United States of America
Before the U.S. Nuclear Regulatory Commission

Comments by Beyond Nuclear, Inc., Nuclear Information and Resource Service, Chesapeake Physicians for Social Responsibility, Citizens Awareness Network, Friends of the Earth US, Montana Environmental Information Center, Nuclear Watch New Mexico, Ohio Nuclear-Free Network, Oregon Conservancy Foundation, PeaceWorks Kansas City, Riverkeeper, Inc., Snake River Alliance, and Uranium Watch
Regarding NRC Proposed Rule, "NRC Reviews of Reactor Designs Previously Authorized by U.S. Department of Energy or Department of War"

Docket ID NRC-2025-1503; 91 Fed. Reg. 16,584 (April 2, 2026)

Submitted May 4, 2026 via Federal eRulemaking Portal

I. INTRODUCTION

Beyond Nuclear, Inc. ("Beyond Nuclear"), Nuclear Information and Resource Service ("NIRS"), Chesapeake Physicians for Social Responsibility, Citizens Awareness Network, Friends of the Earth US, Montana Environmental Information Center , Nuclear Watch New Mexico, Ohio Nuclear-Free Network, Oregon Conservancy Foundation, PeaceWorks Kansas City, Riverkeeper, Inc., Snake River Alliance, and Uranium Watch (collectively "the Commenters") hereby submit comments regarding the U.S. Nuclear Regulatory Commission's ("NRC") proposed regulation entitled "NRC Reviews of Reactor Designs Previously Authorized by U.S. Department of Energy or Department of War."[1]

The NRC proposes to revise its regulations "to facilitate direct leveraging of prior U.S. Department of Energy or Department of War authorizations of demonstration reactors into the NRC's licensing reviews of commercial reactor facility applications that reference those designs."[2] "The Proposed Rule seeks to expedite the NRC's process for licensing reactors previously approved by the DOE or DOW (still officially the Department of Defense (DOD)) by changing the safety standard for approval of these applications.

As discussed below, the manner in which the NRC seeks to expedite these licensing decisions is inconsistent with the Atomic Energy Act ("AEA"), the Energy Reorganization Act (ERA), the Administrative Procedure Act ("APA"), and the National Environmental Policy Act ("NEPA"), as well as the Constitutional requirement for due process in a democratic society. Nothing in the executive orders cited by NRC in support of the Proposed Rule[3] can excuse the NRC from the

[1] 91 Fed. Reg. 16,584 (Apr. 2, 2026) ("Proposed Rule").

[2] *Id*. *See also* 91 Fed. Reg. at 16,585 (asserting that the Proposed Rule's purpose is to "establish an expedited pathway to approve reactor designs that the U.S. Department of Energy (DOE) or the Department of War (DOW) have tested and that have demonstrated the ability to function safely.").

[3] *See* 91 Fed. Reg. at 16584 (citing Executive Order 14300 ("EO 14300"), "Ordering the Reform of the Nuclear Regulatory Commission" (May 23, 2025) (https://www.federalregister.gov/documents/2025/05/29/2025-09798/ordering-the-reform-of-the-nuclear-regulatory-commission); Executive Order 14301 ("EO 14301"), "Reforming Nuclear Reactor Testing at the Department of Energy" (May 23, 2025)

binding requirements of those statutes. The Proposed Rule may also prefigure violations of NEPA in a forthcoming Proposed Rule regarding changes to the NRC's implementation of NEPA.[4]

The Proposed Rule appears to be a companion to a recent DOE Federal Register notice entitled "Categorical Exclusions for Advanced Reactors."[5] As discussed in the attached comments by NIRS, Beyond Nuclear, and other organizations, the DOE Notice re Categorical Exclusions also violates NEPA and the Administrative Procedure Act. The Commenters incorporate those comments by reference here.[6] The Commenters also adopt and incorporate by reference the comments on the DOE's Federal Register notice submitted by the Offices of Attorneys General of eleven different states (WA, CA, IL, MD, MA, MN, NM, NY, NV, OR, VT) and the District of Columbia.[7]

The Commenters respectfully submit that both the NRC's and the DOE's actions seek to hastily and illegitimately accelerate the federal regulatory processes for nuclear reactor design certification, environmental qualification, reactor siting, permitting, licensing, and deployment of "advanced" nuclear technologies (small modular nuclear reactors, microreactors, and non-light-water reactors, as well as the proposed new build of gigawatt-sized commercial light water reactor units) by abdicating the NRC's statutory duty to protect the public health and safety and national security by regulating and licensing commercial nuclear reactors and other utilization facilities. DOE has rationalized its actions by relying on previous experience of the agencies and their findings that are now being instructed by a promotional bias that strays further away from AEA's instructive "reasonable assurance."

Therefore, the Proposed Rule must be withdrawn.

II. ABOUT THE COMMENTERS

(https://www.federalregister.gov/documents/2025/05/29/2025-09799/reforming-nuclear-reactor-testing-at-the-department-of-energy)).

[4] *See* "Proposed Rule: [14300] Implementation of the National Environmental Policy Act." U.S. Nuclear Regulatory Commission. Last Reviewed/Updated, April 24, 2026. See, https://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/active/ruledetails?id=2233. NRC plans to publish the Proposed Rule on May 8, 2026. While NRC has provided no detailed information to the public about the substance of the Proposed Rule, it provides a brief description:

> This rulemaking would revise the U.S. Nuclear Regulatory Commission's regulations to (1) streamline implementation of the National Environmental Policy Act (NEPA), (2) alleviate unnecessary regulatory burdens, and (3) expand flexibilities for applicants and licensees while complying with environmental requirements. The revisions are necessitated by and consistent with the U.S. Council on Environmental Quality's recission of its NEPA implementing regulations, Executive Order (EO) 14300, 'Ordering the Reform of the Nuclear Regulatory Commission,' and EO 14154, 'Unleashing American Energy.

[5] 90 Fed. Reg. 4550 (Feb. 2, 2026) ("DOE Notice re Categorical Exclusions") https://www.regulations.gov/document/DOE-HQ-2025-0405-0002.

[6] *See* Exhibit 1. The Commenters note that DOE provided a 30 day "voluntary" public comment period, but with no intent to respond to or incorporate feedback from the comments that were submitted.

[7] "Comments of the Attorneys General of WA, CA, IL, MD, MA, MN, NM, NY, NV, OR, VT and DC," March 4, 2026, https://oag.ca.gov/system/files/attachments/press-docs/2026_03_04_FINAL_DOE.CatExCommentLetter.pdf

The following is a description of each commenting organization. Both of the organizations and/or their members are either neighbors of existing or proposed nuclear power plants and/or conduct advocacy related to nuclear power; and many have participated in, intervened in, or plan to do so in regulatory proceedings for the licensing or re-licensing of nuclear power plants. Both organizations have interests threatened by the Proposed Rule, such as informational, recreational, property, health, aesthetic, and environmental interests.

Beyond Nuclear[8] is a 501(c)(3) non-profit corporation dedicated to abolishing nuclear weapons and phasing out nuclear power in favor of sustainable, renewable energy. Founded in 2007 by Linda Pentz Gunter, Beyond Nuclear focuses on educating the public on the dangers of radioactive waste, advocating against new reactor construction, and promoting environmental justice. Beyond Nuclear and its members would be adversely affected by the Proposed Rule's reduction in long-established safety and environmental standards.

Nuclear Information and Resource Service[9] ("NIRS") is a non-profit corporation with over 17,200 members across the United States, including 3,160 of whom reside in states where DOE's initial Reactor Pilot Program projects are to be located. NIRS has a mission to promote a non-nuclear energy policy and a concern for the health and safety of the people and ecosphere through public education, advocacy, research, and analysis. On behalf of our members and the NIRS organization itself, we have frequently engaged in licensing, and permitting proceedings before the NRC, the DOE, and the U.S. Environmental Protection Agency. NIRS and its members would be adversely affected by the Proposed Rule's reduction in long-established safety and environmental standards.

Chesapeake Physicians for Social Responsibility[10] is a statewide, evidenced-based, organization of over 850 physicians, and other health professionals and supporters, that addresses the existential public health threats of: nuclear weapons, the climate crisis and the issues of pollution and toxics' effect on health as seen through the intersectional lens of environmental, social and racial justice. As an organization founded by physicians, we understand that prevention is far superior to treatment in reducing costs; death, illness, injury, and suffering.

Citizens Awareness Network[11] ("CAN") is a volunteer, grassroots organization, committed to the creation of vibrant communities with the replacement of nuclear reactors and fossil fuels in New England with sustainable solutions. CAN is committed to empowering people to participate in the democratic process to ensure a sustainable, equitable, and energy independent future with the closure and safe decommissioning of New England's aging fleet of nuclear reactors. CAN is a regional group, with over 1,000 members in New England and the Northeast that was instrumental in the closure of four New England reactors – Yankee Rowe, CT Yankee, Millstone Unit 1, and Vermont Yankee. CAN has won lawsuits against the NRC and nuclear corporations concerning decommissioning, public participation, and high-level waste storage and has

[8] https://www.BeyondNuclear.org.

[9] https://www.nirs.org/.

[10] https://www.chesapeakepsr.org/.

[11] https://www.nukebusters.org/.

intervened in NRC hearings on the cleanup of Yankee Rowe and CT Yankee, and license transfer proceedings on Indian Point, Fitzpatrick, and Vermont Yankee. CAN's other work has included: helping organize a citizen health study on radioactive releases; engaging in outreach to the public via waste tours, public summits, and action camps; supporting legislative action regarding nuclear sites; and helping create a citizen advisory panel to advise on the decommissioning of Vermont Yankee.

Friends of the Earth US[12] ("Friends") is a 501(c)(3) non-profit organization dedicated to improving the environment and creating a more healthy and just world. The organization was founded in 1969 by David Brower in part to safeguard against safety and environmental risks of nuclear powerplants. Friends has more than 140,000 members in all 50 states and the District of Columbia and more than 4.7 million activist supporters across the country. Friends regularly intervenes in NRC licensing proceedings and submits comments as part of NEPA and APA in connection with federal actions that will affect the interests of Friends and its members.

The **Montana Environmental Information Center**[13] (MEIC) is a nonprofit environmental advocacy organization founded in 1973 by Montanans committed to protecting and restoring the state's natural environment. MEIC has approximately 1555 members across Montana. At the state level, MEIC leads efforts to advance clean, affordable, reliable, and efficient energy solutions for Montana — which do not include nuclear power. As NorthWestern Energy and several elected officials explore nuclear development in Montana, MEIC and its members are concerned about the risks of increased air and water pollution, dangerous radiation exposure, and the significant financial burden nuclear projects would place on ratepayers. MEIC has extensive experience participating in regulatory, licensing, and permitting proceedings. Full environmental review and public transparency — including under the Department of Energy's Pilot Reactor Program and other advanced reactor proposals — are essential to understanding the potential impacts of construction, operation, waste storage, and decommissioning. Given the serious environmental and public health implications, MEIC believes any proposed nuclear project must undergo comprehensive environmental review and robust public oversight.

Nuclear Watch New Mexico[14] ("NukeWatch NM") is a nonprofit organization based in Santa Fe, New Mexico. Through comprehensive research, public education, and effective citizen action, NukeWatch NM seeks to promote safety and environmental protection at regional nuclear facilities; mission diversification away from nuclear weapons programs; greater accountability and cleanup in the nation-wide nuclear weapons complex; and consistent U.S. leadership toward a world free of nuclear weapons. We have been engaged in environmental review processes since 2000, including submitting over 60 sets of formal comments to the Department of Energy ("DOE"). We have also advocated for years for programmatic-level environmental review of plutonium pits at Los Alamos and the Savannah River Site, and were a plaintiff in the recent lawsuit against DOE and DOE's semi-autonomous nuclear weapons agency, the National Nuclear Security Administration, over its failure to complete a programmatic environmental impact statement on the expanded production of plutonium "pit" bomb cores, as required by the

[12] https://www.foe.org.

[13] https://meic.org/.

[14] https://nukewatch.org/.

National Environmental Policy Act ("NEPA"). Site-specific risks, accidents, waste, and groundwater particularly concern our group.

The **Ohio Nuclear Free Network**[15] ("ONFN") is a non-profit organization with an office in Toledo, Ohio. ONFN members and supporters are mostly Ohio residents, but we also have members around the United States and in Canada. ONFN educates the public about the costs and dangers of radioactivity generated by nuclear power and nuclear weapons. Some of our members and supporters live close to the Portsmouth Nuclear Site at Piketon, Ohio ("PORTS"). PORTS has a long history of radioactive contamination of Pike County and surrounding counties in Southern Ohio. Our members frequently comment on Department of Energy and Nuclear Regulatory Commission proposals, activities, and licenses. ONFN has been involved in regulatory, licensing, and permitting proceedings before multiple agencies. Currently, Oklo, Inc. is proposing two new nuclear reactors at PORTS, along with other activities including the reprocessing of the radioactive waste that these reactors would generate. Given the environmental and health impacts of construction, operation, radioactive waste generation, and decommissioning of these facilities, ONFN believes that NRC must fully comply with its governing statutes and remain independent from the promotional agenda of DOE, as required by the Energy Reorganization Act.

The **Oregon Conservancy Foundation** ("OCF") is a regional non-profit tax-exempt foundation created in 1991 as the result of a settlement in a lawsuit against Pacific Power and Light for illegally charging Oregon ratepayers for abandoned nuclear power plants. OCF promotes the public benefit by supporting environmental protection, reverence for life, and human rights. OCF works to keep fossil fuels in the ground, to oppose the resurgence of nuclear power and its small modular nuclear reactor designs, and promotes the use of clean renewable energy, energy efficiency, and energy conservation applications. OCF advocates for energy project compliance with NEPA to determine that all environmental impacts are assessed with public input in order to ensure consideration of environmental harms that need to be to be prevented or mitigated.

PeaceWorks Kansas City[16] is a nonprofit organization working to eliminate nuclear weapons, speak truth to power, and take action against racism, violence, and oppression. We are particularly concerned with the Deep Fission company's plan to operate an experimental and novel micro-nuclear reactor at the bottom of a one-mile deep borehole in Parsons, Kansas. The speed with which it is planned to be implemented is also deeply concerning. One of the projects that DOE is sponsoring, the Deep Fission project, was only announced on December 4, 2025 and with plans to reach criticality by July 5, 2026. This project needs strict health and safety regulations and informed public consent, not a categorical exclusion.

Riverkeeper[17] is a 501(c)(3) non-profit organization dedicated to protecting and restoring the Hudson River estuary and its tributaries and safeguarding drinking water supplies for surrounding communities. For more than 50 years, Riverkeeper has stopped polluters, championed public access to waterways, influenced land use decisions, protected aquatic life,

[15] https://onfn.org/.

[16] https://pwkc.org.

[17] https://www.riverkeeper.org/.

and restored habitat through advocacy that is rooted in community partnerships, science, and law. Riverkeeper's work is made possible by the support of approximately 3,400 members. As part of its advocacy, Riverkeeper frequently participates in and utilizes the information made available through federal nuclear licensing and federal and state environmental reviews. In January 2017, Riverkeeper won one of its longest battles when it joined New York State and Entergy, the owner of the nuclear power plant Indian Point, in an historic agreement to close the aging and unsafe nuclear power plant by April 2021. Riverkeeper is ensuring that both the decommissioning of the facility and any planned redevelopment of the site is completed safely and with the best interests of the local communities and environment in mind.

The **Snake River Alliance**[18] is a 501(c)(3) nonprofit organization based in Boise, Idaho. The Snake River Alliance works to nourish and grow an intergenerational community of Idahoans reckoning with our nuclear and radioactive past, present, and future, and protecting Idaho from nuclear waste and contamination in perpetuity. We represent over 1000 supporters and members who reside mainly in southern Idaho, where the Department of Energy's Idaho National Laboratory is located above our aquifer. We have frequently engaged in environmental review processes, involving regulatory, licensing, and permitting proceedings before multiple agencies, including the Department of Energy, the Nuclear Regulatory Commission, and the Environmental Protection Agency. Projects and planned reactors, such as Oklo, Project Pele, Marvel, Aurora Fuel Fabrication Facility, Aalo Atomics, and the Molten Chloride Reactor Experiment, to name just a few, all potentially pose significant health and environmental impacts from construction, operation, nuclear waste storage, and decommissioning of facilities. The Snake River Alliance believes it is essential that there be a full public environmental review and regulation of any such project.

Uranium Watch[19] is a public interest not-for-profit that addresses the health, safety, and environmental risks and impacts from uranium mining and other nuclear fuel cycle facilities, primarily in Utah. The DOE has already placed a Valar Atomics' test reactor about 135 miles from Uranium Watch's home base in Moab, Utah. News articles about the placement of the test reactor at the Utah State-owned San Rafael Energy Lab in Orangeville did not provide any information about the operation of the test reactor; how workers, nearby residents, and others would be protected; emergency response planning; storage of spent fuel; who to contact to get information; site operation and oversight responsible parties; operational regulations; need for NRC licensing for non-DOE utility systems and commercial demonstration reactors; and other aspects of the testing and operation of the reactor.

III. THE PROPOSED RULE VIOLATES THE AEA AND ERA.

The Proposed Rule would amend two sections of the NRC's safety regulations for licensing of reactors: 10 C.F.R § 50.43(e)(3) and 10 C.F.R. § 53.440(a)(1). Proposed Section 50.43(e)(3) provides that applications for class 103 licenses and certifications for commercial power must:

[18] https://www.snakeriveralliance.org.

[19] https://uraniumwatch.org.

> Include[] consideration of relevant information gathered from a design that has been previously authorized by the Department of Energy or the Department of Defense as a utilization facility and that has been tested and has demonstrated the ability to function safely. Any reference to such a design must identify how attributes of the authorization satisfy NRC regulations.

Proposed Section 53.440(a)(1) requires that:

> Analysis, appropriate test programs, prototype testing, operating experience, or a combination thereof must demonstrate that each design feature required by § 53.400 meets the defined functional design criteria required by §§ 53.410 and 53.420. This demonstration must consider interdependent effects throughout the commercial nuclear plant and the range of conditions under which the design features required by § 53.400 must function throughout the plant's lifetime. The bases for this demonstration may include consideration of relevant information gathered from a utilization facility that has been previously authorized by the Department of Energy or the Department of Defense and which has been tested and has demonstrated the ability to function safely. Any reference to such a design must identify how attributes of the authorization satisfy NRC regulations.

The preamble to the Proposed Rule, less than two pages in length, provides virtually no explanation of these proposed amendments to the regulations. The only explanation given by the NRC for the amendments is in a single paragraph:

> The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC will revise its regulations to facilitate direct leveraging of prior DOE or DOW authorizations of demonstration reactors into the NRC's licensing reviews of commercial reactor facility applications that utilize those designs. This action does not constitute the establishment of a standard that contains generally applicable requirements.[20]

Otherwise, the NRC promises to put out guidance at some time in the future:

> The NRC will be issuing new guidance for the implementation of the proposed amendments in this rulemaking. The NRC will publish Federal Register notices announcing the availability of the new guidance documents. The documents will be available at https://www.regulations.gov by searching on Docket ID NRC–2025–1503.[21]

A. The Proposed Rule Violates the AEA and the APA by Substituting a New and Undefined Standard of "Safe" for the Statutory Standard in the AEA.

[20] 91 Fed. Reg. at 16,587.

[21] *Id.*

As set forth in the AEA, the phrase "adequate protection of the health and safety of the public" is the foundational regulatory standard for NRC's licensing of nuclear reactors. The "adequate protection" standard does not mean that all risks must be eliminated, but it does require the NRC to base its decision entirely on safety – without consideration of costs.[22]

The Proposed Rule violates Section 182(a) by allowing the NRC to approve license applications under the vague standard of "safe."[23] Nothing in the regulation indicates that the NRC will apply the adequate protection standard purely on safety grounds and without including cost considerations. And the disclaimer in the preamble that the new language "does not constitute the establishment of a standard that contains generally applicable requirements" is disingenuous, given that the whole purpose of the rulemaking is to "leverage" DOE and DOE approvals and thereby expedite the licensing process.

The proposed rule is also impermissibly vague and therefore violates the APA's requirement that agency actions must be in accordance with law and not arbitrary and capricious. The rulemaking notice contains no explanation of what "safe" means as used in proposed Section 53.440(a)(1), or how it compares to the adequate protection standard. Further, there is no explanation of the meaning of facially nonsensical phrase "attributes of the authorization" as used in Section 50.443(e)(3)'s and the amended Section 53.440(a)(1)'s assertion that "[a]ny reference to such a design must identify how attributes of the authorization satisfy NRC regulations." The NRC violates the APA by failing to explain the meaning of these crucial terms in the regulations themselves. Further, it is not at all clear whether the terms will be explained in the purportedly forthcoming guidance, and even if they are defined in guidance, that guidance is not enforceable. Thus, members of the public are deprived of their right under the APA to a clear understanding of regulations that will govern their health and safety.

Thus, the Proposed Rule would circumvent the AEA's statutory requirement that NRC licensing decisions for commercial reactors must provide adequate protection to public health and safety and the common defense and security.

B. The Proposed Rule Violates the AEA and ERA by Abdicating the NRC's Statutory Obligation to Independently Review License Applications.

The AEA gives the NRC sole authority and responsibility for the licensing of commercial reactors. The Proposed Rule would violate the AEA by allowing the NRC to accept safety findings from other agencies without verifying whether they are correct, compliant with the adequate protection standard, or adequately supported. Therefore, the proposed amendments should not be promulgated.

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[22] *Union of Concerned Scientists v. NRC,* 824 F.2d 108, 117-18 (D.C. Cir. 1987).

[23] Proposed 10 C.F.R § 52.440(a)(1) ("The bases for this demonstration may include consideration of relevant information gathered from a utilization facility that has been previously authorized by the Department of Energy or the Department of Defense and which has been tested and has *demonstrated the ability to function safely*.") (emphasis added).

The Proposed Rule would create a kind of regulatory tunnel around NRC's established regulations and statutorily required oversight and licensing processes for DOE's promotional biases and incorrect conclusions about reactor safety and environmental impacts to become normalized in the regulation of the civilian nuclear power industry. Specifically, it would allow applications for CPs, operating licenses ("OLs"), manufacturing licenses ("MLs"), COLs, Design Certification ("DC"), and Standard Design Approval ("SDA") to substitute "consideration of relevant information gathered from a design that has been previously authorized by the Department of Energy or the Department of Defense" for much more specific testing and analysis requirements under the existing regulations of 10 C.F.R. Parts 50 and 53:

- 10 CFR 50.43(e)(1): (i) The performance of each safety feature of the design has been demonstrated through either analysis, appropriate test programs, experience, or a combination thereof; (ii) Interdependent effects among the safety features of the design are acceptable, as demonstrated by analysis, appropriate test programs, experience, or a combination thereof; and (iii) Sufficient data exist on the safety features of the design to assess the analytical tools used for safety analyses over a sufficient range of normal operating conditions, transient conditions, and specified accident sequences, including equilibrium core conditions
- 10 CFR 50.43(e)(2): (2) There has been acceptable testing of a prototype plant over a sufficient range of normal operating conditions, transient conditions, and specified accident sequences, including equilibrium core conditions. If a prototype plant is used to comply with the testing requirements, then the NRC may impose additional requirements on siting, safety features, or operational conditions for the prototype plant to protect the public and the plant staff from the possible consequences of accidents during the testing period;
- 10 CFR 53.440(a)(1): "Analysis, appropriate test programs, prototype testing, operating experience, or a combination thereof must demonstrate that each design feature required by § 53.400 meets the defined functional design criteria required by §§ 53.410 and 53.420. This demonstration must consider interdependent effects throughout the commercial nuclear plant and the range of conditions under which the design features required by § 53.400 must function throughout the plant's lifetime."

The Commenters disagree with NRC's conclusion that substituting the mere consideration of information from testing reactors of a design previously approved by another government agency, outside the remit of the AEA and the ERA, is sufficient to satisfy NRC's mandate under those statutes. The Proposed Rule does not even define new terms included to permit submission of information from reactors approved by DOE or DOD to satisfy NRC licensing requirements, such as "consideration of relevant information" and "attributes of the authorization" provided by the other agencies. Nor does it define the parameters of data that NRC that would allow it to conclude that a reactor design "has been tested and has demonstrated the ability to function safely."

Furthermore, the requirement that "Any reference to such a design must identify how attributes of the authorization satisfy NRC regulations" irrationally and unjustifiably places responsibility on applicants to demonstrate that the standards DOE and DOD apply to approving reactors of new designs comport with NRC's regulatory requirements and standards. Of course, the

governing statutes (AEA and ERA) do not provide for an interagency process for licensing and regulating commercial reactors—that responsibility is solely the NRC's. But placing the burden of explaining how DOE's or DOD's approvals correspond with NRC regulations on license applicants does not then excuse NRC from its statutory responsibility. Neither is it a practical way to expedite the licensing process to simply impose an anachronistic requirement on applicants to show how two agencies' regulations comport with one another.

The Commenters maintain that the entire process of demonstrating and approving new reactor designs envisioned under the Proposed Rule and DOE's implementation of EO 14301 through its Reactor Pilot Program[24] are in violation of the Atomic Energy Act and the Energy Reorganization Act. Those governing statutes establish that NRC has the sole authority to license and regulate DOE reactors that are "operated as part of the power generation facilities of an electric utility system, or when operated in any other manner for the purpose of demonstrating the suitability for commercial application of such a reactor."[25] DOE expressly states that its Reactor Pilot Program is intended to demonstrate the commercial application of new reactor designs: "The Reactor Pilot Program establishes a new DOE pathway for advanced reactor demonstration to fast-track commercial licensing."[26]

42 U.S.C. §5842 expressly requires NRC to license and regulate such reactors:

> Notwithstanding the exclusions provided for in section 110a. [42 U.S.C. 2140(a)] or any other provisions of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], the Nuclear Regulatory Commission shall, except as otherwise specifically provided by section 110b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2140(b)), or other law, have licensing and related regulatory authority pursuant to chapters 6, 7, 8, and 10 of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2071 et seq., 2091 et seq., 2111 et seq., 2131 et seq.], as to the following facilities of the Administration:
> (1) Demonstration Liquid Metal Fast Breeder reactors when operated as part of the power generation facilities of an electric utility system, or when operated in any other manner for the purpose of demonstrating the suitability for commercial application of such a reactor.
> (2) Other demonstration nuclear reactors-except those in existence on the effective date of this chapter-when operated as part of the power generation facilities of an electric utility system, or when operated in any other manner for the purpose of demonstrating the suitability for commercial application of such a reactor. (Emphasis added)

DOE derives its authority to demonstrate commercial reactor designs from its governing statute, the Department of Energy Organization Act ("DOEOA"). The DOEOA transferred to the Secretary of Energy and, accordingly, to DOE "all of the functions vested by law in the Administrator of the Federal Energy Administration or the Federal Energy Administration, the

[24] U.S. Department of Energy. "U.S. Department of Energy Reactor Pilot Program." U.S. DOE. Accessed April 29, 2026. See, https://www.energy.gov/ne/us-department-energy-reactor-pilot-program

[25] 42 U.S.C. §5842

[26] U.S. Department of Energy. "U.S. Department of Energy Reactor Pilot Program." U.S. DOE. Accessed April 29, 2026. See, https://www.energy.gov/ne/us-department-energy-reactor-pilot-program (Emphasis added.)

Administrator of the Energy Research and Development Administration or the Energy Research and Development Administration; and the functions vested by law in the officers and components of either such Administration." The Energy Research and Development Administration ("ERDA") derived its authority to conduct nuclear energy research and development ("R&D") from the ERA, which abolished the Atomic Energy Commission and segregated the assignment of R&D and regulatory duties with respect to commercial nuclear power between, respectively, ERDA and NRC.

Heretofore, DOE's commercial reactor demonstration programs have complied with the law. DOE is providing financial and material support to several private-sector corporations that are developing new commercial reactor designs. But the permitting and operation of those reactors have all been subject to NRC regulation:

- Terrapower's Kemmer Unit 1 demonstration of the Natrium sodium-cooled fast breeder reactor design, for which NRC issued a construction permit in March 2026.[27] DOE has awarded Terrapower a cost-share matching award to Terrapower under the Advanced Reactor Demonstration Program ("ARDP").[28]
- Dow Chemical's Long Mott Generating Station ("LMGS") project, to demonstrate the X-energy Xe-100 high-temperature, gas-cooled small modular reactor design, for which NRC is currently reviewing a construction permit application.[29] DOE has awarded X-energy and Dow a cost-share matching award under the ARDP,[30] for both construction of LMGS and X-energy's TRISO-X commercial fuel fabrication plant, for which NRC issued a special nuclear material license in February 2026.[31]
- Kairos Power LLC's Hermes and Hermes 2 non-power prototype reactors, for which NRC issued construction permits in 2023[32] and 2024,[33] respectively (the latter in less than 18 months). DOE's Oak Ridge National Lab is providing land and technical support for

[27] "TerraPower, LLC -- Kemmerer Power Station Unit 1 Application." U.S. Nuclear Regulatory Commission. Last Reviewed/Updated, March 19, 2026. See, https://www.nrc.gov/reactors/new-reactors/advanced/who-were-working-with/applicant-projects/terrapower

[28] Patel, Sonal. "Natrium, Xe-100 Are DOE's Picks for Advanced Nuclear Reactor Demonstrations." PowerMag.com. October 14, 2020. See, https://www.powermag.com/natrium-xe-100-are-does-picks-for-advanced-nuclear-reactor-demonstrations/

[29] "Long Mott Energy, LLC – Long Mott Generating Station Xe-100 Power Reactor Application." U.S. Nuclear Regulatory Commission. Last Reviewed/Updated, April 16, 2026. See, https://www.nrc.gov/reactors/new-reactors/advanced/who-were-working-with/applicant-projects/long-mott

[30] Patel, Sonal. "Natrium, Xe-100 Are DOE's Picks for Advanced Nuclear Reactor Demonstrations." PowerMag.com. October 14, 2020. See, https://www.powermag.com/natrium-xe-100-are-does-picks-for-advanced-nuclear-reactor-demonstrations/

[31] "NRC Licenses TRISO-X LLC Fuel Fabrication Facility in Tennessee." U.S. Nuclear Regulatory Commission. February 13, 2026. See, https://www.nrc.gov/sites/default/files/cdn/doc-collection-news/2026/26-019.pdf

[32] "Hermes – Kairos Application." U.S. Nuclear Regulatory Commission. Last Reviewed/Updated, March 03, 2025. See, https://www.nrc.gov/reactors/non-power/new-facility-licensing/hermes-kairos

[33] "Hermes 2 – Kairos Application." U.S. Nuclear Regulatory Commission. Last Reviewed/Updated, March 03, 2025. See, https://www.nrc.gov/reactors/non-power/new-facility-licensing/hermes2-kairos

the Kairos reactor projects, and, DOE is providing "$303 million of risk reduction funding" under the ARDP.[34]

- In December, DOE awarded $400 million each to Holtec Government Services and the Tennessee Valley Authority ("TVA") "to support early deployments of advanced light-water small modular reactors."[35] NRC is currently reviewing TVA's construction permit application for a GE Vernova Hitachi BWRX-300 reactor at its Clinch River Nuclear site in Tennessee,[36] for which NRC issued an Early Site Permit in 2019.[37] Holtec is involved in pre-application engagement with NRC to submit a construction permit application ("CPA") for Pioneer Units 1 and 2,[38] a pair of small modular reactors using Holtec's SMR-300 design at the Palisades Nuclear Power Plant site. NRC is also currently reviewing Holtec's request for limited work authorization to conduct pre-construction site work for Pioneer 1&2 in advance of receiving a CP.[39]
- DOE awarded NuScale $1.4 billion in matching support and land at the Idaho National Lab for the Carbon Free Power Project.[40] NuScale applied to NRC for, and NRC issued, a design certification for NuScale's original US600 design,[41] as well as a standard design approval for the subsequent US460 design.[42] NuScale also submitted a limited work authorization application, associated exemption request, and topical reports in preparation for submitting a COLA,[43] but later canceled the project.

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[34] "Kairos, DOE enhance collaboration on advanced reactor design." World Nuclear News. February 23, 2026. See https://world-nuclear-news.org/articles/kairos-doe-enhance-collaboration-on-advanced-reactor-design

[35] U.S. DOE. "Energy Department Selects TVA and Holtec to Advance Deployment of U.S. Small Modular Reactors." U.S. DOE. December 2, 2025. See, https://www.energy.gov/articles/energy-department-selects-tva-and-holtec-advance-deployment-us-small-modular-reactors

[36] "Clinch River Nuclear Site Application." U.S. Nuclear Regulatory Commission. Last Reviewed/Updated, April 15, 2026. See, https://www.nrc.gov/reactors/new-reactors/advanced/who-were-working-with/applicant-projects/clinch-river

[37] "Issued Early Site Permit - Clinch River Nuclear Site." U.S. Nuclear Regulatory Commission. Last Reviewed/Updated, April 21, 2023. See, https://www.nrc.gov/reactors/new-reactors/large-lwr/esp/clinch-river

[38] "Pioneer Units 1 and 2 Limited Work Authorization Application." U.S. Nuclear Regulatory Commission. Last Reviewed/Updated, April 08, 2026. See, https://www.nrc.gov/reactors/new-reactors/advanced/who-were-working-with/applicant-projects/pioneer

[39] *Id*.

[40] Pearl, Larry. "DOE approves up to $1.4B to test 12-module NuScale reactor." UtilityDive.com. October 19, 2020. See, https://www.utilitydive.com/news/doe-approves-up-to-14b-to-test-12-module-nuscale-reactor/587265/

[41] "Design Certification - NuScale US600." U.S. Nuclear Regulatory Commission. Last Reviewed/Updated, February 11, 2025. See, https://www.nrc.gov/reactors/new-reactors/advanced/who-were-working-with/past-license-activities/nuscale

[42] "NuScale US460 Standard Design Approval Application Review." U.S. Nuclear Regulatory Commission. Last Reviewed/Updated, June 26, 2025. See, https://www.nrc.gov/reactors/new-reactors/advanced/who-were-working-with/applicant-projects/nuscale-us460

[43] "Pre-Application Activities for the Carbon Free Power Project." U.S. Nuclear Regulatory Commission. Last Reviewed/Updated, February 06, 2026. See, https://www.nrc.gov/reactors/new-reactors/advanced/who-were-working-with/licensing-activities/uamps-cfpp

If the AEA and the ERA had, in fact, authorized DOE to approve construction and operation of demonstration commercial reactor designs, then any of the above projects could have proceeded without going through the statutory permitting and licensing processes administered by NRC. Yet no DOE commercial reactor demonstrations have done so, until now.

In the commenters' view, EO 14300 and EO 14301 have imposed DOE and the White House's explicit promotional agenda on the NRC, in an attempt to supersede governing statutes that assign NRC the sole authority to regulate and license commercial reactors and other production and utilization facilities and to ensure the Trump administration's favored approach is conveyed to and understood by the NRC. Article I of the Constitution expressly reserves the authority to make and amend laws to Congress, the legislative branch. It is the executive branch's duty to see that the laws enacted by Congress are faithfully executed. Executive orders are a means of doing so, but they cannot create new laws nor amend or supersede existing laws, except as Congress has expressly provided for through emergency powers under certain statutes, like the Defense Production Act. EO 14300 contains no assertion of such emergency powers, nor is there any basis for doing so.

While EO 14301 does predicate its directives to DOE to review, approve, and deploy demonstration reactors outside of NRC regulatory oversight on the President's declaration of a national energy emergency (via Executive Order 14156 ("EO 14156")), EO 14300 refers to neither EO 14301 nor EO 14156. And regardless of that, NRC is not beholden to violate its governing statutes on the basis of an executive order. DOE may approve construction and operation of reactors in defiance of the law and NRC's statutory role, but NRC is not obligated to play along with the charade. As an entirely separate and definitionally independent agency established by an act of Congress to create a firewall between promotion and regulation of nuclear energy, NRC would not normally interfere with R&D programs DOE has established. However, in this case, NRC may soon find itself in a position requiring it to assert regulatory authority over reactors DOE has authorized in violation of the AEA and the ERA, or to be complicit in DOE's violations and in dereliction of its own duties.

Soon after President Trump issued EO 14300, a Department of Government Efficiency ("DOGE") agent assigned to DOE reportedly held a meeting with NRC commissioners, in which he informed them that the NRC would be expected to "rubber-stamp" approval of reactors that DOE and DOD have already approved.[44] While NRC commissioners have stated that the agency will not shirk its regulatory duties so crassly, the Proposed Rule change, in actuality, provides a formalistic façade for doing so by merely codifying it: the promulgation of a "rubber-stamp rule."

While DOD does have authority to authorize construction and operation of demonstration reactors (per the exemption in 42 U.S.C. 2140(b) that is reaffirmed in 42 U.S.C. §5842), NRC is still not authorized to ignore its statutory oversight and licensing duties when reactors of similar design are deployed commercially in the civilian sector. This matter may also be moot, as DOD has not expressed any intent to approve power reactors that it is planning to deploy under its

[44] Camacho, Francisco, and Peter Behr. "DOGE told regulator to 'rubber stamp' nuclear." Politico.com. July 14, 2025. See, https://www.politico.com/news/2025/07/14/doge-to-regulator-rubber-stamp-nuclear-00450658

programs. Thus far, the Army and the Air Force have announced plans to deploy reactors to power their installations, but they are choosing different regulatory pathways for doing so.[45] The Army has stated that it plans to deploy reactors at several of its bases (the Janus Program) under DOE's oversight program. However, the Air Force has stated that it intends to do so through NRC licensing procedures. The Air Force's programs will, therefore, remain entirely compliant with the law and raise no statutory conflict with respect to NRC's role. It is uncertain if the Army's program will, ironically, by virtue of relying on DOE oversight rather than its own.

IV. THE PROPOSED RULE VIOLATES NEPA.

According to the Proposed Rule, no environmental impact statement ("EIS") or environmental assessment ("EA") is required for this rulemaking:

> The NRC has determined that this proposed rule is the type of action eligible for categorical exclusion because it meets the criterion described in 10 CFR 51.22(c)(3). This provision includes amendments to parts 50 and 53 related to procedures for filing and reviewing applications for licenses or construction permits or early site permits or other forms of permission or for amendments to or renewals of licenses or construction permits or early site permits or other forms of permission. The action belongs to a category of actions which the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental impact statement nor environmental assessment has been prepared for this proposed rule. [46]

As discussed above, the proposed amendments to the NRC's safety regulations for licensing commercial regulations are not merely procedural, as asserted by the NRC. Instead, as discussed above in Section III.A, the NRC is proposing to substitute a different safety standard than the AEA standard for approval of reactor licenses. Further, as discussed in Section III.B, the NRC is proposing to accept assertions by other agencies about the operation of proposed reactors without necessarily making its own independent determinations. Assuming for the purposes of argument that these proposed changes do not violate the AEA, at the very least they profoundly change the standard by which the NRC plans to evaluate reactor license applications and the quality of information that will be required to support those applications. These changes are likely to result in increased risks to the human environment. Therefore, NEPA requires that they must be addressed.

V. ELEVEN STATE ATTORNEYS GENERAL AGREE THAT NRC MAY NOT CEDE ITS REGULATORY DUTIES TO DOE

[45] Donovan, Cate, Della Ratta, Ken Luongo. "Department of Defense Advanced Reactor Programs." Partnership for Global Security. February 27, 2026. See, https://partnershipforglobalsecurity.org/department-of-defense-advanced-reactor-programs/

[46] 91 Fed. Reg. at 16,586.

The commenters submit some for the NRC record public comments excerpted from the March 4, 2026 collective comments submitted by the Offices of Attorneys General of eleven different states (WA, CA, IL, MD, MA, MN, NM, NY, NV, OR, VT) and the District of Columbia. They submitted extensive comments critical of the DOE "Notice of New Categorical Exclusion for Advanced Nuclear Reactors and Request for Comments," February 2, 2026. [47]

The Attorneys General agree that NRC, not DOE, has licensing authority over commercial reactor demonstration projects that DOE undertakes:

> The Energy Reorganization Act of 1974 (as amended) provides that the Nuclear Regulatory Commission (NRC or Commission) has licensing and regulatory authority for commercial nuclear reactors, "production facilities for industrial or commercial purposes" and for reactors operated "for the purpose[s] of demonstrating the suitability for commercial application of such a reactor." In contrast, the NRC does not have regulatory and licensing authority for "[a]ny facility under a contract with and for the account of the Department of Energy … that is utilized for research, development, demonstration, testing, or analysis purposes." That authority resides in the Department of Energy. The Department of Energy Organization Act provides that DOE has authority to enter transactions to carry out research, development and demonstration projects.
> In sum, this statutory structure means that the NRC has regulatory and licensing control for commercial or industrial reactors, including reactors operated for demonstrating commercial viability, while DOE has authority over research and development reactors on DOE property or under DOE's control.[48]

Illustrating the danger of relying on DOE's legal interpretation of law and statute in promulgating its Reactor Pilot Program, they state at the outset of their comments, with respect to NEPA, "DOE must meet its obligations for analysis of environmental impacts under the National Environmental Policy Act (NEPA) in promulgating a categorical exclusion that would exempt advanced nuclear reactors from environmental review."[49]

They further state, "The [DOE] Notice and the Written Record of Support (Supporting Documentation) do not provide the meaningful environmental analysis that NEPA and DOE regulations require to find that the development of advanced nuclear reactors 'do not normally have a significant effect on the human environment.'"[50]

The OAGs opening comments continue, "The Notice and Supporting Documentation fail to fully address multiple potential impacts and fail to address certain impacts at all, including the cumulative impact of this expansion of nuclear power generation. DOE must provide additional

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[47] "Comments of the Attorneys General of WA, CA, IL, MD, MA, MN, NM, NY, NV, OR, VT and DC," March 4, 2026, https://oag.ca.gov/system/files/attachments/press-docs/2026_03_04_FINAL_DOE.CatExCommentLetter.pdf

[48] *Id.*, p. 2 of 23

[49] *Id.*, p.1 of 23

[50] *Id.*, p.1 of 23

analysis to assess whether there could be significant impacts from an advanced nuclear reactor developed under this CE. DOE also exceeds its statutory authority in proposing to apply the CE to 'power production and industrial applications' because authority over those types of facilities rests with the Nuclear Regulatory Commission, not DOE. Finally, DOE's rulemaking process is unlawful and arbitrary and capricious by reaching a predetermined outcome before receiving and reviewing public comments.'"[51]

CONCLUSION

For at least these reasons, NRC's proposed "rubber-stamp rule" is ill-advised and contrary to law, and we respectfully request that NRC abandon this policy, withdraw the Proposed Rule, and adhere to the plain requirements of the agency's governing statutes—the Atomic Energy Act and the Energy Reorganization Act—to protect public health and safety and national security as the regulator of civilian nuclear power plants.

Respectfully submitted,

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[51] *Id.*, p.2 of 23

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