

Response to Request for Information
House Committee on Energy and Commerce
Letter Dated July 18, 2024

1. Please provide the following regarding agency rulemakings proposed or promulgated since January 20, 2021, identifying in each relevant listing the rule or rulemaking and agency statutory interpretation concerned:
 - a. A list of all pending judicial challenges to final agency rules that may be impacted by the Court's *Loper Bright* decision.
 - b. A list of all final agency rules not yet challenged in court that may be impacted by the Court's *Loper Bright* decision if they are so challenged.
 - c. A list of all pending agency rulemakings in which the agency is relying on an agency interpretation of statutory authority that might have depended upon *Chevron* deference prior to the Court's decision in *Loper Bright*.

RESPONSE:

- a. None.
 - b. None. The NRC has only one final rule that is currently open for potential judicial challenge (*Renewing Nuclear Power Plant Operating Licenses: Environmental Review*, 89 FR 64166 (August 6, 2024)) under the Hobbs Act (28 U.S.C. § 2342(4)). For that rule and for final rules published since January 2021, the NRC has not relied on *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.* to support its statutory interpretations.
 - c. None. The NRC is not developing any rulemakings for which the agency intends to rely on an interpretation of the Atomic Energy Act of 1954, as amended, or other statute that may be impacted by *Loper Bright Enterprises v. Raimondo*.
2. Please provide the following regarding agency adjudications initiated or completed since January 20, 2021, identifying in each relevant listing the adjudication and agency statutory interpretation concerned:
 - a. A list of all pending judicial challenges to final agency adjudications that may be impacted by the Court's *Loper Bright* decision.
 - b. A list of all final agency adjudications not yet challenged in court that may be impacted by the Court's *Loper Bright* decision if they are so challenged.
 - c. A list of all pending agency adjudications in which the agency is relying on an agency interpretation of statutory authority that might have depended upon *Chevron* deference prior to the Court's decision in *Loper Bright*.

RESPONSE:

- a. None.
 - b. None.
 - c. None.
3. Please provide the following regarding enforcement actions brought by the agency in court since January 20, 2021, identifying in each relevant listing the agency statutory interpretation sought to be enforced:
- a. A list of all pending enforcement actions in which the agency is relying on an agency interpretation of statutory authority that might have depended upon *Chevron* deference prior to the Court's decision in *Loper Bright*.
 - b. A list of all concluded enforcement actions in which the court deferred under *Chevron* to an agency interpretation of statutory authority as a basis for its judgment against a non-agency party.

RESPONSE:

- a. None.
 - b. None.
4. Please provide a list of all proposed or final agency guidance documents or other documents of the agency containing interpretive rules issued since January 20, 2021, identifying in each the statutory authority the rule interprets and the agency statutory interpretation set forth in the rule for rules likely to lead to:
- a. An annual effect on the economy of \$100,000,000 or more;
 - b. A major increase in costs or prices for consumers, individual industries, Federal, State, local, or Tribal government agencies, or geographic regions; or
 - c. Significant adverse effects on competition, employment, investment, productivity, innovation, public health and safety, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

RESPONSE:

- a. None.
- b. None.
- c. None.

5. Please provide a list of all judicial decisions in cases to which your agency has been a party that were not ultimately overturned by a higher court in which the court relied upon *Chevron* to yield to the agency's interpretation of a statute. Please identify in each listing the statutory authority the agency interpreted, and the agency statutory interpretation upheld.

RESPONSE:

1. *Carstens v. NRC*, 742 F.2d 1546 (D.C. Cir. 1984) (not citing *Chevron* but interpreting 42 U.S.C. § 2232 with deference and noting that "courts have long accepted the Commission's definition of its statutory mandate to "provide adequate protection to the health and safety of the public" as requiring not a risk-free environment, but a 'reasonable assurance ... that the reactor could be safely operated at the proposed location'").
2. *Bus. & Prof'l People for Pub. Interest v. NRC*, 793 F.2d 1366 (D.C. Cir. 1986) (finding that NRC's interpretation of 1981 appropriations act so as to bar payment of fees under Equal Access to Justice Act was most plausible reading of statute and in any event was reasonable and entitled to deference).
3. *Citizens Ass'n for Sound Energy v. NRC*, 821 F.2d 725 (D.C. Cir. 1987) (deferring to NRC interpretation of 42 U.S.C. § 2335 as not requiring a complete forfeiture of construction permit where applicant failed to file new application upon expiration).
4. *Florida Power & Light Co. v. United States*, 846 F.2d 765 (D.C. Cir. 1988) (deferring to NRC's interpretation of "regulatory service" under 42 U.S.C. § 7601(b)(1)(B)).
5. *Massachusetts v. NRC*, 856 F.2d 378 (1st Cir. 1988) (determining that a rulemaking issue involving offsite emergency planning did not raise a question of statutory construction but that, even if it did, applying *Chevron* and determining that Congress had not foreclosed NRC's conclusion concerning scope of emergency planning obligations).
6. *Env'tl Def. Fund v. NRC*, 866 F.2d 1243 (10th Cir. 1989) (deferring to NRC's interpretation of 42 U.S.C. § 2114(c), which speaks to "Commission requirements," as including EPA and NRC standards).
7. *Quivira Min. Co. v. NRC*, 866 F.2d 1246, 1258 (10th Cir. 1989) (deferring to view that the Uranium Mill Tailings Radiation Control Act of 1978 permitted NRC to rely on economic analyses performed by the Environmental Protection Agency (EPA)).
8. *Env't Def. Fund v. NRC*, 902 F.2d 785 (10th Cir. 1990) (deferring to NRC's conclusion that it did not require EPA's concurrence before accepting an alternative concentration limit of a hazardous constituent under 42 U.S.C. §§ 2114(a)(2), 2022(f)(3)).
9. *Union of Concerned Scientists v. NRC*, 920 F.2d 50 (D.C. Cir. 1990) (deferring to NRC interpretation of hearing requirement under 42 U.S.C. § 2239).

10. *Nuclear Info. Res. Serv. v. NRC*, 969 F.2d 1169 (D.C. Cir. 1992) (en banc) (deferring to NRC's interpretation of what is required by term "hearing" in 42 U.S.C. § 2239 and the procedures for issuing a construction permit and operating license under 42 U.S.C. § 2235).
 11. *City of Cleveland v. NRC*, 68 F.3d 1361 (D.C. Cir. 1995) (deferring to NRC construction of 42 U.S.C. § 2135, governing antitrust considerations).
 12. *Envirocare of Utah v. NRC*, 194 F.3d 72 (D.C. Cir. 1999) (deferring to NRC's conclusion that "interest" in proceedings, as defined in 42 U.S.C. § 2239, did not include economic interest).
 13. *Nuclear Energy Inst. v. EPA*, 373 F.3d 1251 (D.C. Cir. 2004) (deferring to NRC's interpretation of 42 U.S.C. § 10141(b) and concluding that the Act does not require that geologic features serve as a spent fuel repository's primary means of isolating radioactive waste from the human environment).
 14. *Brodsky v. NRC*, 578 F.3d 175 (2d Cir. 2009) (deferring to NRC's conclusion that exemptions did not fall within classes of actions for which hearing was available pursuant to 42 U.S.C. § 2239).
 15. *Shieldalloy Metallurgical Corp. v. NRC*, 707 F.3d 371 (D.C. Cir. 2013) (deferring to NRC's interpretation of 42 U.S.C. § 2021(b) and (d) to require transfer of Agreement State authority under terms of proposed transfer agreement, without modification).
6. Please provide a list of all proposed or final agency guidance documents or other documents or statements of the agency containing interpretive rules issued since January 20, 2021, identifying in each the statutory authority the rule interprets and the agency's statutory interpretation set forth in the rule for rules related to:
- a. Novel legal or policy issues arising out of legal mandates or the Administration's priorities; or
 - b. Other significant regulatory issues not already identified by the response to above question 4(a).

RESPONSE:

Please see attached list of all proposed or final NRC guidance documents or other documents or statements issued by the NRC containing interpretive rules issued since January 20, 2021. NRC guidance documents provide information to NRC licensees and applicants on a method or methods that the NRC staff finds acceptable for meeting NRC regulations. NRC guidance documents also may provide additional background information to external stakeholders or provide direction to NRC staff on performing regulatory activities. As such, none of the guidance or other documents issued since January 20, 2021, contains a statutory interpretation related to novel legal or policy issues arising out of legal mandates or the Administration's priorities. Likewise, none of these guidance documents has or will have an annual effect on the economy of \$100,000,000 or more, as noted in response to Question 4(a).