

September 10, 2026

Subject: Breakthrough Institute Comment on NRC Modernization: Rulemaking Procedure, Federal Advisory Committee Act Alignment, Access, and Security [Docket ID NRC-2025-1139; RIN 3150-AI46].

The Breakthrough Institute (BTI) appreciates the opportunity to comment on the Nuclear Regulatory Commission's proposed and direct final rule, *NRC Modernization: Rulemaking Procedure, Federal Advisory Committee Act Alignment, Access, and Security* (Docket NRC-2025-1139).^{1,2} BTI is an independent 501(c)(3) global research center that advocates for appropriate regulation and oversight of nuclear reactors to enable the new and continued use of safe and clean nuclear energy. BTI acts in the public interest and does not receive funding from industry.

BTI generally supports the NRC's proposed modernization of Parts 2, 7, and 10. The rule would remove outdated procedural requirements, align NRC regulations with current government-wide standards, and reduce unnecessary administrative burden. Those objectives are consistent with a regulatory framework that is clear, efficient, and predictable. The NRC also requests comment on the clarity and effectiveness of the proposed rule language. The recommendations below respond directly to that request by identifying provisions that would benefit from clearer statutory boundaries, implementation criteria, and internal consistency. BTI recommends targeted revisions to preserve meaningful public participation, clarify the exercise of regulatory discretion, and ensure that the affected provisions remain consistent with governing statutes and related NRC requirements.

¹ Nuclear Regulatory Commission, *NRC Modernization: Rulemaking Procedure, Federal Advisory Committee Act Alignment, Access, and Security*, Docket ID NRC-2025-1139, 91 FR 51600 (August 11, 2026), <https://www.federalregister.gov/documents/2026/08/11/2026-16374/nrc-modernization-rulemaking-procedure-federal-advisory-committee-act-alignment-access-and-security> (Hereinafter Direct Final FACA Rule).

² Nuclear Regulatory Commission, *NRC Modernization: Rulemaking Procedure, Federal Advisory Committee Act Alignment, Access, and Security*, Docket ID NRC-2025-1139, 91 FR 51555 (August 11, 2026), <https://www.federalregister.gov/documents/2026/08/11/2026-16373/nrc-modernization-rulemaking-procedure-federal-advisory-committee-act-alignment-access-and-security> (Hereinafter Proposed FACA Rule).

I. SUMMARY OF RECOMMENDATIONS

1. **Clarify that GSA alignment in Part 7 remains subordinate to the Atomic Energy Act.**
Proposed § 7.1(j) should clearly state that GSA regulations control conflicts with Part 7 except where the Atomic Energy Act (AEA) requires otherwise.
2. **Pair the shorter Part 7 notice period with timely materials and prompt communication of schedule changes.** BTI does not oppose reducing the minimum meeting-notice period from 15 to 7 calendar days, but meaningful participation depends on stakeholders receiving substantive materials in time to prepare and being promptly informed when a meeting or major agenda item changes.
3. **Clarify when information gathering becomes advisory deliberation subject to Part 7.**
Workshops, listening sessions, and preparatory work should remain available as flexible tools, but the final rule should state clearly when those activities become advisory deliberation subject to FACA.
4. **Retain the proposed discretion in § 2.804(e), but establish a clear threshold for post-promulgation comments.** Technical, editorial, and other non-substantive changes should not automatically require an additional comment period. A post-promulgation comment period should be provided for new or substantive regulatory changes where public input has a reasonable potential to affect NRC decision-making, public health and safety, or common defense and security.
5. **Conform § 10.10 to the proposed SEAD 4-based § 10.11 framework.** BTI supports the NRC's use of the government-wide adjudicative framework, but § 10.10 should not refer to categories and criteria that would no longer appear in § 10.11.
6. **Review the final rule for consistency with related licensing and security requirements.**
The NRC should verify that the Part 7 amendments operate consistently with ACRS responsibilities under Parts 50, 52, 53, and 57, and that the Part 10 amendments remain coordinated with access-authorization and security requirements under Parts 25, 73, and 95. The review should focus on concrete inconsistencies in regulatory text, procedural responsibilities, and cross-references.

II. RULEMAKING PROCEDURE: PRESERVE A PREDICTABLE POST-PROMULGATION COMMENT MECHANISM

The NRC should retain the proposed change in § 2.804(e) from “shall” to “may,” but the final rule should establish a clear threshold for when a post-promulgation comment period should be provided. A mandatory 30-day period can impose unnecessary delay for technical or editorial corrections, while unrestricted discretion could eliminate useful public input on new or substantive regulatory changes.

Section 2.804(e) currently requires a 30-day post-promulgation comment period for specified rules issued without ordinary pre-promulgation notice and comment. The proposed rule would change only the introductory requirement from “shall provide” to “may provide,” leaving the categories of covered rules otherwise unchanged. The NRC explains that the procedure is self-imposed, is not required by the Administrative Procedure Act (APA) where an exception to ordinary notice and comment applies, and can impose unnecessary administrative burden.

BTI agrees that an additional comment period should not be automatic in every case. A rulemaking that corrects a typographical error, makes a purely technical amendment, or implements a non-substantive conforming change is unlikely to benefit from an additional 30-day comment period. Requiring comment in those circumstances could delay routine corrections without improving the regulatory outcome.

However, as the proposed rule is written, the NRC could choose not to request public comments even when a rule involves a substantive regulatory change and additional public input could materially improve the outcome. Public comments can help identify cross-rule inconsistencies, implementation problems, and unintended effects before they become embedded in the regulatory framework. Especially now, with the extraordinary number of rulemakings underway, post-promulgation public comments are even more important. NRC staff have repeatedly emphasized during public meetings on Executive Order 14300 rulemakings that stakeholder engagement is important to ensuring that new requirements are workable.³

³ U.S. Nuclear Regulatory Commission, *Public Meeting on Executive Order 14300 Section 5(b) — Reconsidering the NRC's Radiation Protection Framework*, Official Transcript of Proceedings, July 16, 2025, ADAMS Accession No. ML25205A168, <https://www.nrc.gov/docs/ML2520/ML25205A168.pdf>.

The proposed rule does not identify the standard that will govern the NRC's new discretion. The NRC states that it will use post-promulgation comments "as appropriate," but does not explain what makes a rule appropriate for additional public input. The APA establishes the framework in which public participation is required, and departures from pre-promulgation procedures are tied to specified circumstances.⁴ APA § 553(c), for example, generally provides interested persons an opportunity to submit "written data, views, or arguments."⁵ The NRC's post-promulgation comment procedure can serve as a complementary safeguard where prior participation was appropriately omitted, but subsequent public input could still materially improve the regulatory decision. The final rule should draw that line.

A post-promulgation comment period should ordinarily be provided where the rule is new, novel, or substantively changes regulatory policy and there is a reasonable expectation that public input could affect agency decision-making or matters involving public health and safety or common defense and security. By contrast, purely editorial, technical, organizational, or conforming changes that do not materially affect regulatory obligations ordinarily would not warrant an additional comment period.

Recommendation

The NRC should retain "may" in § 2.804(e), but explain in the final rule the substantive criteria it will use to determine when a post-promulgation comment period is warranted. This approach preserves the efficiency benefit of replacing "shall" with "may" while providing a predictable guardrail for the exercise of that discretion. It directs public participation toward actions where additional input can materially improve the regulatory decision without imposing unnecessary process on routine changes.

⁴ Administrative Procedure Act, 5 U.S.C. § 553(b)–(c).

⁵ Administrative Procedure Act, 5 U.S.C. § 553(c).

III. MODERNIZE FACA PROCEDURES CONSISTENT WITH NRC STATUTORY RESPONSIBILITIES IN PART 7

GSA Alignment Should Remain Consistent With the AEA

The NRC should align Part 7 with the government-wide FACA regulations administered by GSA, but proposed § 7.1(j) should clearly state that GSA regulations control only where they do not conflict with the AEA. Where Congress has prescribed requirements for the NRC or the Advisory Committee on Reactor Safeguards (ACRS), the statute controls; where no specific statutory requirement governs, alignment with the GSA framework is appropriate.

The NRC explains that the Part 7 amendments are intended to conform its advisory committee regulations to GSA's updated FACA framework and improve administrative efficiency, transparency, and accountability. Many proposed changes appropriately advance that objective. For example, proposed § 7.12 would reduce the NRC's meeting-notice period from 15 days to seven calendar days and add more detailed notice and electronic-access requirements. Because the AEA does not establish a separate notice period for ACRS meetings, that type of procedural alignment does not create a statutory conflict. The situation is different where Congress has established specific requirements in the AEA, such as those establishing the ACRS, its membership, term limits, and other specified requirements.⁶ Those statutory requirements cannot be displaced by a conflicting government-wide advisory committee rule.

The proposed rule already recognizes this principle in several places. Proposed § 7.18(a), for example, states that the NRC appoints advisory committee members "unless otherwise provided for by a specific statute or Presidential directive."⁷ Proposed §§ 7.4 and 7.7 likewise distinguish statutorily required committees from discretionary committees in their establishment, renewal, and termination provisions.⁸ Proposed § 7.1(j), however, states categorically that if Part 7 conflicts with GSA regulations in 41 CFR part 102-3, "the GSA regulations control."⁹ That language should include the same statutory qualification used elsewhere in the proposed rule.

⁶ Atomic Energy Act of 1954 § 29, 42 U.S.C. § 2039.

⁷ Proposed FACA Rule at 51567.

⁸ Proposed FACA Rule at 51562–64.

⁹ Proposed FACA Rule at 51561.

Shorter Notice Periods Should Be Paired With Timely Materials and Communication

The proposed rule would reduce that notice period for advisory committee meetings from 15 to 7 calendar days while substantially expanding the information contained in the notice, including electronic connection instructions, registration requirements, the meeting agenda or topics, instructions for accessing meeting materials, procedures for submitting comments, and information about accommodations. BTI does not oppose the proposed seven-calendar-day notice period and strongly supports the expanded access to information. The NRC should pair these changes with timely and consistent implementation, including prompt communication of material changes to meeting schedules, agendas, and supporting materials.

Recent ACRS experience illustrates why timely communication matters. The NRC's notice for the September 3, 2026 ACRS meeting scheduled more than five hours of discussion on the proposed rulemaking for reactor licensing, decommissioning, and operational oversight, followed by additional committee deliberation later that day.¹⁰ Participants who had arranged to attend were informed only after joining the meeting that the scheduled rulemaking discussion would not proceed. As of September 10, 2026, the online agenda still had not been updated to reflect that the scheduled rulemaking discussion did not occur.¹¹ A reader reviewing the agenda after the meeting could therefore reasonably conclude that the ACRS discussed the proposed rule as scheduled. Leaving the public record uncorrected can create an inaccurate account of the Committee's work and undermine the usefulness of NRC meeting materials for stakeholders tracking regulatory development.

The proposed rule moves to improve such instances. Proposed § 7.12(a) states that Federal Register notices, agendas, and supporting materials "should be posted" on the NRC advisory committee website as soon as they are available or when they are provided to committee members.¹² Section 7.14 also states that advisory committee records should be available to the public "as soon as

¹⁰ Nuclear Regulatory Commission, *738th Meeting of the Advisory Committee on Reactor Safeguards (ACRS)*, 91 FR 51184 (August 7, 2026).

¹¹ U.S. Nuclear Regulatory Commission, *738th Meeting of the Advisory Committee on Reactor Safeguards (ACRS), Agenda*, September 3–4, 2026, ADAMS Accession No. ML26203A257, <https://www.nrc.gov/docs/ML2620/ML26203A257.pdf> (accessed September 10, 2026).

¹² Direct Final FACA Rule at 51565. (proposed 10 CFR § 7.12(a)).

practicable" so that the public has a meaningful opportunity to understand the committee's work.¹³ These changes improve the accessibility and usefulness of the NRC's advisory committee process, and BTI supports this approach. The same principle should apply to material schedule changes. Publishing an agenda seven days in advance provides limited value if a major session is canceled or postponed without timely notice. The NRC should communicate such changes as soon as practicable through the same public channels used to provide meeting notices and materials. This approach is consistent with the broader transparency principle already reflected in Part 7. The NRC should consider applying the same communication and record-update practices to other public meetings.

Clarify the Boundary Between Flexible Information Gathering and Advisory Deliberation

Proposed § 7.2 excludes certain activities from advisory committee treatment, including workshops, listening sessions, and similar engagements where the NRC is not seeking consensus advice or recommendations. Proposed § 7.15 likewise allows preparatory and administrative work to occur outside the normal open-meeting requirements. BTI supports this flexibility. Workshops, listening sessions, and preparatory work can improve technical understanding without requiring every exchange of information to be treated as a formal advisory committee meeting. The key issue is identifying when an excluded activity becomes substantive committee deliberation.

That transition should be determined by function rather than label. A workshop or preparatory session may begin with fact gathering but evolve into a discussion in which committee members compare views, weigh alternatives, or develop a collective position for the NRC. At that point, the activity is no longer merely informational or preparatory.

Recommendations

The NRC should revise § 7.1(j) to provide that GSA regulations control conflicts with Part 7 except where otherwise required by the AEA. This would preserve government-wide FACA alignment for

¹³ 10 CFR § 7.14(b).

ordinary administrative procedures while making clear that statutory requirements governing the NRC and the ACRS remain controlling.

The NRC should retain the proposed seven-calendar-day notice period in § 7.12, but clarify that substantive materials should be posted when they are provided to advisory committee members and, where practicable, with the meeting notice. Where important materials become available later, the NRC should make them public promptly and preserve a meaningful opportunity for written public input when their late availability prevents informed participation at the meeting.

The final rule or Statement of Considerations should clarify that the exclusions in §§ 7.2 and 7.15 cease to apply once committee members collectively deliberate toward advice, recommendations, or consensus. The NRC should retain the proposed exclusions for workshops, listening sessions, individual-advice activities, and preparatory or administrative work, but should clarify that those exclusions apply only while the activity remains informational or preparatory. This would preserve flexible, low-burden information gathering while ensuring that substantive advisory deliberation remains subject to the transparency and participation requirements of Part 7.

IV. ALIGN WITH SEAD 4 WHILE PRESERVING INTERNAL CONSISTENCY AND REGULATORY PREDICTABILITY

Current § 10.10 refers to § 10.11 as containing specific “types,” “items,” and “stated categories” of derogatory information.¹⁴ The proposed rule would replace those NRC-specific criteria in § 10.11 with direct reliance on Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, and the whole-person concept.¹⁵ If § 10.10 remains unchanged, it would continue to describe a structure that no longer appears in § 10.11.

BTI supports the NRC’s use of a government-wide adjudicative framework. The NRC already uses SEAD 4, but the CFR text should remain internally consistent when that framework is codified. This is a straightforward correction: the NRC should revise § 10.10 in this rulemaking to remove references that assume § 10.11 contains its own enumerated categories and instead refer to the adjudicative guidelines applicable under § 10.11. This consistency also matters beyond Part 10 because § 25.21 states that, when the NRC is the cognizant security agency, questions concerning

¹⁴ 10 CFR § 10.10(b)-(d).

¹⁵ Direct Final FACA Rule at 51568, (proposed 10 CFR § 10.11).

initial or continued eligibility for access authorization are determined in accordance with Part 10.¹⁶

Proposed § 10.11 would also apply SEAD 4 “or any successor directive.”¹⁷ That language can avoid unnecessary rulemaking for routine updates, but if a successor directive materially changes the adjudicative framework, the NRC should review whether corresponding changes to Part 10 or related provisions are needed.

Recommendation

The NRC should finalize the SEAD 4-based § 10.11 with corresponding revisions to § 10.10 so that the two provisions remain internally consistent. The NRC should also review related provisions if a future successor directive materially changes the governing adjudicative framework.

V. CROSS-RULE COORDINATION

This rule is one component of the NRC's broader implementation of Executive Order 14300 and overlaps with several recent or pending revisions to the agency's licensing and security framework.¹⁸

The NRC should implement the Part 7 amendments with attention to the ACRS's role across Parts 50, 52, 53, and proposed Part 57, as changes governing ACRS can affect implementation across multiple licensing pathways. Parts 50, 52, and 53 require ACRS review across several licensing and approval pathways. Notably, the proposed Part 57 framework contemplates the ACRS's role in reviewing Part 57 applications. The NRC should ensure that revised Part 7 procedures do not create uncertainty about when ACRS deliberation occurs, what procedures govern that deliberation, or how the Committee carries out responsibilities assigned elsewhere in the CFR.

¹⁶ 10 CFR § 25.21(a).

¹⁷ Nuclear Regulatory Commission, *NRC Modernization: Rulemaking Procedure, Federal Advisory Committee Act Alignment, Access, and Security*, Direct Final Rule, 91 FR 51555, 51557–58, 51568.

¹⁸ Executive Order 14300, “Ordering the Reform of the Nuclear Regulatory Commission,” 90 Fed. Reg. 22587 (May 23, 2025), <https://www.federalregister.gov/d/2025-09798>.

Part 53 and proposed Part 57 also contemplate operating models that may include remote or autonomous functions and nontraditional staffing arrangements. The NRC should verify that personnel-security and access-authorization requirements under Parts 10, 25, 73, and 95 map clearly onto those models and do not assume traditional onsite staffing where the licensing framework permits other arrangements. Because Parts 53 and 57 also amend or propose conforming changes to Part 10, the NRC should review the final integrated text rather than treat each amendatory instruction as operating against a static regulatory baseline.¹⁹

Specific to the proposed Part 10 amendments, section 25.21 directs NRC access-authorization eligibility determinations to Part 10, while the separate *Modernizing Security Requirements* rulemaking proposes related changes to Parts 73 and 95.²⁰ The NRC should review the final integrated security provisions to ensure that terminology, cross-references, and implementation standards remain consistent as these proceedings are finalized. Additionally, proposed § 10.11 would apply SEAD 4 “or any successor directive,” while proposed § 7.1(j) would give controlling effect to GSA regulations in the event of a conflict with Part 7.²¹ Government-wide harmonization can reduce duplication, but material future changes to those external standards may require corresponding updates to NRC regulations, guidance, forms, or cross-references.

If these interactions are not addressed before implementation, the NRC may need to resolve otherwise avoidable inconsistencies through interpretive guidance, exemptions, petitions, or later corrective rulemaking. That result would undermine the efficiency and predictability the current modernization effort is intended to produce.

Recommendation

The NRC should review the final rule against provisions that depend on Parts 7 and 10, with particular attention to ACRS functions under Parts 50, 52, 53, and 57 and access-authorization requirements under Parts 25, 73, and 95. Cross-rule review should focus on concrete

¹⁹ Nuclear Regulatory Commission, Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors, 91 FR 15696 (March 30, 2026); Nuclear Regulatory Commission, Licensing Requirements for Microreactors and Other Reactors With Comparable Risk Profiles, 91 FR 23628 (May 1, 2026).

²⁰ Nuclear Regulatory Commission, *Modernizing Security Requirements*, Docket ID NRC-2025-1303, 91 FR 38928 (June 26, 2026), <https://www.federalregister.gov/documents/2026/06/26/2026-12989/modernizing-security-requirements>.

²¹ Direct Final FACA Rule at 51563 and 51568.

inconsistencies in regulatory text, procedural responsibilities, and cross-references before the affected amendments take effect.

VII. CONCLUSION

BTI supports the NRC's effort to modernize Parts 2, 7, and 10. The final rule should preserve the benefits of the proposed changes while maintaining clear statutory boundaries, meaningful opportunities for public participation, and internal consistency across the affected regulations. Before finalization, the NRC should adopt the targeted revisions described above to clarify the exercise of discretion, preserve appropriate transparency in advisory committee activities, and ensure consistency among related regulatory provisions.

The NRC should finalize the principal modernization reforms with those safeguards in place so that the resulting framework is clear, predictable, and durable. These revisions are limited in scope and consistent with the NRC's broader modernization objectives. BTI appreciates the opportunity to comment on this docket and welcomes further engagement on the recommendations provided in this letter.

Sincerely,

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