

August 21, 2026

Submitted via Regulations.gov

The Honorable Ho K. Nieh, Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

cc: Michelle Rome and Andrew Carrera, Office of Nuclear Material Safety and Safeguards
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Re: Docket ID No. NRC-2025-0478; RIN 3150-AL38; Implementation of the National Environmental Policy Act, 91 Fed. Reg. 42,086 (July 7, 2026)

Dear Chairman Nieh:

This letter provides the comments of the Natural Resources Defense Council (NRDC) on the Commission's proposal to revise its procedures for implementing the National Environmental Policy Act (NEPA). NRDC is a national nonprofit environmental organization with over 3 million members and online activists. NRDC has litigated the scope of the Commission's obligations under NEPA for more than five decades, including before the Supreme Court,¹ and its members live, work, recreate, and draw drinking water near facilities the Commission licenses. These comments address the legality of the proposed procedures; they take no position on whether any particular facility should be licensed. NRDC recognizes the zero-carbon benefits of nuclear power and its important continuing role in moving the U.S. toward a zero-carbon future. Like any form of energy generation, nuclear power can also pose risks and impacts. Rigorous environmental review of proposed nuclear power plants is crucial to examine and inform the public about potential safety, community, and environmental impacts. A rigorous and independent Commission with strong environmental review procedures is important for the nuclear industry's social license and is not an obstacle, but an important precondition for the continued role of nuclear power in the U.S. electricity mix.

Since its enactment in 1969, NEPA has provided the space in which the environmental consequences of federal actions are analyzed comprehensively and with the benefit of public input. For more than fifty years the Commission's analysis has encompassed the full range of a licensed facility's effects: water withdrawals and thermal discharges, effects on fish and habitat, land and historic resources, and the cumulative impact on surrounding communities. The Proposed Rule would end that practice.

In brief, as we explain below, the Proposed Rule has the following legal and policy flaws: First, the proposed redefinition of "effects" misreads the Supreme Court's *Seven County* decision, which addressed separate projects, and does not support the NRC's effort to exclude the non-radiological effects of the project being licensed. Many defects flow from this misinterpretation (Section 1). Second, the Proposed Rule arbitrarily counts non-radiological effects when they favor licensing

¹ *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519 (1978); *Baltimore Gas & Electric Co. v. NRDC*, 462 U.S. 87 (1983).

and excludes them when they do not (Section 2). Third, it confines the alternatives analysis to the no-action alternative, conflating authority to implement with the obligation to consider (Section 3). Fourth, it rests sweeping categorical exclusions on a circular record while omitting the promised extraordinary-circumstances safeguard (Section 4). Fifth, it removes the public from scoping, draft review, hearings, and environmental justice analysis (Section 5); and sixth, it conflicts with a companion rulemaking that neither docket acknowledges (Section 6). Finally, the compressed schedule and incomplete docket have not afforded a meaningful opportunity for public comment (Section 7). The Commission should withdraw the identified provisions, complete the docket, and re-propose the rule.

1. The redefinition of "effects" is contrary to law, Commission precedent, and nearly every other defect flows from it.

Proposed § 51.4 would redefine "effects" to "align with the definition of effects in the CEQ Guidance and in response to recent efforts to streamline NEPA and the NRC's permitting processes."² The proposed scope of environmental effects would include only those effects of the proposed agency action that are within the agency's substantive authority to address, excluding "effects that the agency has no ability to prevent due to the limits of its regulatory authority."³ The Commission states that its regulatory authority is generally limited to matters with a "reasonable nexus to radiological health and safety or the common defense and security."⁴ The consequence, in the Commission's own words, is that certain activities and their associated effects may have a close-causal relationship with a proposed agency action, but the NRC "may not have legal authority to prevent or mitigate the effects and therefore, will not consider those effects in its NEPA reviews."⁵ The Commission grounds this in *Seven County Infrastructure Coalition v. Eagle County*.⁶ That rationale fails; the decision is not as expansive in nature as the Commission portrays.

Seven County addressed an agency's obligation to evaluate effects from upstream and downstream projects separate from the project at hand.⁷ The Court held that effects from a separate project may be factually foreseeable, but that "does not mean that those effects are relevant to the agency's decision-making process or that it is reasonable to hold the agency responsible for those effects,"⁸ and that NEPA calls on agencies to "focus on the environmental effects of the *project itself*, not on the potential environmental effects of future or geographically separate projects."⁹ To the extent the Commission draws a "manageable line" around effects of projects separate in time or place,¹⁰ the decision may lend partial support, however, the Commission must be mindful of the requirements of other statutory schemes including satisfying the Administrative Procedure Act's

²Implementation of the National Environmental Policy Act, 91 Fed. Reg. 42,086, 42,088 (proposed July 7, 2026) (Proposed Rule).

³*Id.*

⁴*Id.*

⁵*Id.* at 42,089.

⁶*Seven Cnty. Infrastructure Coalition v. Eagle Cnty.*, 605 U.S. 168 (2025).

⁷*Id.* at 175-76.

⁸*Id.* at 187.

⁹*Id.* at 190 (emphasis added).

¹⁰*Id.*

(APA)¹¹ obligation to assess and weigh reliance interests before reversing course.¹² The Commission has required cumulative effects information from applicants, without temporal or geographic limits, for over a decade,¹³ and has told the public that disproportionate impact analysis "needs to be done to fulfill its NEPA obligations."¹⁴ The Proposed Rule offers no rationale as to why cumulative impacts are no longer to be considered, nor does it address the longstanding consideration of these effects, rather it quietly eliminates the regulatory section.

Relevant precedent does not support the assertion that the Commission need not evaluate non-radiological effects of the very project it is licensing. Every operative limitation in the decision is directed at separate projects. When the Court in *Seven County* reaffirmed that agencies are not required to analyze the effects of projects over which they do not exercise regulatory authority, the object of the sentence was projects, not categories of impact arising from the project under review.¹⁵ The Commission's own illustration proves the point: it states that although the NRC has the statutory authority to issue a construction permit, it "does not have the authority to condition or deny the permit to mitigate the non-radiological impacts — such as dust, noise, non-radiological water and air quality impacts, and non-radiological ecological impacts during construction."¹⁶ But dust and noise from constructing a reactor the Commission has permitted are not an upstream or downstream activity of a different project. They are components of the single project the Commission is evaluating, not effects of a separate project. The Commission is proposing an expansive reading that is not reflected in the holding of *Seven County*. And as previously stated in this comment, the case does not support or address the bifurcation of the effects of a *single* project.

Seven County also observed that, in that case, other agencies possessed authority to regulate the separate projects and their environmental effects.¹⁷ Under the Proposed Rule it is unclear what agency, if not the NRC, would have authority over the non-radiological effects of a single NRC-licensed project. If the Proposed Rule means to leave no authority governing those effects, it stands in opposition to the Commission's mandate to "minimize all unnecessary adverse environmental impact."¹⁸ The Commission's remaining authority speaks to a different question. *New Hampshire*

¹¹ 5 U.S.C. § 706(2)(A); *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42-43 (1983). An agency satisfies this standard only if it "examine[s] the relevant data and articulate[s] a satisfactory explanation for its action including a rational connection between the facts found and the choice made."

¹² *Dep't of Homeland Sec. v. Regents of Univ. of Cal.*, 591 U.S. 1, 33 (2020). An agency changing a longstanding policy "was required to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns."

¹³ 10 C.F.R. § 51.53(c)(3)(ii)(O). "Applicants shall provide information about other past, present, and reasonably foreseeable actions occurring in the vicinity of the nuclear plant that may result in a cumulative effect."

¹⁴ See generally Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions, 68 Fed. Reg. 62,642 (Nov. 5, 2003) "NRC believes that an analysis of disproportionately high and adverse impacts needs to be done to fulfill its NEPA obligations to accurately identify and disclose all significant environmental impacts associated with a proposed action."

¹⁵ *Seven Cnty.*, 605 U.S. at 188-89 (citing *Dep't of Transp. v. Public Citizen*, 541 U.S. 752 (2004)).

¹⁶ 91 Fed. Reg. at 42,089.

¹⁷ *Seven Cnty.*, 605 U.S. at 189.

¹⁸ *Public Service Co. of New Hampshire v. NRC*, 582 F.2d 77, 81 (1st Cir. 1978). Upholding the Commission's authority to condition Seabrook's permits on rerouting transmission lines to protect wetlands and migratory waterfowl habitat, the court held that the Commission "was under a duty to consider and, to the extent within its authority, minimize environmental damage resulting from Seabrook and its transmission lines," and described the

v. Atomic Energy Commission construed the Atomic Energy Act, before NEPA existed, not to reach thermal pollution. That holding describes the limits of the Commission's organic statute, not the scope of the review NEPA separately requires.¹⁹

The D.C. Circuit rejected materially the same position when the Commission's predecessor advanced it. In *Calvert Cliffs*, the Atomic Energy Commission (AEC) adopted rules that "specifically exclude[d] from full consideration a wide variety of environmental issues," including water quality, "perhaps the most significant impact of nuclear power plants"; the court held the rule was "in fundamental conflict with the basic purpose of the Act."²⁰ The Proposed Rule is void of any mention of *Calvert Cliffs*. And the premise, the need to analyze a wide array of environmental issues, is contradicted within the Proposed Rule: the Commission revises and republishes § 50.36b, authorizing license conditions "for the protection of the nonaquatic environment," and proposed § 51.75 requires the environmental document to analyze those conditions.²¹ Finally, no other agency backstops most of the environmental analysis that would be eliminated. License renewal, power uprates, decommissioning, and spent fuel storage typically trigger no other federal action and thus no other federal NEPA review; as the Commission has acknowledged in a companion docket, where there is no other federal action, the analysis does not transfer, it simply does not occur.²²

2. The Proposed Rule counts "non-radiological effects" when they favor licensing and excludes them when they do not.

Immediately after limiting alternatives, the preamble adds that "[t]he reasonably foreseeable effects of the no-action alternative would continue to include the negative environmental impacts of not implementing the proposed agency action," and proposed § 51.71(b)(3) codifies the requirement.²³ When the Commission asks what would happen if it denied a license, the answer is that the electricity would come from somewhere else. The environmental consequences of that substitution are mostly non-radiological: air pollution and greenhouse gas emissions from the fossil generation that would be built or kept running instead. Those emissions come from power plants the Commission does not license and has no power to control. They reach the environment through exactly the chain of causation the proposed definition of "effects" is written to exclude.

Commission's "dual obligation: to pursue the objectives of the Atomic Energy Act *And* those of the National Environmental Policy Act."

¹⁹See 91 Fed. Reg. at 42,088 (citing *New Hampshire v. Atomic Energy Comm'n*, 406 F.2d 170 (1st Cir. 1969)). The D.C. Circuit later described that decision as having upheld the Commission's pre-NEPA position that, while it was obliged to consider radiological hazards, "it could not consider broader environmental impacts." *Calvert Cliffs' Coordinating Comm. v. AEC*, 449 F.2d 1109, 1112 (D.C. Cir. 1971). The First Circuit in turn described NEPA as supplying the mandate for "timely and comprehensive consideration of non-radiological pollution effects in the planning of installations," which was "previously missing." *Pub. Serv. Co. of N.H. v. NRC*, 582 F.2d 77, 81 n.6 (1st Cir. 1978) (quoting *New Hampshire v. AEC*, 406 F.2d at 176).

²⁰*Calvert Cliffs*, 449 F.2d at 1122-23.

²¹91 Fed. Reg. at 42,104 (proposed § 50.36b); *id.* at 42,117 (proposed § 51.75(a), (b)).

²²Modernizing Reactor Licensing, Safety Oversight, and Siting Practices, 91 Fed. Reg. 44,560, 44,566 (July 16, 2026) ("As long as there is no other Federal action authorizing these activities, under 10 CFR 51.20 through 51.22, an environmental review under the National Environmental Policy Act (NEPA) is not required.")

²³91 Fed. Reg. at 42,090; *see also id.* at 42,116 (proposed § 51.71(b)(3)).

The result is that the same category of effect counts when it supports granting a license and disappears when it counts against. An analysis that tallies the benefits of approval while ignoring its costs is not an environmental analysis at all. The Commission cannot have it both ways. If effects beyond its authority to fix are within the scope of NEPA review, the new definition of "effects" cannot stand. If they are not, then the no-action analysis must be limited to radiological effects as well. The Commission may not count them when they help to bolster its analysis and ignore them when they hurt.

3. Limiting alternatives to the no-action alternative guts what review remains and is contrary to NEPA.

The preamble states that "in most cases, the reasonable range of alternatives to the NRC regulatory or licensing decision would be defined as and limited to the no-action alternative," and that the Commission "would not consider alternatives to the proposed agency action that the agency does not have the authority to implement (e.g., facility siting and other technology or energy alternatives)."²⁴ NEPA requires a detailed statement of "a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative."²⁵ "Including" is not a synonym for "limited to." Congress specified the no-action alternative as one component of a range, which implies others.

Nothing has changed with regard to NEPA's mandate to consider a reasonable range of alternatives. The Commission's premise, that it cannot consider alternatives it lacks authority to implement, is not only arbitrary, it also conflates implementing an alternative with considering one. The Commission does not build reactors, choose sites, or select cooling systems, and never has. It grants, denies, and conditions authorizations, and for fifty years it has compared proposals against alternatives and imposed conditions accordingly under the very § 50.36b authority this Proposed Rule is set to republish. The Third Circuit rejected an analogous claim, holding that the Commission could not categorically decline to consider severe accident mitigation design alternatives under NEPA on the ground that they fell outside its safety regulations.²⁶ Courts have long described the alternatives analysis as the heart of an environmental impact statement.²⁷ What is lost is the means through which environmental protection has actually been achieved in Commission licensing: cooling system alternatives that have driven impingement and entrainment mitigation at operating reactors; siting alternatives, the only federal forum comparing candidate sites; design and layout alternatives affecting water withdrawal, wetlands, and transmission corridors; and mitigation alternatives. The Proposed Rule retains severe accident mitigation analysis where the effects are radiological and eliminates alternatives where they are not,

²⁴91 Fed. Reg. at 42,090.

²⁵42 U.S.C. § 4332(2)(C)(iii).

²⁶*Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719 (3d Cir. 1989). ("[S]imply meeting the requirements of the AEA does not exempt the Commission from complying with NEPA's procedural requirements."); *id.* at 730-31 (holding the NRC "cannot . . . look to sufficiency under the AEA to avoid" its NEPA obligation to address SAMDAs).

²⁷*Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 194 (D.C. Cir. 1991); *see also Alaska v. Andrus*, 580 F.2d 465, 474 (D.C. Cir. 1978).

confirming that the operative constraint is the "effects" definition, which fails for the reasons in Section 1.

4. The categorical exclusion scheme lacks record support and bypasses rulemaking.

The Commission here proposes four related changes. It eliminates in § 51.20(b) actions automatically requiring an environmental impact statement. It adds exclusions of unprecedented breadth, reaching limited work authorizations, construction permits, operating licenses, early site permits, and combined licenses for nuclear reactors, license renewals, power uprates, decommissioning activities, and dry cask spent fuel storage.²⁸ It authorizes the Commission to "establish these categorical exclusions by rule or public notification on the NRC's website."²⁹ And it invites prospective applicants to propose exclusions by petition, advising submission at least six months before the applicant's own filing so the exclusion is available when the application arrives.³⁰

A categorical exclusion is lawful only for a category of actions that "normally do not significantly affect the quality of the human environment within the meaning of section 4332(2)(C) of this title."³¹ The record here is circular: the Commission identified the new exclusions by applying the proposed "effects" definition and conditioned them on Tables B-1 and C-1 as this same rulemaking rewrites those tables to delete all non-radiological findings.³² The preamble's acknowledgment that no Category 2 issues requiring plant-specific mitigation analysis would remain concedes that these issues are being eliminated by the scope of the Commission's assertion of authority rather than resolved by environmental analysis, precisely the substitution *Limerick* held NEPA forbids. The conclusion that licensing a new nuclear reactor normally has no significant effect is only because the Proposed Rule simultaneously redefined "effect" to exclude the impacts that would make it false. The related determination that a "SMALL" impact finding means the impact is "not significant" is a substantive change presented as a clarification and lacks a reasonable explanation as to why the Commission for the first time considers these impacts to not be significant.

The two terms answer different questions: SMALL describes the magnitude of an effect on a resource, while significance is the legal threshold that determines whether NEPA requires an environmental impact statement at all. The Commission's findings over thirty years assigned impact levels; they did not purport to decide significance. Indeed, under the Commission's own definition, a radiological impact is SMALL whenever it does not exceed permissible levels in the Commission's regulations, and compliance with a dose limit is not a finding of no significant environmental impact. The Proposed Rule nonetheless converts every one of those findings, retroactively and without new technical analysis, into a determination of no significance.³³

The Written Record of Support, the sole record document offered for the new categorical exclusions, confirms the circularity and reveals how thin the evidentiary basis is. For categorical

²⁸91 Fed. Reg. at 42,090; *id.* at 42,087.

²⁹*Id.* at 42,107.

³⁰*Id.* at 42,091, 42,107.

³¹NEPA § 111(1), 42 U.S.C. § 4336e(1).

³²91 Fed. Reg. at 42,090, 42,095 ("the NRC recognizes that, following these revisions, there would no longer be any Category 2 issues in Appendix C").

³³*Id.* at 42,095.

exclusion after exclusion it reasons that, "[c]onsistent with the new proposed definition of effects, once this determination has been made, there are no further environmental effects under NEPA within the scope of the NRC's substantive statutory authority to prevent or mitigate that could be considered significant."³⁴ For the two broadest exclusions the record cites no environmental assessment or finding of no significant impact at all: § 51.22(i), reaching new reactor licensing, rests on NUREG-2249 and Table C-1, whose non-radiological findings this same rule strikes, and § 51.22(j), reaching license renewal, rests on NUREG-1437 in the same posture, each referring to the SMALL reclassification. Section 51.22(k) is supported by no environmental document whatever, only "the expertise and judgment of its professional staff."³⁵ Where past assessments are cited, they are few and do not match the categories they are offered to support: approximately ten extended power uprate assessments substantiate an exclusion reaching all changes to reactor power levels, and those findings of no significant impact rested on review of all effluents, including thermal discharges, while the codified criterion screens only "radiological effluents." The Written Record describes its own tables as "a subset" of the assessments relied upon, so the complete technical bases remain off the docket, as NRDC's request for an extension of the comment period observed.³⁶

The safeguard the preamble describes appears nowhere in the regulatory text. The phrase "extraordinary circumstances" appears only in the preamble at 42,090 and 42,093; the special circumstances provisions of current §§ 51.21 and 51.22 are struck outright; and proposed § 51.20(a)(2), where the safeguard would belong, is marked "[Reserved]."³⁷ The Proposed Rule would codify exclusions covering the Commission's most consequential licensing actions with no regulatory mechanism for identifying the case that should not be excluded. Establishment by website posting violates the APA: the establishment of a categorical exclusion is a substantive rule with legal consequences,³⁸ as the preamble concedes in explaining when § 2.335's bar on challenges attaches, and it must be promulgated through notice and comment; NEPA § 109 permits adoption of another agency's exclusion, not creation of the Commission's own outside rulemaking.³⁹ Once codified, § 2.335 requires a waiver before the categorical exclusion may be

³⁴U.S. Nuclear Regulatory Commission, Written Record of Support of Proposed Amendments to 10 CFR 51.22 in Accordance with Executive Order 14300 and SRM-SECY-24-0046 (ML26176A427) (Written Record) at 6, 8-9 (repeating the quoted sentence for proposed §§ 51.22(f)(2), (g), and (h)); *see id.* at 15 (same in substance for § 51.22(k)).

³⁵Written Record at 9-14 (§§ 51.22(i) and (j)); *id.* at 14-15 (§ 51.22(k)).

³⁶Written Record at 8-9 ("Between 2010 and 2024, the NRC has completed approximately 10 EAs for license amendments related to extended power uprates," concluding that the uprates did not significantly "change the types or amounts of effluents released offsite"); *compare* 91 Fed. Reg. at 42,109 (proposed § 51.22(h), conditioning the exclusion on "radiological effluents"); Written Record at 17 (tables identify "a subset of EA/FONSI's").

³⁷91 Fed. Reg. at 42,107 (proposed § 51.20(a)(2) marked "[Reserved]").

³⁸*See Citizens' Committee to Save Our Canyons v. U.S. Forest Service*, 297 F.3d 1012, 1023 n.8 (10th Cir. 2002) (citing *Rhodes v. Johnson*, 153 F.3d 785, 788 (7th Cir. 1998)).

³⁹NEPA § 109, 42 U.S.C. § 4336c (an agency "may adopt a categorical exclusion listed in another agency's NEPA procedures for a category of proposed agency actions for which the categorical exclusion was established," and even then must identify the exclusion, consult with the establishing agency, identify the exclusion to the public, and document its adoption); *compare* NEPA § 106(b)(1), 42 U.S.C. § 4336(b)(1) (distinguishing "one of the agency's categorical exclusions" from "another agency's categorical exclusions consistent with section 4336c"). Congress provided a notice-based pathway only for adopting exclusions established in another agency's NEPA procedures; it

challenged in a licensing proceeding.⁴⁰ Counsel advising applicants have described the petition pathway as allowing developers to create "a bespoke NEPA off-ramp for their specific project type."⁴¹ And the consequences extend beyond this docket: a companion rule would authorize construction of important component parts of a facility upon docketing of an application, resting on the premise that the referenced license met the criteria for a categorical exclusion, a condition the exclusions proposed here would guarantee for essentially every referenced plant.⁴²

5. The public is removed at every stage.

The Proposed Rule removes, in a single action, many of the principal mechanisms through which the public participates in the Commission's environmental reviews. First, the Commission proposes to remove its scoping procedures at §§ 51.26 through 51.29 and the scoping provisions of the part 51 appendices.⁴³ Scoping determines the scope of information to take in and analyze during the environmental review,⁴⁴ allows the Commission to hear from affected communities before it defines the boundaries of review, and helps the agency identify reasonable alternatives that can then be evaluated in an EIS.⁴⁵ Without scoping, the applicant, and therefore the NRC, could decide which impacts are within or outside review, which alternatives are reasonable, and which issues are most significant, before the public has any meaningful opportunity to be heard. NEPA requires agencies to take a "hard look" at environmental consequences, informed enough to serve NEPA's twin aims of agency consideration and public disclosure,⁴⁶ and the alternatives analysis that scoping seeds is the "heart" of an EIS.⁴⁷ Removing scoping risks narrowing the range of reasonable alternatives before affected communities, Tribes, state agencies, and local governments have a meaningful chance to identify feasible alternatives or site-specific impacts.

provided none for an agency to create its own outside rulemaking. See also 5 U.S.C. § 553; 91 Fed. Reg. at 42,091 (conceding the exclusions' legal consequences: § 2.335 "would not apply until the categorical exclusion is added to the NRC's regulations in § 51.22").

⁴⁰*Id.* at 42,094.

⁴¹Holland & Knight, *NRC Proposes Sweeping NEPA Overhaul* (July 16, 2026), <https://perma.cc/8AB4-W55L>.

⁴²91 Fed. Reg. 44,560, 44,567 (July 16, 2026); *id.* at 44,668-69 (proposed § 50.10(h)); *id.* at 44,709 (proposed § 53.1130(e)).

⁴³91 Fed. Reg. at 42,096; *see also* Appendix B to Subpart A of 10 CFR Part 51, Appendix B provides that before the Commission updates the material in the appendix, "[a] scoping notice must be published in the Federal Register indicating the results of the NRC's review and inviting public comments and proposals for other areas that should be updated." NRDC notes that the Commission followed that requirement when it last revised the Appendix, publishing a NOI in 2020 (Notice of Intent to Review and Update the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, 85 Fed. Reg. 47,252 (Aug. 4, 2020)).

⁴⁴Environmental Law Institute, FAQs on the NEPA Scoping Process (2017), <https://perma.cc/2KDP-KV5M>.

⁴⁵Council on Environmental Quality, A Citizen's Guide to NEPA at 13 (2021), <https://perma.cc/A3QJ-QV9G>.

⁴⁶*Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349-50 (1989); *Baltimore Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 97 (1983).

⁴⁷*Citizens Against Burlington*, 938 F.2d at 195-96; *see Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 551-53 (1978).

Under the APA, the Commission must provide a reasoned explanation for abandoning procedures it has long treated as integral to its NEPA implementation.⁴⁸

Second, the Commission would discontinue preparation and publication of draft environmental impact statements for comment.⁴⁹ The Commission's own materials state that development of an EIS "typically involves one or more scoping meetings to collect public comments on the scope of the environmental review and one or more meetings, on the draft EIS, to collect public comments on the preliminary results of the staff's review."⁵⁰ Without the draft, the first time the public sees the Commission's detailed thinking is at the final EIS stage, when there is no opportunity to modify the analysis. Comment at the notice of intent stage is different in kind: at that stage the project may lack the details a stakeholder needs to comment on the points relevant to them. Past public feedback on draft EISs has identified numerical errors, proposed mitigation measures, and influenced outcomes; NEPA is designed to ensure environmental information is available to officials and citizens before decisions are made.⁵¹ The effect is compounded by proposed § 2.309(f)(2), under which NEPA contentions must be filed against the applicant's environmental document, while contentions on the Commission's own analysis, arriving for the first time as a final document, require leave to file late.⁵²

Third, the proposed deletion of the hearing-related provisions at §§ 51.104 through 51.108⁵³ would diminish the public's ability to enforce NEPA compliance. Comments alone are not a substitute for adjudicatory review: a comment process allows the agency to summarize and respond on its own terms, while a hearing process allows qualified participants to frame legal disputes, present admissible contentions, and obtain reasoned resolution before licensing decisions become final.⁵⁴

Fourth, the Proposed Rule removes environmental justice analysis. Nuclear facilities significantly affect environmental justice communities,⁵⁵ and the Commission's 1995 Environmental Justice Strategy⁵⁶ and 2004 Policy Statement⁵⁷ reflected its longstanding judgment that environmental reviews should identify and address disproportionately high and adverse effects on minority and low-income populations. The withdrawal of those documents⁵⁸ does not erase the administrative

⁴⁸*State Farm*, 463 U.S. at 43; *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221-22 (2016).

⁴⁹91 Fed. Reg. at 42,093.

⁵⁰NRC, Public Involvement in Environmental Reviews, (last updated, Aug. 11, 2026) <https://perma.cc/TCS4-P68X>.

⁵¹*Robertson*, 490 U.S. at 349; *Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 768 (2004).

⁵²91 Fed. Reg. at 42,102 (proposed § 2.309(f)(2)).

⁵³*Id.* at 42,096.

⁵⁴*See Beyond Nuclear, Inc. v. NRC*, 113 F.4th 956, 963-70 (D.C. Cir. 2024).

⁵⁵*See, e.g.,* Onondaga Nation, Haudenosaunee Environmental Task Force, and American Indian Law Alliance, Red Paper, Nuclear Reactors are not "Green" (Jan. 30, 2020).

⁵⁶NRC Environmental Justice Strategy, March 1995 (ML20081K602); *see also* SECY-22-0025, <https://perma.cc/2EZB-V8TE>.

⁵⁷Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions 69 Fed. Reg. 52040 (Aug. 24, 2004); *see also In the Matter of Louisiana Energy Servs., L.P.* (Claiborne Enrichment Ctr.), 47 N.R.C. 77, 100 (Apr. 3, 1998) ("Disparate impact' analysis is our principal tool for advancing environmental justice under NEPA.").

⁵⁸SRM-SECY-25-0007, <https://perma.cc/R9UT-3ZFJ>.

record the Commission built around environmental justice as a legitimate and recurring NEPA consideration. For license renewals, environmental justice has been a Category 2, site-specific issue in Table B-1, requiring plant-specific analysis precisely because the Commission could not assign a single significance level.⁵⁹ Removal of that analysis without reasoned explanation is arbitrary and capricious.⁶⁰ The collective effect of these removals, alongside the narrowed scope of analysis, would be to insulate environmental determinations from timely and effective public feedback. That runs against the record: public participation under NEPA has repeatedly produced outcomes both the public and industry could accept, from the relocation of uranium mill tailings after a scoping and draft EIS process to the siting and mitigation of the PrairieWinds project.⁶¹

6. A companion rulemaking rewrites the same sections of the CFR on an overlapping schedule, and neither proposed rule cross-references the other.

The Modernizing Reactor Licensing, Safety Oversight, and Siting Practices proposed rule separately revises §§ 51.4, 51.51, and 51.52, provisions this Proposed Rule revises and republishes.⁶² The two versions of § 51.52 set different numerical thresholds for the same regulatory finality, and the companion rule's § 51.52 opens with a cross-reference to § 51.50, a section this Proposed Rule eliminates. The Commission explains that it is converting § 51.4's definition of "construction" into a bare cross-reference "to avoid inconsistencies if the NRC considers changes to the definitions in those parts,"⁶³ and then, nine days later, changed that definition in another docket. The replacement cross-reference is defective in two respects. It directs the reader to the wrong section, citing § 50.4, "Written communications," rather than § 50.10(a), where the definition resides. And because it references only part 50, it leaves "construction" undefined for materials licenses under parts 30, 36, 40, and 70. That omission is not a drafting quibble: the definition of "construction" is the jurisdictional trigger that determines when an applicant may lawfully begin building, and for an entire class of licensees the trigger would point nowhere. The companion rule confirms the gap is avoidable, since its own version of the same section retains a definition applicable to materials licenses.⁶⁴ The companion rule never mentions this Proposed Rule, and this Proposed Rule's only acknowledgment is an unattributed reference to "a separate rulemaking" limited to two tables. The Commission should reconcile the two dockets, in the text of both, before finalizing either.

⁵⁹10 C.F.R. § 51.53(c)(3)(ii); 91 Fed. Reg. at 42,095.

⁶⁰5 U.S.C. § 706(2)(A).

⁶¹DOE, Quiet Success Stories Illustrate NEPA's Value, (Dec. 10, 2010), <https://perma.cc/2XDH-2Q5B>; NRDC, Never Eliminate Public Advice: NEPA Success Stories, (Feb. 1, 2015) <https://perma.cc/DN7S-DPEQ>.

⁶²Modernizing Reactor Licensing, Safety Oversight, and Siting Practices, 91 Fed. Reg. 44,560 (July 16, 2026) (separately revising §§ 51.4, 51.51, and 51.52).

⁶³91 Fed. Reg. at 42,089.

⁶⁴Modernizing Reactor Licensing, Safety Oversight, and Siting Practices, 91 Fed. Reg. 44,560, 44,689 (July 16, 2026) (proposed § 51.4) (defining construction to include, "[f]or materials licenses, taking any site-preparation activity at the site of a facility subject to the regulations in parts 30, 36, 40, and 70 of this chapter that has a reasonable nexus to radiological health and safety or the common defense and security"); *see also id.* at 44,565 (discussing the revision of the construction definition in §§ 50.10, 51.4, and 53.020).

7. The compressed schedule and incomplete docket have not afforded a meaningful opportunity for public comment.

By its own amendatory instruction, the Proposed Rule would "[r]evis[e] and republish part 51," replacing the Commission's entire body of NEPA regulations while renaming the part, eliminating its subpart structure, and amending twelve additional parts of the Commission's regulations. NRDC asserts this is the most consequential revision to the Commission's environmental review framework since that framework was established. The Commission allowed forty-five days for comment. It did not publish a redline in the Federal Register; it placed a 139-page "Unofficial Redline Strikeout" on the docket dated August 7, 2026, thirty-one days into the comment period, leaving fourteen days.⁶⁵ For a rulemaking that republishes an entire CFR part while amending twelve others, a redline is not a convenience. It is the only practical means by which the public can determine what is being changed, retained, relocated, or deleted. Past practice demonstrates that changes to 10 CFR part 51 have included comment periods of at least sixty days,⁶⁶ and while the APA prescribes no minimum, it requires an opportunity to comment that is meaningful in substance rather than nominal in form.

The redline also reveals CFR removals the preamble does not identify by section: §§ 51.77, 51.80, 51.81, and 51.97, the provisions governing draft and final environmental impact statements for materials licenses, are struck in their entirety. And the proposed text is not internally consistent. The republished authority note cites §§ 51.80 and 51.97, which are struck. Provisions implementing sections 141 and 148 of the Nuclear Waste Policy Act are eliminated without discussion while the authority note continues to cite those sections. Amendatory instruction 20 directs revision of § 50.10 paragraph (d)(3)(ii) and supplies text designated (d)(3)(iii); instruction 54 omits the section number from the amendatory instruction; proposed § 53.1282(b)(2) provides that if the application references a standard design certification, "the no environmental report or environmental document is required" to contain a discussion of severe accident mitigation design alternatives; and Table C-1 carries a footnote 4 that is never defined. These are illustrations rather than a full accounting: NRDC's necessarily partial review within the forty-five day window has identified more than thirty such defects in all, across the preamble, the regulatory text, the amendatory instructions, and the Written Record of Support, ranging from misdirected cross-references and misspelled regulatory terms to duplicated paragraph headings, conflicting dates and titles for the same supporting documents, and at least two invalid Federal Register citations. The Regulatory Flexibility Act certification of no new burden appears alongside a new 44,016-hour information collection, and the comment period on that information collection closed the day before the redline appeared. The Commission will need to correct these items regardless, which is itself reason to extend the comment period rather than proceed to a final rule on this record.

The Commission has also not disclosed the record of its consultation with the Council on Environmental Quality, though the redefinition of "effects" is expressly framed as an alignment with CEQ's recommended definition.⁶⁷ The public is asked to comment on the Commission's most

⁶⁵Unofficial Redline Strikeout - Proposed Rule - Implementation of the National Environmental Policy Act (RIN 3150-AL38) (ML26218A280) (Aug. 7, 2026), <https://perma.cc/8BJT-4HTN>; *see also* Draft Regulatory Analysis (ML26176A426) (July 23, 2026), <https://perma.cc/4UGZ-AHSW>.

⁶⁶*See* Renewing Nuclear Power Plant Operating Licenses - Environmental Review, 88 Fed. Reg. 13,329 (Mar. 3, 2023); Waste Confidence - Continued Storage of Spent Nuclear Fuel, 78 Fed. Reg. 56,776 (Sept. 13, 2013).

⁶⁷91 Fed. Reg. at 42,087.

consequential NEPA provision without any ability to assess what CEQ recommended or whether the proposal reflects the Commission's independent judgment about its own statutory authority. Overlapping rulemakings compound the burden: since July 1, 2026, the Commission has opened at least three additional major rulemakings with comment deadlines of August 17 and August 31, 2026, and these interdependent proposals cannot be reviewed together within successive forty-five day windows.⁶⁸ A compressed schedule is particularly inappropriate for a rule that curtails public participation. Openness is one of the Commission's five Principles of Good Regulation: “[n]uclear regulation is the public's business, and it must be transacted publicly and candidly.”⁶⁹ An inadequate comment opportunity is itself a ground for vacatur, and a final rule responding to information the public never had an opportunity to address may not be a logical outgrowth of the proposal. NRDC and the Clean Air Task Force requested that the comment period be extended to the later of November 4, 2026 or sixty days after the Commission completes the docket⁷⁰ because of the compressed schedule and incomplete docket among other reasons.

Requested Action and Conclusion

NRDC requests that the Commission: (1) withdraw the proposed definition of "effects" at § 51.4, particularly paragraph (3), together with the conforming deletions made in referring back to the definition, including former § 51.53(c)(3)(ii)(A) through (C), (E) through (K), (M) through (O), and (Q), the non-radiological rows of Tables B-1 and C-1, and the thermal effluents entry in Table S-3; (2) withdraw the restriction of alternatives to the no-action alternative in proposed § 51.71 and the accompanying preamble, and resolve the asymmetry by which non-radiological effects are counted when they favor licensing and excluded when they do not; (3) withdraw the proposed categorical exclusions at § 51.22(f)(2) through (f)(4), (h), (i), (j), (k), and (l), the determination that a SMALL impact finding constitutes a finding of no significant effect, the authority to establish exclusions by website posting, and the petition pathway for applicant-proposed exclusions; (4) retain § 51.20(b), the draft environmental impact statement process at current §§ 51.70 through 51.75, including the 45-day minimum comment period, the scoping procedures at §§ 51.26 through 51.29, the hearing provisions at §§ 51.104 through 51.108, and the materials-license environmental impact statement provisions at §§ 51.77, 51.80, 51.81, and 51.97; (5) retain the requirement that applicants characterize the demographic composition and resource use patterns of communities near licensed facilities; (6) codify extraordinary circumstances review at § 51.20(a)(2) and re-propose it for comment; (7) conform § 2.309 so that contentions on the Commission's environmental document are timely as of right; (8) publish the scoping notice required by Appendix B and re-propose the revisions to Appendix B and Table B-1 on that record; (9) withdraw proposed § 51.4's definition of "construction" and restore a definition applicable to materials licenses, or at minimum correct the cross-reference to § 50.10(a); (10) reconcile this rulemaking with the Modernizing Reactor Licensing proposal in the text of both dockets; and (11)

⁶⁸Integrated Low-Level Radioactive Waste Disposal, 91 Fed. Reg. 40,290 (comments due Aug. 17, 2026); Reforming and Modernizing the NRC's Radiation Protection Framework, 91 Fed. Reg. 43,456 (comments due Aug. 31, 2026); Modernizing Reactor Licensing, Safety Oversight, and Siting Practices, 91 Fed. Reg. 44,560 (comments due Aug. 31, 2026).

⁶⁹NRC Principles of Good Regulation, (last updated July 27, 2026) <https://perma.cc/CV25-UGXC>.

⁷⁰NRDC & Clean Air Task Force, Request for Extension of Public Comment Period, Docket ID No. NRC-2025-0478 (Aug. 17, 2026).

complete the rulemaking docket, including the record of consultation with CEQ and the full technical bases for the Written Record of Support, and re-propose the rule.

The Commission has framed this rulemaking as a choice between environmental review and the efficient deployment of nuclear energy. NRDC does not accept that framing, and neither should the Commission. The environmental review the Commission performs is one of the few points at which a community can learn what a licensed facility will mean for the water it drinks, the river it fishes, and the land around it, and one of the few points at which the Commission can be held to its answer. This Proposed Rule removes most of the environment from environmental review in departure from established precedent, forecloses the reasonable range of alternatives that give the review meaning, excludes the largest licensing actions from review altogether, and eliminates the public's opportunity to comment on the analysis before it becomes final. That is not a faster process; it is a more fragile one. Every license issued under an unlawful rule inherits its defects, and the vacatur of a single definition would unsettle multiple projects all at once. More than fifty years ago, this agency was told that it could not write the environment out of environmental review, and the decades since have shown that rigorous review is not the obstacle to nuclear deployment; rather, it is the foundation of public confidence in it. The Commission should withdraw the provisions identified above, complete the docket, and re-propose the rule.

Respectfully submitted,

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