



August 21, 2026

U.S. Nuclear Regulatory Commission  
Office of the Secretary  
ATTN: Rulemakings and Adjudications Staff  
Washington, DC 20555

Subject: "Implementation of the National Environmental Policy Act" [NRC-2025-0478]

To all concerned:

The State of New York appreciates the opportunity to comment on the U.S. Nuclear Regulatory Commission's (NRC's) proposed rule "Implementation of the National Environmental Policy Act" (NRC-2025-0478) published in the Federal Register on July 7, 2026. As we actively pursue advanced nuclear energy development, support economic expansion, and build public confidence in new technologies, New York believes that balancing streamlined governmental decision-making process with essential environmental and public safety standards is critical to achieving the nation's goal of accelerated deployment of these emerging technologies. We appreciate all opportunities to provide input to NRC on the licensing, regulation, and oversight of nuclear power and offer the following feedback.

### **New York's Interest in the Proposed Rule**

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 dispatchable, emissions-free resource is currently under strong consideration in New York. The State is pursuing economic growth through increased in-state activities as well as attracting new commercial and industrial activity to New York, while advancing legislated policies for a zero-emission electric grid.

In June of 2025, New York Governor Kathy Hochul directed the New York 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.

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The NRC's adoption of a durable Rule that is consistent with NEPA will help New York advance its nuclear efforts while ensuring protection of the environment.

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

NEPA provides important benefits to NRC decisionmakers and interested stakeholders. Its 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 NRC's licensing actions.

NEPA's benefits are particularly clear in the context of advanced nuclear reactors. 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 may 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 could result in reduced community support or increased risk of litigation, both of which would slow deployment. Additionally, if the U.S. regulatory review is not viewed as robust, that could hinder the ability of nuclear reactor vendors to sell reactors abroad. 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.

### **Comments on the Proposed Rule**

New York supports NRC's goal of providing efficient and effective environmental reviews of commercial nuclear licensing actions and acknowledges that several provisions of the proposed rule would be worthwhile updates. New York offers constructive, concrete suggestions for improving the proposed changes and are provided to balance the need for regulatory expediency while ensuring public confidence and understanding.

#### Categorical Exclusions

New York has concerns about some of NRC's proposed provisions on categorical exclusions, which may deprive NRC decisionmakers of site-specific information and host community views in certain instances.

First, the proposed rule's expansion of the number and types of categorical exclusions, including for reactor projects that currently require an Environmental Impact Statement (EIS), may result in lower acceptance by new host communities and neighboring sites for new facilities. The proposed rule would categorically exclude new reactor construction permits, operating licenses, combined licenses, and early site permits as long as the facility and site meet the parameters of the Appendix C tables, which are based on the Generic Environmental Impact Statement (GEIS) for Licensing of New Reactors. In addition, the proposed rule would establish categorical exclusions for most reactor license renewals and dry cask independent spent fuel storage facility (ISFSI) licenses.

Although it makes sense to use the New Reactor GEIS as part of NRC's environmental review for new reactors, New York believes that the proposed rule's expansion of categorical exclusions is too broad. Broadly applying a categorical exclusion to the construction and operation of new reactors would curtail public participation in NRC's licensing process and increase the possibility that host community concerns about a project will go unaddressed, which may inadvertently lead to other delays in the project development and construction phases. This risk may be particularly apparent in these early years of the nascent advanced nuclear reactor industry, where environmental impacts are not available from past operating experience. Unlike EISs and Environmental Assessments (EAs), a categorical exclusion does not involve a scoping process that includes stakeholders and does not provide an opportunity for public comment, and leaving interested stakeholders and communities out of the process deprives NRC decisionmakers of potentially valuable public education opportunity as well as constructive feedback that may accelerate project advancement. The categorical exclusion additionally prevents state agencies from serving as cooperating agencies in the NEPA process and eliminates their ability to offer local expertise on specific environmental resources that fall within specialized state regulatory expertise.

Further, a NEPA review covers an array of environmental aspects of a project that are not sufficiently analyzed simply by meeting the GEIS parameters, particularly regarding site-specific issues. Many advanced reactor designs feature novel technologies with limited operating experience and unknown potential for new environmental impacts and safety issues, which on their own warrant the breadth and depth of a site-specific environmental analysis under NEPA. Further, as "New Nuclear" in the "Generic Environmental Impact Statement for Licensing of New Nuclear Reactors" includes applications for a license for any fission reactor, this could include larger-scale facilities if considered within the GEIS envelope parameters. New York recommends that NRC require an EIS or EA in conjunction with the New Reactor GEIS for at least the initial deployments of a particular design. This would provide a track record of construction and operation before the consideration of categorical exclusions. This approach would allow NRC to efficiently license new reactors while realizing NEPA's benefits of informed decision-making and increased public confidence in agency determinations.

A categorical exclusion for ISFSI licenses may also undermine local community acceptance of such facilities. It is important for NRC to understand and evaluate site-specific environmental hazards, such as seismic activity, flood risk, and corrosion risk. Without appropriate environmental review and the opportunities for stakeholder engagement the NEPA process provides, public acceptance of these important dry cask facilities may diminish.

Second, the proposed rule would allow for NRC adoption of categorical exclusions established by other federal agencies. As an initial matter, New York notes that this regulatory change is unnecessary because the practice is already allowed by Section 109 of NEPA. One concern that New York notes is the potential for the proposal rule's adoption of Department of Energy (DOE) exclusions, which would conflict with the Atomic Energy Act of 1954 and Energy Reorganization Act of 1974, wherein NRC holds a statutory duty to license commercial

nuclear facilities. Through the Energy Reorganization Act, Congress explicitly charged the newly established NRC with this role, deliberately separating independent safety regulation from DOE or another organization with market development responsibilities. New York has previously noted concerns over DOE's proposed use of broad categorical exclusions for advanced reactor projects.<sup>1</sup> Adopting DOE categorical exclusions in the context of commercial nuclear reactors would could undermine or erode the international gold standard that the NRC is known for and inadvertently lead to slowed development of new projects.

Third, the proposed rule would allow new NRC categorical exclusions to be established without rulemaking by listing them on the NRC's website. In New York's view, the rulemaking process should be used for the creation of any new categorical exclusions. Notice-and-comment rulemaking provides interested stakeholders an opportunity to weigh in on a proposed categorical exclusion and share views that help inform NRC decision-making. And the establishment of categorical exclusions prior to any rulemaking would reduce the reliability and clarity of NRC's regulatory structure by leaving the categorical exclusion provisions in a state of constant flux with little or no notice of major changes, thereby removing regulatory certainty. Such an outcome is at odds with the basic goals of NRC's proposed rule.

New York could support the provision allowing stakeholders to propose new categorical exclusions through the petition for rulemaking process. When implemented with due consideration for public input, this would be a sensible change that signals that NRC is open to stakeholder suggestions and considers such ideas in an open, transparent process.

In the wake of the court's NEPA ruling in *Limerick Ecology Action Inc. v. U.S. Nuclear Regulatory Commission*, 869 F.2d 719 (3d Cir 1989), the NRC began conducting site specific NEPA analyses of potential accident consequences. Given the differences that exist among potential host communities and the surrounding environs, the State of New York continues to maintain that the review of potential severe accident scenarios or beyond design basis scenarios should be reviewed on a site specific basis under NEPA. Such site specific characteristics may well include differences involving nearby population centers, potable drinking water supplies, terrain, prevailing winds, and weather patterns, updated seismic profiles and hazard metrics, markets and economic centers, value of surrounding real estate (both farm and non-farm improvements), and transportation networks to support response actions to natural disasters or evolving threats. Site specific review should also include an analysis of all site-wide risk (e.g., all power reactors and waste storage facilities located nearby) on an aggregated or comprehensive basis, as opposed to focusing on an individual facility or feature. Such analyses should be conducted with updated and current information for the specific host site and for the specific time period of the license term under consideration as part of the proposed NRC agency action. Appropriately developed site specific analyses of potential accident scenarios will provide states and host communities with the

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<sup>1</sup> N.Y. State Energy Research and Development Authority, Comment re DOE-HQ-2025-0405, Categorical Exclusion for Advanced Nuclear Reactors (March 4, 2026) (<https://www.regulations.gov/comment/DOE-HQ-2025-0405-0245>).

assurance that the federal agency has taken a hard look and gave careful consideration to potential consequences for the specific facility that may be located in their communities. For these reasons, the State continues to advocate for the inclusion of accident analyses as a site specific category 2 review issue under NEPA.

#### Scoping and Draft EIS

The proposed rule would eliminate two key steps in the NRC staff's development of an EIS: the requirement to hold a scoping process and the requirement to prepare and publish a draft EIS for public comment. Instead, the proposed rule would make these steps optional for the NRC staff. New York does not support these proposed changes because the changes may actually complicate and prolong the licensing timeline by generating numerous adjudicatory contentions on issues that could otherwise have been resolved earlier in the process.

Both the scoping process and the opportunity to comment on a draft EIS are critical stages of the NEPA process. These steps enhance the quality and completeness of an EIS. They also boost public participation and give stakeholders a chance to identify concerns with or gaps in the NRC's environmental review so that those issues can be addressed and resolved. Eliminating these vital steps would dramatically reduce public participation in the licensing process, which will erode community confidence in NRC's decision-making. By increasing the likelihood that community concerns will be left unaddressed in the final EIS, these changes would spur litigation.

#### Narrowing the Scope of NEPA Reviews

We recommend that NRC maintain the existing scope of NEPA reviews, which is supported by well-documented generic environmental reviews and tables of environmental findings. With the proposed rule's new deadlines for the preparation of EISs and EAs and new page limits for each type of document, narrowing of the review scope is unnecessary to meet schedules or reduce the expenditure of agency resources.

Under the proposed rule, the scope of an NRC NEPA review would be narrowed to only those environmental effects with a direct connection to radiological impacts. An EIS or EA prepared by NRC for a licensing action would no longer examine non-radiological impacts, such as land use, air quality, noise, surface water warming, construction noise and non-radiological air and water quality, and socioeconomic effects like jobs, tax revenue, and traffic. Contested hearings on environmental issues would be limited to "focus solely on those radiological effects that the NRC has the substantive statutory authority to regulate."<sup>2</sup>

The new proposed definition of effects also limits cumulative impacts. The definition states, in part, "Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include those

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<sup>2</sup> U.S. Nuclear Regulatory Commission, Proposed Rule: Implementation of the National Environmental Policy Act, 91 Fed. Reg. 42086 (July 7, 2026) at 42089.

effects that the agency has no ability to prevent due to the limits of its regulatory authority, or that would occur regardless of the proposed agency action, or that would need to be initiated by a third party.”

New York has concerns with this narrowing and the unintended consequences that may result from it. To make a well-informed and defensible licensing decision, it is important for NRC to take a “hard look” at all environmental impacts resulting from its proposed action, both positive and negative, radiological and non-radiological. The proposed rule only states that the term “effects or impacts” *can* include ecological effects or impacts. This may result in environmental impacts being disregarded entirely. To avoid the potential for delays due to litigation risk or stakeholder opposition, New York recommends that the definition of “effects or impacts” include all direct environmental impacts.

NRC seems to acknowledge that its refusal to evaluate non-radiological effects of licensing a commercial nuclear facility will result in “the need for additional NEPA reviews by other agencies.”<sup>3</sup> Instead of consolidating all federal NEPA review into one NRC-led document, each federal agency with a related licensing action would need to prepare its own NEPA review document. In order to properly consider the environmental impacts of a decision, federal agencies involved with a project but with limited permitting jurisdiction, may be required to perform a full environmental review with the authority to only address impacts associated with its permit. Therefore, if a federal permit is required for a project, the applicable federal agency would need to unnecessarily attempt (assuming NRC would agree) to obtain joint-lead-agency status to correct the shortcomings of NRC’s NEPA review or prepare its own NEPA review document.<sup>4</sup> But section 107 of NEPA explicitly requires the designation of one lead agency and the preparation of one environmental document, to the extent practicable.<sup>5</sup> As a result, this approach could introduce unnecessary legal risk; both from NRC’s interpretation of NEPA and from the creation of additional NEPA documents by other federal agencies that could be challenged. It would also be the opposite of streamlining and contrary to the goals of NEPA. NRC’s failure to examine non-radiological impacts also would impair its ability to use the NEPA process to streamline compliance with other special purpose environmental laws. For example, the narrow NEPA analysis, as proposed, would be unable to support required consultations with other federal agencies under the National Historic Preservation Act and Endangered Species Act.

This approach may also necessitate an increase in the level of state and local environmental review of non-radiological impacts, which could complicate and lengthen state and local permitting processes and place a greater burden on project developers to provide required environmental analyses. In New York, the State must conduct a substantive environmental review

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<sup>3</sup> *Id.* at 42097.

<sup>4</sup> NEPA requires the preparation of one document: “(b) **One document.** To the extent practicable, if a proposed agency action will require action by more than one Federal agency and the lead agency has determined that it requires preparation of an environmental document, the lead and cooperating agencies shall evaluate the proposal in a single environmental document.” 42 USC 4336a(b)

<sup>5</sup> 42 U.S.C. 4336a.

under Article 10 of the Public Service Law (PSL) or the State Environmental Quality Review Act (SEQRA) for any necessary State-issued action. This environmental review can be informed, possibly to a meaningful extent, by the NRC's issuance of an EA or EIS if the EA or EIS provides adequate information for those State and local agencies to make the required environmental evaluations and findings.<sup>6</sup> In the absence of the NRC's issuance of an EA or EIS, a State or local agency would lack the NRC EA or EIS that otherwise could serve as the foundation for its environmental review. For example, under SEQRA, federal agencies have a limited participatory role; therefore, there is less potential for a fully coordinated federal and State review. A lack of coordination between the State and federal agencies, and a lack of consistency between the environmental review processes, could create an otherwise avoidable and significant delay in the issuance of State permits necessary for the federal approval of a nuclear facility. This can be further exacerbated by the proposed definition of a "Connected Action." The definition limits such actions to those that are separate federal actions within the authority of NRC. This limits the scope of impacts assessed, the opportunity for state collaboration, and potentially leads to permitting delays as discussed above. Separate actions necessarily dependent on a proposed action before the NRC should be considered for all impacts and contained in one environmental review document. New York opposes changes to definitions that would limit the scope of the environmental review to radiological safety.

New York generally supports NRC's proposal to include in § 51.19 an illustrative list of the types of actions that are considered "major," such as an application for a new license or permit and application for renewal of a license or permit, to help clarify when an action is a "major Federal action" under NEPA. However, New York recommends that the regulations include a list of activities that definitively will be considered a "major Federal action" as well as language that additional activities may be considered "major" at NRC's discretion. Combined with the use of the New Reactor GEIS, these measures help increase efficient environmental reviews.

#### Flexibility in Determining Whether to Prepare an EIS or EA

NRC is proposing to provide its staff with more flexibility in determining whether to prepare an EIS or EA for a particular licensing action by replacing the list of licensing actions automatically requiring an EIS with a provision allowing the staff to determine the level of NEPA review.<sup>7</sup> We agree that not every individual microreactor or small modular reactor construction permit necessarily requires the preparation of a full EIS. However, New York believes that sensible guard rails should be added to the provision. In our view, licenses for large light-water reactors and other reactors of a new design have significant or novel impacts and should receive the rigorous environmental review of a full EIS.

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<sup>6</sup> 6 NYCRR § 617.15.

<sup>7</sup> *Id.* at 42107.

This suggested standard is consistent with NRC’s approach to the Kairos advanced reactors. After preparing an EIS for the Kairos Hermes 1 test reactor, NRC opted for an EA for the Kairos Hermes 2 test reactors because the follow-on 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>8</sup>

New York recommends that NRC replicate this thoughtful and efficient approach for additional advanced reactor designs.

#### Cooperation with State, Local, and Tribal Governments

The proposed rule makes optional NRC cooperation with state, tribal, and local agencies that are responsible for preparing environmental documents, which is in stark contrast with NRC’s existing NEPA regulations that require NRC to invite state and local agencies to participate in the scoping process and to “cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements.”<sup>9</sup>

When enacting NEPA, Congress declared that the federal government must act, “in cooperation with States and local governments” to evaluate potential environmental impacts in fulfillment of NEPA’s purposes.<sup>10</sup> NEPA thus contains provisions directly incorporating participation by states, territories, and local governments into federal decision making, and the proposal should not limit the states’ statutory role. The states rely on participation in the NEPA process to protect their residents and interests in their natural resources by identifying potential issues that federal agencies might not have on-the-ground understanding. Participation also allows the states to thoroughly weigh in on the environmental impacts of an action and more efficiently coordinate state-level review with federal licensing processes. A robust NEPA process is critical to protecting state interests, resources, and residents from any harmful environmental effects. State agencies thus regularly engage in the federal NEPA process as cooperating and commenting agencies or as agencies with special expertise highlighting potential effects to each state’s natural

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<sup>8</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.

<sup>9</sup> 10 C.F.R. § 51.28, § 51.70.

<sup>10</sup> National Environmental Policy Act, Section 101.

resources and public health. New York has been very active in NRC NEPA notice-and-comment opportunities for decades. We recommend that NRC maintain the current regulatory direction for staff to cooperate with state, tribal, and local agencies in the preparation of NEPA reviews.

#### Contractor Preparation of Draft NEPA Documents

The proposed rule would allow an applicant to hire a contractor to prepare a draft EIS or EA under NRC supervision. The draft NEPA document would be submitted as part of the application in lieu of the environmental report that has traditionally been required.

New York acknowledges that this provision would comply with the Fiscal Responsibility Act, and we appreciate that NRC's proposal would ensure that<sup>11</sup> the agency, rather than the applicant's contractor, "would be responsible for determining the level of NEPA review." However, New York is concerned about the proposed language stating that "NRC would be responsible for conducting all consultations required by other environmental statutes unless the NRC authorizes the prospective applicant or petitioner (or applicant- or -petitioner-hired contractor) to do so" and it "accepts such responsibility."<sup>12</sup> In our view, federal and state consultations during a NEPA review should be the exclusive purview of NRC as lead agency and should not be delegated to a third-party company hired by an applicant. New York recommends that NRC revise the text to make clear that conducting consultations will always be NRC's responsibility.

#### **Conclusion**

New York shares NRC's goal of efficient, timely environmental reviews completed in accordance with a durable NEPA Rule. To achieve this shared objective, we urge NRC to incorporate New York's recommended improvements to the proposed NEPA Rule discussed in this comment.

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

Sincerely,



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<sup>11</sup> U.S. Nuclear Regulatory Commission, Proposed Rule: Implementation of the National Environmental Policy Act, 91 Fed. Reg. 42086 (July 7, 2026) at 42092.

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