforcement and inspection efforts, merely pointing to the compliance program is in no way sufficient to support a scientific finding that spent-fuel pools will not cause a significant environmental impact during the extended storage period.”<sup>7</sup> Here, DOE actually conducted substantially less analysis in issuing its broad categorical exclusion than NRC did when it promulgated the Waste Confidence Decision that did not survive judicial scrutiny.

#### DOE’s Written Record of Support Does Not Justify a Broad Categorical Exclusion

Third, DOE’s Written Record of Support does not justify a very broad categorical exclusion. Although the document examines several previous DOE and NRC Environmental Impact Statements and Environmental Assessments for nuclear reactors, nearly all of those reactors were microreactors, and none were large, light-water reactors.<sup>8</sup> Different reactor designs will have unique fuel configurations and radioactive waste streams.<sup>9</sup> They will have different sizes, fission product inventories, land and water use impacts, and radioactive waste storage systems. The reactors considered by DOE represent only a small sliver of this variability and cannot reasonably be used to draw the broad conclusions necessary to support an expansive categorical exclusion. For instance, none of the reactors considered in the Written Record of Support have an environmental profile similar to that of a large, Generation III+ light-water reactor. Yet DOE proposes to categorically exclude such projects from NEPA environmental review based on the much

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<sup>6</sup> *New York v. NRC*, No. 11-1045(D.C. Cir. 2012).

<sup>7</sup> *Id.* at 17-18.

<sup>8</sup> Department of Energy, “Categorical Exclusion for Advanced Nuclear Reactors Written Record of Support” (Feb 2, 2026).

<sup>9</sup> See, e.g., Krall, *et al.*, “Nuclear Waste from Small Modular Reactors,” PNAS (Vol. 119, No. 23) (2022).

different characteristics of small, non-light-water microreactors. The New York agencies are concerned that this approach does not rest on a solid analytical foundation.

#### The Categorical Exclusion Is Not Consistent with Past Practice

Fourth, the proposed categorical exclusion is not consistent with the past practice of DOE and NRC. As the Written Record of Support demonstrates, DOE and NRC have a long history of interpreting their NEPA obligations as requiring the preparation of Environmental Assessments or Environmental Impact Statements for new nuclear reactor projects. Even with the recent focus on streamlined environmental reviews, NRC prepared an Environmental Assessment for the Kairos Hermes 2 test reactors. The NRC staff opted for an Environmental Assessment rather than an Environmental Impact Statement because the Hermes 2 reactors:

would be located immediately adjacent to the proposed Hermes 1 facility on the same previously disturbed, former nuclear industrial site that was evaluated in the Hermes 1 EIS. The Hermes 2 test reactors would be similar in design to the Hermes 1 test reactor, employing fluoride salt-cooled, high-temperature reactor technology with inherent safety features that the staff found in the Hermes 1 EIS to have SMALL environmental impacts. Like the Hermes 1 design, the Hermes 2 test reactors would operate at a low power level (35 megawatts thermal) but would include an intermediate salt loop to exchange heat from the primary coolant loops to a common power generation system to produce electricity. The Hermes 2 facility would also include a small building footprint, limited interfaces with environmental resources, and increased reliance on passive systems and inherent characteristics used to prevent radioactive releases.<sup>10</sup>

NRC decided on the Environmental Assessment approach after a thorough evaluation of the options. DOE's broad categorical exclusion departs from the thoughtful, well-justified approaches used by DOE and NRC over many years for numerous nuclear reactor projects.

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<sup>10</sup> U.S. Nuclear Regulatory Commission, "Environmental Review Approach for the Kairos Power, LLC, Hermes 2 Construction Permit Application," SECY-23-0080 (Sept. 13, 2023) at 5.

## The Categorical Exclusion Is Not Commensurate with Other DOE Categorical Exclusions

Fifth, the scope of the proposed categorical exclusion is not commensurate with the other categorical exclusions established in DOE’s regulations. DOE’s existing categorical exclusions apply to activities such as routine maintenance and janitorial services for buildings, the installation of fencing, and traffic flow adjustments.<sup>11</sup> In the realm of energy generation, categorical exclusions cover projects like the installation of solar photovoltaic systems on rooftops or previously disturbed land and the installation and operation of “generally no more than 2” wind turbines of limited height.<sup>12</sup> Nuclear-related categorical exclusions have been limited to activities like refueling of nuclear reactors and the recovery of radioactive sealed sources.<sup>13</sup> The broad categorical exclusion for construction and operation of new nuclear reactors with no limitations on the number of reactors, the size of their footprint, or their fission product inventories would go far beyond DOE’s existing categorical exclusions. A categorical exclusion is appropriate only for categories of actions that “normally do not significantly affect the quality of the human environment.” 42 U.S.C. § 4336 e(1). The construction and operation of nuclear reactors—even advanced designs with enhanced safety features—inevitably involve environmental impacts that are highly dependent on site-specific characteristics and cannot be evaluated without reference to the specific location of a reactor and the surrounding environment.

Such impacts can affect a wide range of environmental resources, the extent of which depends on the footprint of the individual nuclear reactor. The New York State Department of Environmental Conservation’s role in the environmental review for these projects, for example, includes the applicable delegated authority, namely State Pollutant Discharge Elimination System (SPDES) permits and oversight under the Clean Water Act Section 401 Water Quality Certification process, the latter of which was recently proposed by EPA to be significantly curtailed in scope.<sup>14</sup> In that respect, the limited environmental resources available for regulation under these delegated permits could become even more limited in scope, and as such, a categorical exclusion for advanced nuclear reactors in DOE’s NEPA implementing regulations eliminates the primary means of evaluation of their numerous and varied impacts on natural resources, particularly those that are outside the realm of water quality.

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<sup>11</sup> See 10 C.F.R. 1021, Appendix B.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Environmental Protection Agency. (Proposed 2026, January 15). *Updating the Water Quality Certification Regulations*. 91 Fed. Reg. 2008. (To be codified at 40 C.F.R. Part 121).

### The Categorical Exclusion Could Adversely Affect NRC's Licensing Process

Sixth, the New York agencies are concerned about how DOE's broad categorical exclusion for advanced reactors might affect NRC's review of proposed commercial nuclear power plants. Executive Order 14300 directs NRC to "[e]stablish an expedited pathway to approve reactor designs that the DOD or the DOE have tested and that have demonstrated the ability to function safely." If NRC were to recognize and apply DOE's categorical exclusion to new commercial reactor applications, NRC's licensing reviews would be substantially compromised, and public acceptance of new reactors could be undermined. New Yorkers, and indeed all Americans, rely on a thorough and independent NRC review of proposed commercial nuclear power plants to ensure that these projects do not pose undue risks to human health and the environment.

### The Categorical Exclusion Eliminates Public Participation

Finally, and perhaps most fundamentally, applying a categorical exclusion to the construction and operation of advanced reactors eliminates public participation in the process of siting and authorizing new reactors. Unlike Environmental Impact Statements and Environmental Assessments, a categorical exclusion does not involve a scoping process that includes stakeholders and does not provide an opportunity for public comment. The categorical exclusion additionally prevents state agencies from serving as cooperating agencies in the NEPA process and eliminates their ability to offer comments and expertise on specific environmental resources. Leaving interested stakeholders and communities out of the process deprives DOE decisionmakers of valuable feedback and increases the possibility that host community concerns about a project will go unaddressed.

### **Conclusion**

For these reasons, the New York agencies recommend that DOE not proceed with the broad categorical exclusion for advanced reactors. The New York agencies recommend that DOE publish a notice on a proposed rescission of the new advanced nuclear reactor categorical exclusion. That notice should include a request for public comments (with at least a 60-day comment period) to be compliant with the Administrative Procedures Act and give all stakeholders sufficient opportunity for review and comment.

Thank you for the opportunity to comment. If you have any questions or concerns, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Alyse Peterson".

Alyse Peterson, P.E.  
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on behalf of the New York State Energy Research  
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