



January 2, 2026

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

Subject: "The Sunset Rule" (NRC-2025-0479)

To all concerned:

The State of New York appreciates the opportunity to review the U.S. Nuclear Regulatory Commission's (NRC) proposed rulemaking "The Sunset Rule" (NRC-2025-0479) published in the Federal Register on December 3, 2025. The Federal Register notice indicates that this is published as a direct final rule that will become effective January 8, 2026, unless NRC receives significant adverse comments by January 2, 2026. Due to its controversial provision repealing the safety-significant aircraft impact assessment rule, New York State does not believe this rulemaking meets the standard for issuance as a direct final rule. If the rulemaking is to include the aircraft impact assessment rule sunset, it should instead be issued as a proposed rule subject to full notice and comment rulemaking.

If promulgated, the rulemaking would revise the NRC's regulations by adding a sunset provision to 10 CFR 2.807 relative to future NRC rulemaking activities. The Federal Register notice also describes several existing regulations that the NRC proposes to sunset which the Commission has determined to be no longer applicable, duplicative, and/or never used.

The potential for well-designed and professionally operated advanced nuclear reactors to serve as a dispatchable, emissions-free resource is currently under strong consideration in New York as the State moves to 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. In parallel, New York is currently developing a [New York Master Plan for Responsible Advanced Nuclear Development in New York](#) 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. For New York's four operating nuclear power reactors and its future nuclear facilities, New York supports strong safety standards and rigorous independent oversight to ensure those standards are met.

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New York State appreciates all opportunities to provide input to the NRC on initiatives affecting nuclear power plants in the State and offers the following feedback.

While several of the sunset provisions in NRC's Sunset Rule are unobjectionable, New York has significant concerns about sunseting the 2009 aircraft impact assessment rule, which was promulgated in direct response to the 9/11 attacks. The aircraft impact assessment rule is an important safety enhancement that was supported by a bipartisan Commission vote after detailed agency analysis and broad stakeholder engagement.

As the *Federal Register* notice promulgating the rule stated, "The aircraft impact rule focuses on enhancing the design of future nuclear power plants to withstand large, commercial aircraft impacts, with reduced operator actions."¹ NRC explained, "Using realistic analyses, applicants must identify and incorporate into the design those design features and functional capabilities to show, with reduced operator action, that the reactor core remains cooled or the containment remains intact and spent fuel cooling or spent fuel pool integrity is maintained."² In NRC's judgment, "this type of consideration is more effectively done during the development of the design itself."³ Thus, "[p]lant structures critical to maintaining facility safety functions should be designed such that an impact does not result in structural failure, and aircraft parts and jet fuel do not enter the structures."⁴

The rule's safety objectives were bipartisan, with all four commissioners agreeing on issuance of an aircraft impact assessment rule and three of the four commissioners aligning on the specific acceptance criteria. The Commission grappled with challenging, controversial policy questions to craft the rule. As Chairman Klein noted, "There was a significant amount of personal involvement by the entire Commission in the consideration of this rule."⁵ And it is clear from the voting record that the Commission intended the rule to provide a significant safety enhancement. Chairman Klein expressed his confidence that the rule "will result in the new generation of reactors built in the United States being inherently more capable of tolerating beyond design basis events, including the impact of a large commercial aircraft."⁶ Similarly, in his vote, Commissioner Lyons stated,

Performing the assessment required by the rule and the incorporation of design features and functional capabilities identified by the assessment to meet specified acceptance criteria constitute substantial increases in overall safety and reliability of facility design due to a decreased dependence on mitigation strategies. Therefore, implementation costs are justified in view of the increased safety and reliability of the design.⁷

¹ U.S. Nuclear Regulatory Commission, Consideration of Aircraft Impacts for New Nuclear Power Reactors (June 12, 2009) FR 28112, at 28114.

² *Id.* at 28113.

³ *Id.* at 28118

⁴ *Id.* at 28121.

⁵ Chairman Klein's Vote on SECY-08-0152 (Jan. 9, 2009).

⁶ *Id.*

⁷ Commissioner Lyons's Vote on SECY-08-0152 (Nov. 7, 2008).

He emphasized that the rule would “provide additional public confidence that all reasonable design measures were taken to add additional margin beyond the adequate protection standard.”⁸ Even while disagreeing with some aspects of the final rule, Commissioner Svinicki characterized the rule as “a capstone in the NRC’s security-related efforts” and the “last element of the post-September 11th threat environment.”⁹

The Commission’s focus on enhanced safety is mirrored in the *Federal Register* notice’s Statements of Consideration. The notice is replete with clear, unambiguous declarations of the safety value of the rule, including the following:

- “This rule should result in new nuclear power facilities being more inherently robust with regard to an aircraft impact than if they were designed in the absence of the final rule.”¹⁰
- “[T]his rule’s goal is to enhance the facility’s inherent robustness at the design stage.”¹¹
- “The final aircraft impact rule will further enhance the safety of new nuclear power plants for aircraft impacts.”¹²
- “[T]his aircraft impact final rule will enhance safety and security by requiring an assessment of newly designed facilities to show that the facility can withstand the effects of an aircraft impact.”¹³

As the Statements of Consideration point out, the rule’s requirement of enhanced safety for new designs is a natural extension of the Commission’s policy statements. For example, the Commission’s 1985 Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants states, “The Commission expects that vendors engaged in designing new standard [or custom] plants will achieve a higher standard of severe accident safety performance than their prior designs.”¹⁴ In addition, the Commission’s 1994 Policy Statement on the Regulation of Advanced Nuclear Power Plants states, “The Commission expects that advanced reactors would provide enhanced margins of safety and/or utilize simplified, inherent, passive, or other innovative means to accomplish their safety functions.”¹⁵

The aircraft impact assessment rulemaking had widespread stakeholder support. Of the 32 comments received on the proposed rule, “31 commenters were in favor of requiring aircraft impacts assessments on nuclear power plants,” including the industry commenters.¹⁶ According to the 2009 *Federal Register* notice, the Nuclear Energy Institute, “the industry organization representing, in part, the companies who are most likely to be combined license applicants and, therefore, most likely to be

⁸ *Id.*

⁹ Commissioner Svinicki’s Vote on SECY-08-0152 (Jan. 30, 2009).

¹⁰ U.S. Nuclear Regulatory Commission, Consideration of Aircraft Impacts for New Nuclear Power Reactors (June 12, 2009) FR 28112.

¹¹ *Id.* at 28113.

¹² *Id.*

¹³ *Id.* at 28114.

¹⁴ *Id.* at 28113.

¹⁵ *Id.*

¹⁶ *Id.* at 28123.

adversely affected by a NRC decision to impose the aircraft impact rule on such applicants – supported the extension of the aircraft impact rule to all future combined license applicants.”¹⁷

New York opposes sunseting the aircraft impact assessment rule for several reasons. Eliminating the rule would sacrifice the substantial safety benefits it provides. The AP1000, APR1400, and other modern reactor designs have met this standard, and the public would benefit from future reactor designs meeting it as well. Moreover, repeal of the rule would run counter to the Commission’s long history of policy statements declaring that newer reactor designs should be safer than their predecessors. And as NRC acknowledges in the Sunset Rule *Federal Register* notice, the aircraft impact assessment rule is “part of the NRC’s permitting regime authorized by statute” and, therefore, falls outside the scope of Executive Order 14270, “Zero-Based Regulatory Budgeting to Unleash American Energy.”¹⁸

The Sunset Rule’s one-paragraph justification for eliminating the aircraft impact assessment rule is not convincing. First, NRC contends that “if reconsidered today, the cost of implementation would not be justified by the increase in safety for future reactors.”¹⁹ The agency provides no detailed analysis for this conclusion, which flies in the face of the Commission’s unambiguous findings when it issued the aircraft impact assessment rule. In its 2009 backfit analysis, the Commission explicitly found “that performance of the assessment required by the rule and incorporation of design features and functional capabilities identified by the assessment constitute a substantial increase in overall protection of public health and safety and common defense and security of the design and operation of a nuclear power plant constructed in accordance with the referenced design certification, and that the direct and indirect implementation costs of compliance with the aircraft impact rule are justified in view of the increased safety and security.”²⁰ Second-guessing a regulatory analysis from 16 years ago in order to weaken safety standards undermines regulatory stability and predictability and could decrease public confidence in the safety of new designs.

Next, NRC argues that “[o]ther more recently developed regulations”, such as the Mitigation of Beyond-Design-Basis Events (MBDBE) rule, “provide alternative approaches to understand how newly licensed plants would address those beyond-design-basis hazards.”²¹ But the MBDBE rule does not provide the same level of safety as the aircraft impact assessment rule. The MBDBE rule focuses on mitigation, not design. It does not include requirements that would increase the safety of new reactor designs. In 2009, when the aircraft impact assessment rule was promulgated, NRC already had post-9/11 mitigation requirements in place. The Commission consciously chose to add to those requirements in order to enhance safety and avoid reliance on operator actions. The Sunset Rule would roll back those additional safety protections based on superficial, conclusory statements.

¹⁷ *Id.* at 28144.

¹⁸ U.S. Nuclear Regulatory Commission, Sunset Rule (Dec. 3, 2025) FR 55621, at 55624.

¹⁹ *Id.*

²⁰ U.S. Nuclear Regulatory Commission, Consideration of Aircraft Impacts for New Nuclear Power Reactors (June 12, 2009) FR 28112, at 28144.

²¹ U.S. Nuclear Regulatory Commission, Sunset Rule (Dec. 3, 2025) FR 55621, at 55624

Finally, NRC states that “sunsetting this provision will not decrease safety at any operating facility.”²² While this is true for operating reactors, it is not accurate for new reactors. The whole purpose of the aircraft impact assessment rule was to improve the safety of new reactor designs. Eliminating the aircraft impact assessment rule would weaken safety standards for new reactor designs.

For these reasons, New York encourages NRC to drop the inappropriate repeal of the aircraft impact assessment rule from the Sunset Rule. There is no persuasive basis for including this controversial rollback of safety standards in the direct final rule. If NRC intends to pursue repeal of the aircraft impact assessment rule, this major, controversial deregulatory action must go through full notice and comment rulemaking. The direct final rule procedure cannot be used to promulgate controversial regulations that will attract significant adverse comments, such as New York’s. A full notice and comment process would provide stakeholders an opportunity to weigh in on the merits of the aircraft impact assessment rule and whether and how the rule could be tailored for emerging reactor technologies, such as microreactors.

New York also recommends clarifying the future rulemakings sunset provision. To effectuate the intent of the Sunset Rule, conditional sunset clauses should only be included in future regulations if they both “are not required by statute” and are “not part of a regulatory permitting regime authorized by statute.” The direct final rule’s current use of “or” in § 2.807(b) would apply the sunset provision more broadly than provided by the executive order. The executive order explicitly states, “This order shall not apply to regulatory permitting regimes authorized by statute.”²³

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.
State Liaison Officer - Designee
Senior Advisor for Nuclear Energy

Attachment(s):

cc: Doug Tift, State Liaison Officer, NRC

²² *Id.*

²³ Executive Order 14270, “Zero-Based Regulatory Budgeting to Unleash American Energy” (Apr. 9, 2025) at § 5(c).