

September 9, 2026

Chairman Ho K. Nieh and Fellow Commissioners
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Comments of Connecticut Department of Energy and Environmental Protection on revisions to 10 CFR Parts 2, 7, and 10 related to NRC Modernization: Rulemaking Procedure, Federal Advisory Committee Act Alignment, Access, and Security

Docket ID: NRC-2025-1139

Dear Chairman Nieh, and Commissioners Wright, Crowell, Marzano, and Weaver,

The Connecticut Department of Energy and Environmental Protection (DEEP) appreciates the opportunity to provide comments on the U.S. Nuclear Regulatory Commission's (NRC's or "the Commission's") direct final rule (DFR) revising 10 CFR Parts 2, 7, and 10 related to NRC Modernization: Rulemaking Procedure, Federal Advisory Committee Act Alignment, Access, and Security¹. The rule would make changes related to information withholding, post-promulgation comment periods, Federal Advisory Committee Act (FACA) requirements, and personnel security eligibility criteria. DEEP does not seek to challenge the substance of the proposed FACA changes. Rather, DEEP believes that the DFR process is not appropriate for this action, particularly where the proposed amendments would alter the NRC's own public-participation and information-disclosure procedures. Although the NRC considers these amendments administrative and procedural in nature, DEEP believes these are substantive amendments. Therefore, DFR is not an appropriate mechanism to make such amendments.

DEEP submits these comments consistent with the policy framework established in Section 16a-100 of the Connecticut General Statutes regarding the development and regulation of nuclear energy and the use of radioactive materials. The State of Connecticut affirms its support for the development and utilization of atomic energy, consistent with the protection of public health and safety, the common defense and security, and the preservation of the environment. In furtherance of this policy, Connecticut is committed to working with the federal government, including the NRC, and to maintaining a regulatory program that is compatible with, and complementary to, the Atomic Energy Act of 1954 and its accompanying regulations.

¹ "NRC Modernization: Rulemaking Procedure, Federal Advisory Committee Act Alignment, Access, and Security," 91 Fed. Reg. 51555 (August 11, 2026).

Consistent with Section 16a-102 of the Connecticut General Statutes, the Commissioner of DEEP is charged with coordinating all atomic development activities within the state and serving as the state's lead representative in matters relating to atomic energy. The Commissioner's statutory role encompasses coordination with the federal government, including the NRC, and reinforces DEEP's responsibility to ensure that state and federal regulatory programs are comprehensive, compatible, and effectively implemented.

DEEP supports the NRC's efforts to modernize its regulatory framework and to enable the safe, secure, and efficient deployment of advanced nuclear technologies. As energy demand grows, nuclear energy remains a critical component of a reliable and secure electric grid. Connecticut has taken deliberate steps to explore advanced nuclear deployment through a transparent, community-centered approach, including enactment of Connecticut Public Act 25-173 which established an Advanced Nuclear Reactor Site Readiness Funding Program. These efforts emphasize robust public engagement and informed decision-making as foundational to building public trust.

Proposed changes to notice and post-promulgation comment requirements.

Under 10 CFR § 2.804(d), the NRC currently provides exceptions from advance notice and comment for certain changes, including interpretive rules, general statements of policy, and rules concerning agency organization, procedure, or practice. The regulation also provides an exception where the Commission finds, for good cause, that notice and comment are "impracticable, unnecessary, or contrary to the public interest," and are not otherwise required by statute. Under the current 10 CFR § 2.804(e), when the NRC proceeds under these exceptions, the Commission "shall" provide a 30-day post-promulgation comment period. The DFR would change "shall" to "may."

Proposed changes to treatment of proprietary information under the Freedom of Information Act (FOIA).

The NRC proposes to eliminate the requirement that an applicant seeking to withhold materials provide a statement describing the harm that would result from disclosure. The NRC explains that the proposed changes are intended to clarify the Commission's procedures and align with a recent revision to 10 CFR § 2.390. DEEP understands the potential administrative rationale for this change and does not seek to challenge the NRC's policy of protecting legitimate commercial, financial, and proprietary information.

Rulemaking Approach

DEEP is very concerned with the NRC's use of the DFR process for both of the above proposed actions and considers it an inappropriate procedure to apply to this rulemaking. The NRC asserts that the DFR process is appropriate for this proposed rule because it is non-controversial and

unlikely to generate significant adverse comment.² DEEP is not merely expressing a preference for a different rulemaking process. Rather, these comments (1) explain why the proposed changes would be improper without further analysis and clarification, (2) challenge the underlying premise that the changes are non-controversial, and (3) identify procedural safeguards that, if this rule proceeds despite those fundamental problems, should be retained or added before the rule is finalized.

First, DEEP challenges the NRC's characterization of this rule as "non-controversial" and therefore appropriate for a DFR. The NRC's decision to use the DFR process rests on the premise that the proposed changes are non-controversial and do not warrant the full notice-and-comment process. DEEP challenges this premise with respect to the proposed changes to 10 CFR § 2.804(d) and (e) concerning notice and post-promulgation comment.

The proposed change from "shall" to "may" in 10 CFR § 2.804(e), when considered together with the existing exceptions to advance notice and comment in 10 CFR § 2.804(d), could materially expand the circumstances in which the NRC may adopt procedural changes without advance public participation and without a mandatory opportunity for post-promulgation comment; essentially eliminating the public's opportunity to meaningfully participate in a rulemaking.

DEEP's concern is not simply that the NRC has selected a different procedural mechanism; it is that the proposed approach would eliminate the current mandatory post-promulgation public participation safeguard by changing the NRC's standard to provide a 30-day comment period from "shall" to "may" without adequately explaining the limits on that discretion or establishing substantive criteria governing when post-promulgation comment would be required. In addition, the NRC proposes to rely on an undefined standard that would leave to the Commission to determine which rules are non-controversial, and which are not, without providing substantive criteria in the rule to govern that determination. Allowing a federal agency to exercise broad discretion increases subjectivity, undermines consistency and precedent in decision-making, and severely undermines public confidence in the rulemaking process.

DEEP therefore concludes that the proposed changes cannot be properly characterized as non-controversial. A rule that changes the point at which the public is entitled to notice and an opportunity to comment, and makes that requirement discretionary, is not non-controversial merely because it concerns agency procedure rather than substantive technical requirements. These changes raise due process, among other, concerns and should be adequately evaluated under a full rulemaking process.

² The NRC's definition provides that a significant adverse comment is one in which the commenter explains why the rule would be inappropriate, challenges the rule's underlying premise or approach, or argues that the rule would be ineffective or unacceptable without a change. The definition further identifies comments that require the NRC to reevaluate its position, raise issues serious enough to warrant a substantive response, or raise relevant issues not previously addressed or considered by the NRC. 91 FR 51555 (August 11, 2026).

Second, DEEP asserts that our comments raise issues serious enough to require a substantive response and additional analysis. DEEP's comments raise significant questions concerning the interaction of the proposed changes with the Administrative Procedure Act (APA) and the NRC's obligations to provide a meaningful opportunity for public participation.

DEEP recognizes that the APA does not independently require advance notice and comment for every category of agency action identified in 10 CFR § 2.804(d), and that the NRC may have discretion to determine when an exception applies. However, the proposed amendment to 10 CFR § 2.804(e) raises a separate question: What meaningful limits would remain on the NRC's discretion if the Commission could invoke an exception to advance notice and comment and then choose whether to provide any post-promulgation comment period?

The NRC should explain:

- How the proposed changes would operate together in practice;
- What standards would constrain the NRC's use of the "impracticable, unnecessary, or contrary to the public interest" exception;
- Whether the NRC could use that exception to characterize changes intended to streamline or accelerate licensing as being in the public interest;
- What circumstances would require the NRC to provide post-promulgation comment; and
- What safeguards would ensure that the public retains a meaningful opportunity to identify errors, unintended consequences, or legal concerns before changes become effective.

The proposal would provide the NRC with considerably more discretion to make certain changes without prior public notice and potentially without any post-promulgation opportunity for public comment. That is particularly significant where the distinction between an administrative or procedural change and a change with broader regulatory consequences may not be clear. For example, depending on how broadly "impracticable, unnecessary, or contrary to the public interest" is interpreted, the Commission could potentially characterize changes intended to streamline or accelerate nuclear licensing under Executive Order 14156—Declaring a National Energy Emergency as being in the public interest and proceed without the normal notice-and-comment process. Under the proposed amendment, there would then also be no mandatory post-promulgation comment period. DEEP is not asserting that the NRC necessarily intends to use the exception in that manner. Rather, the example illustrates why the proposed rule should explain the limits of the discretion being created.

These are not editorial questions. They concern the scope of the NRC's authority to alter long established public-participation procedures that fosters transparency and the circumstances under which stakeholders may be excluded from the rulemaking process. The fact that numerous explanations should have accompanied this amendment elucidates the inappropriateness of using DFR process for this amendment. Such changes warrant a substantive response and, therefore, additional analysis before the NRC determines that the changes are appropriate.

Third, DEEP's comments identify relevant issues that were not adequately addressed in the NRC's explanation of the DFR. The NRC's characterization of the rule as non-controversial does not appear to adequately address the cumulative effect of the proposed changes to notice, post-promulgation comment, and proprietary-information procedures.

In particular, the NRC should address whether the proposed changes could:

- Reduce opportunities for affected stakeholders to identify and challenge procedural changes before they take effect;
- Permit significant changes to agency practice to be adopted without a full public record;
- Make it more difficult for the public to understand the basis for the NRC's withholding of information; or
- Create a precedent for using direct final rulemaking to implement increasingly consequential administrative changes without meaningful public participation.

DEEP also requests a substantive explanation of the proposed changes to 10 CFR § 2.390 concerning proprietary information. DEEP understands the NRC's administrative rationale for removing the applicant's required statement describing the harm that would result from disclosure. However, the proposed change raises a relevant question that should be addressed in the rulemaking record: What standards and safeguards will constrain the NRC's discretion to determine that information is proprietary and withhold it from public disclosure, particularly when the applicant is no longer required to articulate the basis for the claimed competitive harm?

This question is especially important as the NRC expands pre-application and pre-licensing activities, during which substantial information may be submitted before a formal licensing action is initiated. The public should not be required to rely solely on the NRC's determination that information is proprietary without a clear explanation of the standards applied and the safeguards available to prevent over-withholding.

DEEP is not opposing the protection of legitimate proprietary information. Rather, DEEP is requesting that the NRC explain how the proposed changes would preserve the appropriate balance between protecting proprietary information and ensuring that the public is adequately informed of matters relevant to nuclear safety, environmental protection, and agency decision-making, and that the NRC build additional safeguards into the rule to ensure that balance is maintained. The NRC should identify the standards, procedural protections, and opportunities for review that would constrain its discretion to withhold information, particularly when the applicant is no longer required to articulate the basis for the claimed competitive harm.

Fourth, DEEP's comments propose changes that are necessary to make the rule acceptable. DEEP's comments also satisfy the NRC's definition because they identify changes that are necessary to make the proposed rule acceptable.

At a minimum, DEEP recommends that the NRC:

- Withdraw the direct final rule in response to these significant adverse comments and provide a full opportunity for public comment on these procedural changes before finalizing them;
- Explain the APA implications of the proposed changes to 10 CFR §§ 2.804(d) and (e), including the limits on the NRC’s discretion to dispense with advance notice and post-promulgation comment; and,
- Clarify and strengthen the substantive standards and safeguards that would govern the NRC’s determination that information is proprietary under 10 CFR § 2.390, including criteria for withholding, documentation of the basis for that determination, and meaningful opportunities for review.

Fifth, DEEP’s comments meet the NRC’s own definition of significant adverse comment. DEEP’s comments oppose the proposed changes and provide reasons sufficient to require a substantive response in a notice-and-comment process. Specifically, they challenge the rule’s underlying premise and approach, raise issues serious enough to warrant a substantive response to clarify or complete the record, and identify relevant issues that the NRC has not adequately addressed or considered. They also propose changes and additional safeguards necessary to make the rule acceptable. Accordingly, the comments fall within the NRC’s stated criteria for significant adverse comments under paragraphs (1)(a)–(c) and (2) of its definition contained in section III, Rulemaking Procedure³.

In Summary

In closing, DEEP remains supportive of the NRC’s efforts to modernize its regulatory framework and enable the next generation of nuclear technologies. However, achieving these objectives in a manner that maintains public trust and ensures robust oversight requires a deliberate, transparent, and inclusive regulatory process.

DEEP believes the proposed changes to notice and post-promulgation comment requirements and the treatment of proprietary information under FOIA raise questions that warrant additional consideration from an APA and public-participation perspective. The NRC should not treat DEEP’s comments as general expressions of disagreement or as comments that can be resolved through editorial changes. They directly challenge the premise that the proposed procedural changes are non-controversial and identify substantive issues that warrant consideration through the full notice-and-comment process. DEEP respectfully states that this rule should follow the standard notice-and-comment process rather than the DFR process. Accordingly, DEEP strongly opposes this proposal and urges the NRC to withdraw the DFR.

Thank you for the opportunity to comment on this important matter.

³ “NRC Modernization: Rulemaking Procedure, Federal Advisory Committee Act Alignment, Access, and Security,” 91 Fed. Reg. 51556 (August 11, 2026).

Sincerely,

A handwritten signature in black ink that reads "Emma Cimino". The script is fluid and cursive, with the first letters of both names being capitalized and prominent.

Emma Cimino

Acting Commissioner

Connecticut Department of Energy and Environmental Protection