



March 4th, 2026

Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

Subject: Public Comment on DOE’s Notice of New Categorical Exclusion and Request for Comment (DOE-HQ-2025-0405).

Dear DOE Staff,

The Nuclear Innovation Alliance (NIA) is an independent, non-profit, non-partisan “think-and-do” tank whose mission is to help create the conditions for success for new nuclear energy so it can play a major role as an energy security and climate solution. We focus on regulatory modernization, federal and state policy, private investment and workforce development to support advanced reactor commercialization while meeting national environmental and energy security goals.

NIA appreciates the opportunity to comment on the DOE’s notice of a new categorical exclusion and request for comment issued on February 2, 2026. NIA welcomes DOE’s commitment to advancing the deployment of advanced reactor technologies and recognizes the potential for categorical exclusions (CatEx) under the National Environmental Policy Act (NEPA) to conserve agency and applicant resources and reduce unnecessary delays for advanced reactors. This is important in recognizing not only the long history of positive environmental performance of nuclear energy but also the characteristics of advanced reactors that result in even greater environmental benefit. However, for these changes to be durable, the application of CatEx for advanced reactors must be clearly justified by detailed information, bounding conditions, and sufficient empirical environmental review data. DOE’s justification to implement this new categorical exclusion does not contain the necessary specificity or bounding conditions we believe are necessary to ensure credibility and utility.

In 2025, NIA published a report on [Improving Environmental Reviews through a Categorical Exclusion for Microreactors](#). Our report was focused on NRC, but we believe the recommendations can be applied to DOE as well.

Specifically, with respect to NRC categorical exclusions, we recommended that the NRC:

1) produce a written record demonstrating that the construction, operation, and decommissioning of reactors within the categorical exclusion “does not have a significant effect, individually or in the aggregate, on the human environment.”

2) identify when documentation is required to demonstrate that a categorical exclusion applies to a proposed action. Documentation will likely be necessary in all cases to verify that the proposed technology meets the specified definition. Generally, maintaining a record of categorical exclusion determinations would enhance confidence in the agency’s determination and provide a stronger foundation during judicial review.

3) describe how it will consider “extraordinary circumstances in which a normally excluded action may have a significant effect.” This so-called “extraordinary circumstances analysis” is used to verify that any site-specific issues do not amount to significant environmental impact, and the NRC would need to identify such circumstances to be considered for each project. If an extraordinary circumstance is present in a particular analysis, the NRC could: (1) determine that the circumstance does not lead to potentially significant effects, or (2) modify the proposed action to avoid the potential effects. If it cannot avoid a significant effect, “the agency shall prepare an environmental assessment or environmental impact statement, as appropriate.”

While these recommendations were focused on NRC, we believe that they should be applied to DOE as well. In our view, the DOE notice falls short with respect to all three recommendations.

The proposed action through the notice is procedurally ambitious but broadly consistent with recent EOs directing DOE to streamline environmental review and accelerate deployment of advanced nuclear technologies.

In response to DOE’s 2022 Request for Information regarding Categorical Exclusions (FR 68385), NIA recommended that DOE evaluate whether certain advanced reactor projects could qualify for a CatEx based on clearly defined reactor and siting characteristics.

NIA supports DOE and NRC proactively establishing CatExs for well-specified categories of advanced reactors, but only if the definition includes specific parameters linked to minimal environmental impacts. DOE’s notice includes many conditions that are qualitative, leaving room for differing interpretations and litigation. DOE’s notice also references existing orders, but DOE is in the process of changing many of them. While DOE has reviewed data from recent experience, it has not translated that experience into clearly defined reactor and siting characteristics.

To achieve a durable outcome, DOE’s written record¹ that provides a basis for this notice should be expanded. For example, it could include the results of the analysis from the 2024 draft NRC

¹ DOE’s Written Record of Support (February 2026) <https://www.energy.gov/nepa/articles/written-record-support-february-2026>

New Reactor Licensing Generic Environmental Impact Statement (AR GEIS) and associated rulemaking (NRC Docket 2020-0101). The 2024 draft concludes that for Category I issues, any new nuclear reactor application that meets the values and assumptions of the plant parameter envelopes (PPE) and the site parameter envelopes (SPE) assumed in the AR GEIS require no further environmental analysis. Providing these types of bounding evaluations from the NRC AR GEIS docket in the DOE written record would assist DOE in making robust CatEx determinations and achieve the goals of facilitating advanced nuclear projects.

Alternatively, conducting detailed environmental reviews for a representative range of forthcoming designs could support this evaluation by generating empirical data to justify, where appropriate, the application of CatEx.

Additionally, NIA supports DOE reliance on its "Integral Elements" and "Extraordinary Circumstance" screening tests for applying a CatEx to a reactor project. However, NIA is concerned that these screening tests as specified in the existing DOE Orders are essentially based on DOE discretion. NIA recommends that DOE clarify this discretion with examples of Integral Elements or Extraordinary Circumstances that would affect the applicability of a CatEx. DOE could rely on past evaluations to inform when a CatEx is not applicable.² For example, an extraordinary circumstance could be the loss of the sole habitat of an endangered species. The failure of an Integral Element could be discharges that exceed legal limits. Overall, DOE needs to demonstrate that the written record constitutes reasonably informed decision making, as required by *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 605 U.S. 168 (2025).

While NEPA grants federal agencies broad discretion in structuring their environmental review processes, CatExs must have a strong, defensible foundation.

NIA would like to thank DOE for the opportunity to comment on this notice. If you have any questions, please contact Miranda McGuire at mmcguire@nuclearinnovationalliance.org.

Sincerely,
Judi Greenwald
President & CEO
Nuclear Innovation Alliance

² The U.S. Supreme Court rejected an action that did not properly consider the potential impact of a dam construction project on the habitat of an endangered fish species (the Snail Darter case). See, e.g., **Tennessee Valley Auth. v. Hill**, 437 U.S. 153 (1978)