Comments of the Attorneys General of Illinois, New Mexico, Massachusetts, California, Minnesota, Colorado, Vermont, and Maryland

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November 4, 2026

The Honorable Ho Nieh, Chairman
Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Exemptions from Materials Licensing Direct Final Rule, 91 Fed. Reg. 63,133 (October 5, 2026), Docket ID No. NRC-2025-1568

Dear Chairman Nieh:

The Attorneys General of the States of Illinois, New Mexico, Massachusetts, California, Minnesota, Colorado, Vermont, and Maryland ("States") respectfully submit the following comments on the Exemptions from Materials Licensing Direct Final Rule, 91 Fed. Reg. 63,133 (October 5, 2026) ("Rule").[1]

The Rule, along with more than two dozen other rulemakings in calendar year 2026, is part of the Nuclear Regulatory Commission's ("NRC") wholesale revision of its long-standing regulations. The scale and speed of these changes in an area of historically stable regulation is deeply concerning. In this latest proposal, the NRC would make licensing exemptions available for a wider range of radionuclides than currently allowed and would also raise the dosing thresholds under which licenses will not be required. These decisions are not based on science but administrative convenience and would create environmental harms and state law conflicts, with attendant regulatory confusion and uncertainty. As described below, the States oppose the Rule, which has been improperly proposed under the APA and fails to meet the scientific standards of the Atomic Energy Act. This comment and many others already filed in the DFR

[1] This comment responds to the Direct Final Rule (DFR), but the NRC has concurrently published a Notice of Proposed Rulemaking (NPRM) for the same regulatory changes as the DFR and stated that all comments submitted in response to the DFR will be included as comments in the docket for the NPRM. *See* 91 Fed. Reg. 63,133. This comment therefore uses the general term "Rule," which should be read to apply to both the DFR and NPRM. However, when used in citation, the cite usually refers to the Federal Register publication of the DFR.

docket are significant adverse comments. Accordingly, the Commission must withdraw the DFR and NPRM and nullify the effective date.

Background

In 1954, when Congress enacted the Atomic Energy Act ("AEA"), it established the policy that "[s]ource and special nuclear material, production facilities, and utilization facilities are affected with the public interest, and regulation by the United States of the production and utilization of atomic energy and the facilities used in connection therewith is necessary in the national interest to assure the common defense and security and to protect the health and safety of the public.[2] Congress also found that "[t]he processing and utilization of source, byproduct, and special nuclear material must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public."[3] Specific to materials exemptions, the AEA authorizes the Commission to exempt certain classes or quantities of material or kinds of uses or users from licensing requirements when it finds that the exemption of such classes or quantities of material or such kinds of uses or users will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public.[4]

Congress has delegated this authority and responsibility to implement the AEA to the NRC.[5] The NRC has exercised this authority through promulgation of implementing regulations codified in more than fifty Parts in Title 10 of the Code of Federal Regulations. The Proposed Rule would revise four of these Parts addressing the standards for radiation protection and domestic licensing of byproduct, source, and special nuclear material.

Through the AEA, Congress also created a special relationship between the NRC and the states for the purpose of, among others, "promot[ing] an orderly regulatory pattern between the Commission and State governments" with respect to "regulation of byproduct, source, and special nuclear materials" and "provid[ing] for coordination of the development of radiation standards for the guidance of Federal agencies and cooperation with the states." [6] The NRC and the states have coordinated the implementation of these Congressional purposes through agreements that provide for the states to assume control and establish programs for radiation

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[2] 42 U.S.C. § 2012(e) (emphasis added).

[3] *Id.* at § 2012(d) (emphasis added).

[4] *Id.* at § 2111(a).

[5] *See* AEA Sec.11(f) n.6 (as amended); *see also* 10 C.F.R. § 1.1(a) ("The Nuclear Regulatory Commission was established by the Energy Reorganization Act of 1974, as amended, Pub. L. 93-438, 88 Stat. 1233 (42 U.S.C. §§ 5801 *et seq.*). This Act abolished the Atomic Energy Commission and, by section 201, transferred to the Nuclear Regulatory Commission all the licensing and related regulatory functions assigned to the Atomic Energy Commission by the Atomic Energy Act of 1954, as amended, Pub. L. 83-703, 68 Stat. 919 (42 U.S.C. §§ 2011 *et seq.*)).

[6] 42 U.S.C. § 2021(a)(2), (5).

hazard licensing, regulation, and inspection.[7] Many of the undersigned States are Agreement States who have entered these agreements to assume full authority for a radiation hazard program. Agreement States are members of the Organization of Agreement States whose Executive Board has also raised similar concerns. Their letter voicing these concerns is incorporated by reference.[8]

Many of the undersigned states also have storage sites and tens of thousands of small entities providing radiation services, all of which would be affected by the Proposed Rule. We have an interest in ensuring the safe operation of such facilities, maintaining safe standards for radiation exposure to protect worker and public health and safety, and fostering public trust in the regulation and oversight of radioactive materials. The Rule's revisions will negatively impact that safety by significantly increasing the radiation dose from materials exempted from licensure oversight and allowing increased levels of radioactive materials to enter and accumulate in the waste stream without regulation, while exacerbating public concerns about the health impacts of radiation exposure. These consequences are unacceptable.

Comments

I. The Rule is a Controversial Rulemaking and the NRC Must Withdraw the DFR and NPRM and Nullify the Effective Date.

The NRC has issued the Rule as a Direct Final Rule (DFR), while simultaneously publishing a Notice of Proposed Rulemaking (NPRM) for the same regulatory proposals. The Rule is a significant and controversial regulatory action that does not qualify for the Administrative Procedure Act (APA)'s good cause exemption to notice and comment rulemaking. The concurrent issuance of a DFR and NPRM is also procedurally improper for this Rule, which involves matters of significant public concern and is consequential to the regulated industries. As explained below, the Rule failed to identify a scientific basis for the proposal, inconsistently applies the licensing revisions, does not consider the regulatory burdens and health and environmental harms, and will negatively impact the States. The DFR and NPRM do not reflect reasoned decisionmaking and fail to consider these important aspects of the problem. The Rule must be withdrawn and the effective date nullified. Not doing so and thereby allowing the DFR to become effective on December 21, 2026, will violate the APA.[9]

The APA provides several exemptions from the notice and comment rulemaking requirement, including a narrow escape clause if an agency for "good cause" finds that "notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[10]

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[7] *Id.* at § 2021(i).
[8] Comment ID NRC-2025-1568-0580.
[9] *See, e.g., Mississippi v. Dept. of Energy*, 186 F.4th 267 (5th Cir. 2026).
[10] 5 U.S.C. § 553(b)(4)(B).

For the Rule, the NRC invoked this exemption solely on the basis that it consider this action to be "noncontroversial" and therefore notice and comment was unnecessary.[11]

When a rule is expected to be noncontroversial, courts have accepted that agencies may issue a DFR rather than going through the normal process of providing an NPRM, hosting a public comment period, responding to comments, and then issuing a final rule.[12] However, federal law imposes significant constraints on the NRC's discretion to issue this rule as a DFR. The most significant limitation is that, if an agency receives even a single significant adverse comment on a DFR, the DFR *must* be withdrawn, and the agency must either abandon the rule or address the comment in a proposed rule that will then go through the usual notice-and-comment process for rulemaking.[13]

According to the Administrative Conference of the United States (ACUS), an independent federal agency established by Congress to promote "efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies,"[14] "agencies must be able to justify use of … exemptions from notice-and-comment procedures."[15] ACUS also states that "[c]ourts generally have not allowed post-promulgation comment as an alternative to the pre-promulgation notice-and-comment process in situations where no exemption is justified."[16] In other words, an agency issuing a DFR must show that it has good cause to believe that traditional notice-and-comment will not be necessary for the underlying Rule. The DFR procedure is subject to abuse, however, when agencies falsely represent to the public that their proposal is noncontroversial. Taken at face value, the public would trust that the agency is being honest and proposing something relatively inconsequential to the public interest. However, when used to obscure the significance of a proposal, the procedure is wholly inappropriate and constructively deprives the public of adequate notice.

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[11] Rule at 63,134. This exemption is rarely used with major rules that implement substantive regulatory changes. Rather, it is typically applied to minor technical amendments or actions that involve little or no agency discretion, such as those "confined to those situations in which the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and the public. *Mack Trucks Inc. v. EPA*, 682 F.3d 87, 94 (D.C. Cir. 2012).

[12] This practice is not specifically provided for by law but is generally accepted under Section 553 of the APA, which allows agencies to forego the traditional notice-and-comment process "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553.

[13] Procedures for Noncontroversial and Expedited Rulemaking | Administrative Conference of the United States.

[14] Admin. Conf. of the U.S., Administrative Conference Recommendation 2024–6, Public Engagement in Agency Rulemaking Under the Good Cause Exemption 4 (Dec. 12, 2024), [hereinafter "ACUS 2024–6"] https://www.acus.gov/sites/default/files/documents/Public-Engagement-Agency-Rulemaking-Good-CauseExemption-Final-Recommendation.pdf; see also 5 U.S.C. §553(b)(B); Off. of the Fed. Reg., A Guide to the Rulemaking Process 9 (2011), https://uploads.federalregister.gov/uploads/2013/09/The-Rulemaking-Process.pdf (direct final rulemaking is appropriate where a rule "would only relate to routine or uncontroversial matters").

[15] Procedures for Noncontroversial and Expedited Rulemaking | Administrative Conference of the United States.

[16] Procedures for Noncontroversial and Expedited Rulemaking | Administrative Conference of the United States.

The NRC claims that it expects this rule to be noncontroversial; thus, traditional notice-and-comment is unnecessary, and a DFR is appropriate.[17] However, the notion that a rule exempting radionuclides at a level that would exceed permissible public dose limits could ever be considered noncontroversial is implausible on its face. Indeed, this Rule has already received more than 500 comments as of November 2, 2026, some of them explicitly identifying themselves as significantly adverse to the DFR.[18]

Further, the NRC's own actions contradict its assertion that the rule is noncontroversial. The NRC has issued a Notice of Proposed Rulemaking, identical in substance to the Rule, concurrently with its announcement of the DFR.[19] The most logical reason for this is it would allow the NRC to proceed quickly in the aftermath of having to withdraw the DFR after it receives significant adverse comments. The NRC would not need to hedge its bets if it truly thought that the Rule was noncontroversial. Instead, this practice suggests that the NRC expects opposition to the Rule and issued a DFR in case commenters miss the Rule amidst the high volume of proposed rule changes that the NRC has issued this year.[20]

Simultaneously publishing an NPRM with a coterminous comment period and simply adding any adverse comment from the DFR to the NPRM docket is not an acceptable substitute for following the proper rulemaking procedure in the first place. If a member of the public cares about a subject but lacks specialized expertise for highly technical matters, they may rely on the agency's DFR and believe that a proposal is noncontroversial. There is thus no cause for concern and no need for them to submit a comment. But if another party with the necessary expertise submits an adverse comment, and the DFR must subsequently be withdrawn, it will be too late at that point for the concerned member of the public who believed the rule to be noncontroversial to submit a comment on the NPRM. This constructively denies that member of the public from a fair opportunity to comment and could bar them from pursing litigation. Abuse of the DFR process, as other agencies have similarly illustrated, should not be tolerated.[21]

Where a rule should reasonably be expected to be controversial, an agency has no good cause to skip notice-and-comment proceedings, and a DFR becomes inappropriate and unlawful.

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[17] Rule at 63,134.
[18] *See, e.g.,* Comment ID NRC-2025-1568-0533 (comment from Fred Schofer), https://www.regulations.gov/comment/NRC-2025-1568-0533.
[19] *Exemptions from Materials Licensing*, 91 Fed. Reg. 63,168 (Oct. 5, 2026).
[20] *See, e.g.,* Comment ID NRC-2025-0975-0076, comment period extension request due to overlapping review periods for four significant NRC rules. *See Wholesale Revision of Regulations Under Executive Order 14300*, https://www.nrc.gov/about-nrc/governing-laws/advance-act/wholesale-revision-regs#rulemaking (last visited Nov. 3, 2026).
[21] For example, the Department of Energy published 13 DFRs in the May 16, 2025, issue of the Federal Register, including several that rescinded significant regulations. All received adverse comments and three have more than 7,000 comments published on their docket. *See* 90 Fed. Reg. 20753-21214 (May 16, 2025).

The NRC should withdraw the DFR and the improper NPRM, reconsider the proposed rule in response to the significant adverse comments received, and—if the NRC still pursues some form of regulatory change—issue a new NPRM based on the NRC's consideration of the significant adverse comments already received and thereafter subject to the full notice-and-comment procedure required by the APA. The NRC should also reevaluate its use of DFRs moving forward to avoid misleading the public and stop abusing the APA's good cause exemption.

II. The Rule Lacks a Scientific Basis and Fails to Satisfy the AEA's Standard for Licensing Exemptions.

The AEA sets the scientific standard for exempting radionuclides from regulation: the NRC must find that the exemption will not constitute an unreasonable risk "to the health and safety of the public."[22] The NRC has not demonstrated that the Rule meets this standard and instead relies on a faulty premise solely rooted in dubious administrative costs. The failure to meet this standard violates the AEA.

In the Rule, the NRC proposes to merge two lists of materials that have fundamentally different purposes: Schedule B for licensing exemptions and Appendix C for labeling requirements. Schedule B is the amount of each radionuclide someone can possess and be exempt from licensing.[23] The list was codified by the Atomic Energy Commission—the NRC's predecessor agency—and is fairly old and incomplete, missing numerous radionuclides that are now in use. However, when derived, the purpose was to define "safe" thresholds that were too small to warrant regulatory licensing and would not constitute an unreasonable risk to public health and safety and therefore do not warrant regulatory licensing.[24] Accordingly, Schedule B should correspond to amounts that would allow for use without causing excessive or unsafe public doses of radiation, even if grossly misused, such as through ingestion or inhalation.

In contrast, the values in Appendix C to 10 CFR Part 20 (to which the NRC seeks to align), are the amounts of licensed radioactive material that require labeling, generally for occupational exposure purposes. These values—while a more expansive list—were derived from the ICRP 26 dosimetry models in the NRC's 1991 rulemaking. Specifically, these values are obtained by taking 1/10th of the most restrictive Annual Limit on Intake (ALI), rounding to the nearest factor of 10, and arbitrarily constraining the values listed between 0.001 and 1,000 μci. This means the quantity of radioactive material—if inadvertently ingested or inhaled—could result in up to 500 millirem whole body or 5,000 millirem to a target organ of the maximally exposed individual. These are now the values that the NRC seeks to exempt from any regulatory oversight.

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[22] 42 U.S.C. § 2012(d).
[23] 10 C.F.R. § 30.18; 10 C.F.R. § 30.71.
[24] NRC NUREG-1717, "Systematic Radiological Assessment of Exemptions for Sources and Byproduct Materials," at 1-2 (June 2001).

The NRC provides no scientific basis for replacing Schedule B with Appendix C. In sum, they serve different purposes and provide for very different exposure risks. Arbitrarily substituting the Appendix C list for Schedule B without revising the quantity values based on scientific derivations will exempt significantly higher values from any regulatory oversight, creating a clear path for public—not occupational—exposure to radioactive material at levels far exceeding both domestic and international dose limits (100 millirem per year).

The NRC claims the Rule would align Schedule B with material quantities that were recommended but ultimately not revised in its 1991 adoption of recommendations in the International Commission on Radiation Protection ("ICRP") No. 26 publication, and would achieve this through a "cross-reference" to Appendix C, thereby ensuring adequate protection of public health and safety.[25] However, this conclusion is not supported by the NRC's own assessment in the more recent NUREG-1717, and the Rule does not merely "cross-reference" Appendix C—it replaces the current Schedule B to exempt the wide range of radionuclides listed in Appendix C from licensing without revising the quantities to account for appropriate dose limits that adequately protect public health and safety and without any new or additional scientific or technical analysis.[26]

Moreover, the NRC made clear in its 1991 Final Rule that the appropriate values were premised entirely on the existence and application of the ALARA standard and the Linear No Threshold (LNT) model for radiation protection.[27] But the NRC has now proposed to eliminate the ALARA standard in a separate rulemaking earlier this year and the NRC has not mentioned, much less explained, how elimination of the ALARA standard interacts with the Rule's impact on exposure levels.[28] The Rule would significantly increase the exemption level for 86 radionuclides without a scientific basis to conclude that these increased levels do not present an unreasonable risk to public health and safety.[29] Of those 86 radionuclides, 75 are of sufficient quantity to exceed 100 millirem per year in the event of inadvertent inhalation/exposure, while 38 exceed 500 millirem—with the exempted amount of In-115 being particularly problematic at 10,000% of the public dose limit. Taken in combination with removal of the ALARA standard, the public would be exposed to higher dose limits than what the science supports and attendant

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[25] Rule at 63,134.
[26] *See e.g.,* Comment ID 2025-1568-0533 (comment of Fred Schofer).
[27] *Standards for Protection Against Radiation*, 56 Fed. Reg. 23,363 (May 21, 1991) ("Due to the practice of maintaining radiation exposures ALARA ('as low as is reasonably achievable'), the average radiation dose to occupationally exposed individuals is well below the limits in either the previous or amended part 20 and also below the limits recommended by the ICRP.").
[28] *Reforming and Modernizing the NRC's Radiation Protection Framework*, 91 Fed. Reg. 43,456 (July 15, 2026), Docket ID No. NRC-2025-1140.
[29] This is an excellent example of how the NRC's wholesale revisions are sowing confusion and hiding the true impact of the various proposals. The entire wholesale undertaking is procedurally improper.

increased risks of cancer incidence and other adverse health impacts. All of this would occur without licensing requirements or oversight.

In sum, the Rule does not rest on a sound scientific basis and should be withdrawn. The NRC simply is not permitted to swap out one schedule for another, inapplicable schedule for the sake of administrative convenience. If the NRC wishes to modify regulatory exemptions for radionuclides, it must ensure that it does so in a manner that is supported by science, and that would achieve the AEA's standard of avoiding an unreasonable risk to the health and safety of the public. The NRC should therefore take a truly dose-based and risk-informed approach to the exempt quantities.

III. The Rule Arbitrarily and Inconsistently Applies the Proposed Licensing Exemptions.

In an effort to remove as many licensing requirements as possible, the NRC arbitrarily would also apply Appendix C inconsistently to certain radionuclides. The NRC states it wishes to align with the ICRP 26-derived values in 10 CFR Part 20. However, the Rule deviates from that path by retaining values for at least three radionuclides that would otherwise be revised downward to align with modern risk profiles.

The first is Cadmium-109. Using the ICRP 26 dosimetric models underpinning 10 CFR Part 20, this value would be revised from the current 10 microcuries down to 1 microcurie. The NRC is electing to retain the higher value. The current value could give rise to a maximum dose of 5,000 millirem to a target organ (kidneys). Aligning this value with 10 CFR Part 20 Appendix C would lower the maximum dose to 500 millirem. Similarly, the current exempt activity for Iridium-192 corresponds to a maximum dose of 250 millirem whole body. If the NRC were to consistently apply the 10 CFR 20 Appendix C value, this would be lowered to 25 millirem.[30] Finally, the current exempt activity for Zirconium-93 corresponds to a maximum dose of 8,333 millirem. If the NRC were to consistently apply the 10 CFR 20 Appendix C value, this would be lowered to 833 millirem. In these three instances, the NRC has elected not to align with the ICRP dosimetric models or adopt the lower values to alleviate what they describe as unnecessary licenses. The NRC provides no justification for establishing these higher thresholds that conflict with ICRP 26, upon which it claims to rely, nor does it address the increased risks of exposure that would result from those higher thresholds.

[30] Iridium-192 is frequently used to make gamma cameras for industrial radiography, an area which already sees more occupational harm than most other uses of radioactive material. An increase in the exempt quantity for Iridium-192 could lead to manufacturers making gamma cameras free from regulatory oversight, worsening the risk that workers will receive dangerous doses of radiation. *See* 0486 - H305 - Safety Aspects of Industrial Radiography - 21 - Industrial Radiography Incident Case Histories.

Far more concerning is Indium-115, which already has an exempt activity threshold corresponding to a maximum dose of 50,000 millirem. Following adoption of the Rule with its corresponding new Appendix C value, the maximum dose for Indium-115 would increase to 500,000 millirem. The NRC has not addressed this truly alarming increase in the Rule; it just references NUREG-1717.[31] The NRC has not explained how it plans to prevent any adverse health consequences resulting from these proposed exemptions.

The NRC's approach to expanding that list based on Appendix C has failed to consider the states' reliance interests in the scientific validity of the exempted quantities to ensure state programs can properly protect public health and the environment. The NRC should withdraw the Rule and take a truly dose-based and risk-informed approach to the exempt quantities.

IV. The Rule does not Analyze Regulatory Burdens or Health and the Environmental Harms thus Ignoring Important Parts of the Problem.

The NRC gives scant attention to the potential burdens and costs proposed by the Rule, while simultaneously overstating its possible benefits. As a result, the NRC falls short of its burden to rationally weigh costs and benefits as required by the APA and fails to consider potential environmental impacts as required by the National Environmental Policy Act (NEPA).

In the Rule, the NRC provides a cursory regulatory burden analysis pursuant to Executive Order 14215 and devotes no space to seriously considering the potential health and safety or environmental impacts of the Rule.[32] Instead, the Commission quickly handwaves such concerns, saying that the Rule reduces administrative burdens "while ensuring continued oversight and safety," without actually explaining how it does so.[33] Further, while the analysis discusses hypothetical cost-savings, it provides no quantitative analysis of the potential burdens

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[31] The bulk of NUREG-1717 addresses exposure scenarios and low incidence from distributed exempt *devices*. On page 46, it states, *"[a]s indicated in 10 CFR 30.70, Schedule A, which lists exempt concentrations of byproduct material (see Section 2.2), and 10 CFR 30.71, Schedule B, which lists exempt quantities of byproduct material (see Section 2.13), a large number of byproduct materials are potentially of concern in exempted products or materials. However, relatively few of these products have been distributed to any significant extent in exempted products or materials, and only those byproduct materials are considered in this section. Specifically, radioactive decay and dosimetry data are presented only if the radionuclide is included in specific exemptions for products or materials containing byproduct material or was distributed to a significant extent as exempt concentrations or exempt quantities of byproduct material during the period of 1970 to 1991."* Therefore, dose consequence of several exempt quantities was noted but dismissed since those radionuclides weren't known to have been distributed during the subject time frame. Not only does this not fully validate the safety of existing exempt values, but it also calls into question the wisdom of raising those values out of convenience.

[32] *See* Rule at 63,136. It should be noted that such regulatory analyses are only required for "significant actions." Exec. Ord. 14215. The fact that the NRC chose to prepare one here further undercuts its claim that it ever expected the Rule to be noncontroversial or for public comment to be unnecessary, providing more evidence that the use of the DFR procedure is improper and misleading.

[33] *Id*. at 63,137.

the Rule would impose on States or the public. Indeed, the NRC either minimizes or entirely fails to mention any potential negative impacts of the Rule.[34]

This failure to analyze potential health impacts is in direct conflict with the NRC's own expressed understanding of radiation safety, and violates NEPA, as described more below. While the NRC is currently engaged in an ill-advised effort to remove the ALARA standard of radiation protection,[35] it continues to follow the related Linear No Threshold model. The LNT model recognizes that, with respect to radioactive material, "any increase in dose, no matter how small, results in an incremental increase in risk."[36] As recently as 2021, the NRC specifically denied requests to switch to a different model, finding that the LNT model "continues to provide a sound regulatory basis for minimizing the risk of unnecessary radiation exposure to both members of the public and radiation workers."[37] This means that the NRC expressly recognizes that raising exempt thresholds for radioactive substances increases risks associated with radiation exposure. While the States recognize that entirely eliminating the threat of radiation exposure is not possible, the continued viability of the LNT model highlights the fact that the NRC must not skip analyzing the possible health impacts from exposing individuals to higher doses of radioactivity, under the implicit assumption that no such risk exists. Because the Rule would increase exposure, there is an associated increase in health risks, and the NRC must analyze the potential impacts of that increase.

The main value that the NRC purports to advance through the Rule is the reduction of regulatory burden. Specifically, the NRC states that the Rule would save resources for users of low-risk quantities of radionuclides by "remov[ing] the need to get a specific license" and simultaneously save resources "for NRC and Agreement States."[38] However, the Rule's actual burden reduction would likely be minimal. The NRC states that only about 80 license applications for materials that would be newly exempted under the Rule are submitted each year, with the vast majority of these going to the Agreement States rather than to the NRC itself.[39] Further, very few licensees apply for licenses solely to handle an amount of radioactive material that would be newly exempt under the Rule. Instead, many licensees handle a variety of radionuclides at varying quantities. For these licensees, the Rule would not alleviate their need to apply to the NRC or Agreement States for licenses, meaning there would be very little actual reduction in their regulatory burden. The NRC also does not address the reliance interests that States and the public have in the current regulatory framework, which has been in place for

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[34] *See, e.g., id*. at 63138 ("Agreement States will be required to adopt compatible regulations; however, the scope of changes is limited, and the associated revisions are expected to be minimal.").
[35] *See Reforming and Modernizing the NRC's Radiation Protection Framework*, 91 Fed. Reg 43,456 (July 15, 2026).
[36] Radiation Exposure and Cancer | Nuclear Regulatory Commission.
[37] *Linear No-Threshold Model and Standards for Protection Against Radiation*, 86 Fed. Reg. 45,923 (Aug. 17, 2021).
[38] Rule at 63,135.
[39] *Id*. at 63,138.

decades, leading to an even bigger discrepancy between the NRC's analysis and the actual balance of costs and benefits struck by the rule.

In addition to time and money saved, the NRC also claims that the Rule would "provid[e] qualitative benefits by improving regulatory clarity and predictability."[40] But by merging two tables with fundamentally different purposes and failing to explain (or even to acknowledge) differential treatment among radionuclides, the NRC is muddying the regulatory waters, not providing clarity. Any benefit from increased predictability is outweighed by the direct inconsistencies the Rule would create between federal regulations and the statutes of many states, including Illinois (to be discussed in further detail below).

The analysis that the NRC provides for its responsibilities under NEPA is also woefully inadequate. Rather than performing a detailed assessment of the Rule's potential environmental impacts, the Commission casts its duty aside through a few short, conclusory paragraphs. The NRC's conclusion is, in essence, that because "the direct final rule would result in no physical changes to the environment," it would "not have a significant effect on the quality of the human environment."[41] The NRC provides no support for this conclusory statement. On the contrary, the Rule will allow increased radiation levels in the general environment where it will be encountered, possibly unknowingly, by human beings. This will create reasonably foreseeable, and likely significant, impacts on the human environment that could lead to serious health consequences. The NRC also seems to assume that former licensees will not change their behavior in response to being newly exempted from regulatory requirements. This conclusion has little basis in reality, but the NRC arbitrarily did not consider these other aspects of the problem, offering no evidence to support its notion that handlers of radioactive material will act in exactly the same way once the licensing requirement no longer exists.[42] The more logical conclusion would be that, now being exempted from licensing requirements, handlers of radioactive material will be less hesitant to produce, use, and dispose of these materials, and that the environment would thereby be impacted. A conclusory statement that treats a change in licensing requirements as a purely paper exercise with no practical effects is not a sufficient analysis of environmental impacts.

One foreseeable environmental consequence that the NRC failed to consider is that newly unlicensed materials can and almost certainly will be disposed of into the general waste stream. Those waste streams aggregate in landfills and other waste repositories, and over time, as more

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[40] *Id*. at 63,141.
[41] *Id*. at 63,142.
[42] Furthermore, there are practical consequences of transferring previously licensed materials to exempt status that must be considered more fully. For example, Technetium-99m, a widely used radionuclide listed in Appendix C to Part 20, is utilized in low doses in medical diagnostic imaging including common procedures such as sentinel lymph node mapping, soft tissue scans, bone scans, and cardiac stress tests. Such common licensed practices could become entirely exempt under the Rule, potentially resulting in the withdrawal of essential health and safety requirements including radiation safety training, handling, and contamination control measures.

unlicensed radioactive waste gathers, the doses experienced by landfill and other depository workers will increase without their knowledge and without any protection. The Rule does not acknowledge the "grave" aspect of cradle-to-grave oversight or consider the impacts to those who tend the graves. There are already broad gaps between the NRC exemption limits and the limits on radionuclides in disposal sites imposed by the U.S. Environmental Protection Agency, the entity generally charged with regulating radionuclides in land and water. The Rule could widen that gap even further. The Rule does not analyze the impact of widening this gap and indeed does not consider any effects beyond lifting the administrative burden of procuring a license. In fact, the NRC ignores the administrative and financial burdens the Rule would shift to state, Tribal, and municipal governments forced to bear the cost of investigating and disposing of unlicensed and untraceable radioactive materials—including in states without available solid waste burial sites. Finally, the NRC fails to account for time and resources—ranging from public engagement to full-scale multi-year epidemiological studies—required to address escalated public concern about the health impacts of radiation exposure resulting from newly unlicensed materials.

While some exempt values are needed and appropriate, they should be established at a low enough value that, even in aggregate, they don't present public health or environmental hazards. Several of the new exempt values already represent a 500 millirem dose potential. So even if the list of radionuclides in Appendix B needs to be expanded, the derivation must look at each radionuclide dose and environmental impact in aggregate.

In addition to only providing a meager analysis of the impacts of the Rule in its own right, the NRC also fails to consider potential cumulative impacts of its wholesale regulatory revisions in aggregate.[43] Many of these rule changes have revised and re-revised the same regulations, creating confusion as to what impact any given rule will have, both individually and when put into its proper context with other changes. The NRC has reviewed each proposal, including the Rule, in a vacuum while wearing blinders.

Taken as a whole, the Rule poses a threat to public health, safety, and the environment: all important aspects of the problem that the NRC has declined to consider. This, combined with the fact that the Commission overstates the plausible benefits of the Rule, means that the NRC's regulatory and environmental analyses are inadequate and must be corrected. The NRC owes the public and the States a comprehensive and frank assessment of all potential impacts of the Rule.

V. The Rule Would Increase Burdens and Create Conflicts and Uncertainty for States.

The Rule would burden many States with jurisdictional conflicts and create a lack of consistency, predictability, and uniformity in the application of materials licensing. Many

[43] Executive Order 14300, Ordering the Reform of the Nuclear Regulatory Commission.

Agreement States have assumed regulatory authority over low-level radioactive waste ("LLRW") from the NRC under the AEA and established their own comprehensive programs for the storage, treatment, and disposal of LLRW. Under the AEA, Agreement States regulate materials licensees, with Agreement States holding a majority of the licenses in the National Materials Program.[44] At least 13 States have passed laws that require regulation of LLRW and/or materials within their State, irrespective of any blanket exemptions or other deregulatory efforts, codifying an express intention to protect against future deregulation of radioactive materials.[45] These State programs may require monitoring and tracking of shipments, enforcement and verification regulating the movement of LLRW into, out of, and within the State. The Rule assigns a compatibility category of B to the regulatory revisions, so Agreement States are required to adopt the proposed changes, despite a clear conflict where more than a dozen States have codified policies that expressly prevent deregulation of radioactive waste. The NRC has not considered these problems, further demonstrating that the Rule rests on an arbitrary and capricious foundation that ignores numerous foreseeable impacts.

While some states may desire an updated and more expansive list of radionuclides in Schedule B, the NRC's approach to expanding that list based on Appendix C has failed to consider the states' reliance interests in the scientific validity of the exempted quantities to ensure state programs can properly protect public health and the environment.

VI. This Comment and Many Others are Significant Adverse Comments.

The NRC states that a significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be unacceptable without a change. This comment and many others meet that standard.[46] The States consider all meaningfully presented comments, objections, and legal issues, raised either by the States or other parties, to be preserved for judicial review.[47]

The rule is inappropriate for raising the allowable quantities of radionuclides eligible for a licensing exemption based not on science but as a matter of administrative convenience, the approach myopically focuses on regulatory relief for a small slice of the fuel cycle industry while ignoring regulatory burdens shifted elsewhere, and the rule is unacceptable for its failure

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[44] NRC, STC–26–005, Annual Count of Active Radioactive Material Licenses in the National Materials Program (Jan. 21, 2026).

[45] *See, e.g.,* Illinois Low-Level Radioactive Waste Management Act, Findings and Purpose, 420 ILCS 20/2(a)(3) (2024); Mass. Gen. Laws ch. 111H (1987).

[46] *See, e.g.,* Comment IDs NRC-2025-1568-0533; NRC-2025-1568-0531; NRC-2025-1568-0530; NRC-2025-1568-0241; NRC-2025-1568-0239; NRC-2025-1568-0778.

[47] Similarly, the States consider the dockets for all "wholesale revisions" rulemakings to contain relevant information considered by the NRC for each of those proposed rules, and therefore part of the administrative record for each rule comprising the wholesale revisions. *See Wholesale Revision of Regulations Under Executive Order 14300*, https://www.nrc.gov/about-nrc/governing-laws/advance-act/wholesale-revision-regs#rulemaking (last visited Nov. 3, 2026).

to consider the direct health and environmental harms that will result from the rule. The NRC must withdraw the DFR and NPRM, nullify the effective date, and reconsider its entire approach to offering regulatory relief. The NRC must provide scientific derivations for each radionuclide quantity it proposes to exempt from licensing and analyze the potential harms of the exemptions, including increased exposure levels and accumulation of unlicensed materials.

Conclusion

For these reasons, the Rule is procedurally improper, contrary to the protective standard of the AEA, lacks a reasoned basis, and fails to consider important aspects of the problems presented. The NRC must withdraw the Rule and nullify the effective date. Allowing the DFR to become effective on December 21, 2026, will violate the APA, AEA, and NEPA.

Respectfully submitted,

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