NAVIGATING NUCLEAR: STREAMLINED NEPA PROPOSED RULES ADD COMPLEXITY FOR NEAR TERM REACTOR DEVELOPER APPLICANTS

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By: Tison A. Campbell, Christine A. Jochim, Michael S. Heard Snow

On 7 July 2026, the US Nuclear Regulatory Commission (NRC or Commission) issued a proposed rule to "streamline and modernize" its environmental regulations in 10 C.F.R. Part 51.[1] These proposed changes, which are part of the agency's regulatory "wholesale revision" directed by Executive Order 14300, Ordering the Reform of the Nuclear Regulatory Commission, build on a series of statutory changes, judicial decisions, and executive orders that shrink the scope of federal agencies' environmental reviews under the National Environmental Policy Act (NEPA).[2]

NEPA requires federal agencies to take a "hard look" at significant impacts to the human environment before taking any major federal action, including, for the NRC, permitting and approval decisions related to nuclear energy. These NEPA reviews typically culminate in a Categorical Exclusion (CE), an Environmental Assessment (EA), or an Environmental Impact Statement (EIS). While all of these reviews evaluate impacts from the proposed action and the significance of those impacts, CEs (the least intensive form of NEPA review) are reserved for projects with no potential for individual or cumulative significant impacts on the human environment, while EISs (the most detailed form of review) are required for projects with reasonably foreseeable significant impacts.[3] The NRC further utilizes a unique method of review referred to as a Generic Environmental Impact Statement (GEIS) to streamline environmental reviews for impacts that are common across projects.[4]

On 21 July 2026, the Court of Appeals for the DC Circuit separately appeared to endorse several principles the NRC relies on to support the proposed rule. Citing to the Supreme Court's decision in *Seven County Infrastructure Coalition v. Eagle County*,[5] the Court noted that "the central principle of judicial review in NEPA cases is deference" and found that the Commission's decision not "to expend further resources" on the potential contributions of climate change to its severe accident analyses "is precisely the type of judgement call…to which we must defer, so long as it falls within a 'broad zone of reasonableness."[6] The proposed rule expands the NRC's use of this "broad zone of reasonableness" to implement a substantial shift toward a more limited, focused NEPA process in which environmental review is centered on impacts the NRC can directly regulate and alternatives the NRC has the authority to implement.

The most significant change in the proposed rule is that NRC would limit its NEPA reviews to environmental effects that are within NRC's "substantive statutory authority."[7] Because NRC's authority is generally tied to radiological health and safety, the agency proposes that its environmental reviews should primarily evaluate radiological impacts (and certain associated chemical hazards), rather than broader environmental impacts it cannot directly regulate.[8] As a result, the NRC's NEPA analyses would no longer consider things like dust, noise,

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non-radiological water and air quality impacts, and non-radiological ecological impacts during construction.[9] The proposed rule would, among other things, expand the use of categorical exclusions, allow for the adoption of other agencies' CEs, create a process for establishing additional CEs through the NRC website, allow any interested party to petition for new CEs, discontinue the practice of publishing draft EISs or EAs for public comment, provide additional flexibility to the NRC when deciding whether to prepare an EA or EIS, and establish procedures for applicants to prepare their own EA or EIS under NRC supervision for adoption by the agency.[10]

The NRC issued updated draft guidance in parallel with the proposed rule that draws a distinction between the narrowed scope of the agency's NEPA reviews and its compliance with other federal statutes, including the Coastal Zone Management Act of 1972,[11] the Endangered Species Act, Marine Mammal Protection Act, and the National Historic Preservation Act.[12] These statutes may, independently of NEPA, require the NRC to consider the "potential effects from construction, operation, and decommissioning activities, and other non-radiological impacts associated with the proposed agency action" on the resources covered by these statutes.[13]

Streamlined NEPA reviews at the NRC, coupled with other regulatory reform efforts, may provide a shorter route to an NRC license for reactor developers but also create new and novel risks for near-term applicants. The NRC will need to find the right balance between these more focused NEPA reviews and its obligations under other federal statutes, which may require additional, non-radiological analyses. Further, an NRC license is not all that is required to bring nuclear power to the grid; developers still need to engage with local authorities and state agencies to receive required approvals and permits prior to construction and operation. It is also unclear how other federal agencies with different statutory mandates will be able to leverage the NRC's limited-scope NEPA reviews to satisfy their own NEPA obligations. Thus, while the NRC's proposed changes to its NEPA processes may streamline the agency's review of an application, these proposed changes may result in additional work for applicants, other federal agencies, state agencies, and local stakeholders.[14]

The NRC is accepting comments on the proposed rule until 21 August 2026.

As the NRC continues to reshape this regulatory landscape, the firm's Nuclear Energy practice group team is available to help clients navigate these complex and evolving issues.

FOOTNOTES

[1] Implementation of the National Environmental Policy Act, 91 Fed. Reg. 42086 (July 7, 2026).

[2] *See*, e.g., Fiscal Responsibility Act of 2023, Pub. Law No. 118-5, 137 Stat. 10 (2023); *Seven Cnty. Infrastructure Coalition v Eagle Cnty.*, 605 U.S. 168 (2025); Executive Order No. 14154, Unleashing American Energy, 90 Fed. Reg. 8353 (Jan. 20, 2025); One Big Beautiful Bill Act, Pub. Law No. 119-21, 139 Stat. 25 (2025).

[3] *See* NEPA § 106, 42 U.S.C. § 4336.Environmental Assessments meanwhile are a catch-all document required for actions that either do not have a reasonably foreseeable significant effect on the quality of the human environment but do not qualify for a CE, or those actions for which the significance of the effect is unknown.

[4] *See*, e.g., Generic Environmental Impact Statement for Licensing of New Nuclear Reactors, 91 Fed. Reg. 22394 (Apr. 24, 2026).

[5] For a deeper dive into the significant NEPA developments in Seven County Infrastructure see Varu Chilakamarri et al., *Course Correction Supreme Court Steers Toward Greater Predictability in NEPA Reviews*, K&L GATES

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(June 2, 2025), https://www.klgates.com/thought-leadership/Course-Correction-Supreme-Court-Steers-Toward-Greater-Predictability-in-NEPA-Reviews-6-2-2025.

[6] *Id.*, slip op. at 17 citing *Seven Cnty*. 605 U.S. at 183.

[7] *See* 91 Fed. Reg. at 42089 ("This means that while certain activities and their associated effects may have a close-causal relationship with the proposed agency action, the NRC may not have legal authority to prevent or mitigate the effects and therefore, will not consider those effects in its NEPA reviews."). The NRC notes that there is an exception to the proposed narrowed scope: "NEPA reviews for actions related to AEA § 11e.(2) byproduct materials (e.g., mill tailings), for which the NRC has additional regulatory authority[.]" *Id*.

[8] *See* 91 Fed. Reg. at 42089.

[9] *See id*.

[10] *See* 91 Fed. Reg. at 42089-42095.

[11] Through the CZMA's reverse preemption requirements states may be able to require compliance with state NEPA equivalent statutes which were previously satisfied through a single joint document. CZMA § 307, 16 U.S.C. § 1456.

[12] *See* NUREG-2270, Appendix I and J. These statutes impose additional requirements that the NRC and other federal and state agencies must address prior to the completion of the NRC's licensing action. The NRC's guidance in NUREG-2270 explains how the NRC will approach each of these statutes as part of its licensing reviews.

[13] *Id*. at Appendix I at I-1.

[14] The NRC's draft regulatory analysis recognizes that aspects of the proposed rule may shift some burden to other federal agencies. *See* Regulatory Analysis for the Proposed Rule: Implementation of the National Environmental Policy Act (June 2026) (ADAMS Accession No. ML26176A426).

KEY CONTACTS



TISON A. CAMPBELL
PARTNER

WASHINGTON, DC
+1.202.778.9323
TISON.CAMPBELL@KLGATES.COM



CHRISTINE A. JOCHIM
PARTNER

SEATTLE, WASHINGTON, DC
+1.206.370.5816
CHRISTINE.JOCHIM@KLGATES.COM



MICHAEL S. HEARD SNOW
ASSOCIATE

WASHINGTON, DC
+1.202.778.9318
MICHAEL.HEARDSNOW@KLGATES.COM

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