



August 10, 2026

U.S. Nuclear Regulatory Commission
Office of the Secretary
ATTN: Rulemakings and Adjudications Staff
Washington, DC 20555

Subject: “Modernizing Materials Licensing” [NRC-2025-1370]

To all concerned:

The State of New York appreciates the opportunity to comment on the U.S. Nuclear Regulatory Commission’s (NRC’s) proposed rule “Modernizing Materials Licensing” (NRC 2025-1370) published in the Federal Register on June 24, 2026. The proposed rule includes a wide range of changes to NRC’s byproduct material, source material, and special nuclear material regulations. It addresses spent fuel reprocessing facilities, other fuel cycle facilities, and dry cask storage, among other issues.

New York’s Interest in the Proposed Rule

New York State has direct and substantial interests in this action. First, New York is host to the decommissioning of a spent fuel reprocessing facility, which provides a demonstration of the long-term consequences of inadequate attention and planning to site operation and clean up. This history gives New York unique insights on the proposed reprocessing, high-level waste, and decommissioning funding provisions.¹ Second, New York hosts independent spent fuel storage installations at both operating and decommissioning reactor sites, giving the State a tangible interest in the cask Certificate of Compliance process and the revised spent fuel definition.² Third, as an Agreement State,

¹The Western New York Nuclear Service Center in West Valley, New York was the only privately-operated spent fuel reprocessing plant in the United States, which operated from 1966 to 1972. The approximate 40-year cleanup of the site has proceeded under the West Valley Demonstration Project Act of 1980, Pub. L. 96-368, and remains a multi-billion-dollar federal and State undertaking. The site is owned by the State of New York through the New York State Energy Research and Development Authority.

²New York hosts independent spent fuel storage installations at operating reactor sites (Nine Mile Point, James A. FitzPatrick, and R.E. Ginna) and at the Indian Point Energy Center, which is undergoing decommissioning. These installations rely on cask designs approved through the Certificate of Compliance process the rule proposes to change.

New York State Energy Research and Development Authority

Albany

17 Columbia Circle, Albany, NY 12203-6399
(P) 1-866-NYSERDA | (F) 518-862-1091
nyserda.ny.gov | info@nyserda.ny.gov

Buffalo

726 Exchange Street
Suite 821
Buffalo, NY
14210-1484
(P) 716-842-1522
(F) 716-842-0156

New York City

1359 Broadway
19th Floor
New York, NY
10018-7842
(P) 212-971-5342
(F) 518-862-1091

West Valley Site

Management Program
9030-B Route 219
West Valley, NY
14171-9500
(P) 716-942-9960
(F) 716-942-9961

New York administers its own radioactive materials program and must adopt compatible regulations for those provisions assigned to the Agreement States. The Part 37 physical protection changes fall in this category and would require State rulemaking. Finally, New York's energy planning contemplates the potential deployment of advanced reactors, implicating the pilot fuel line and fuel cycle facility provisions. New York's commitment to advanced nuclear deployment is both ambitious and concrete.

New York believes that maintaining rigorous environmental and public safety standards is critical to achieving the nation's goal of accelerated deployment of these emerging technologies. We appreciate all opportunities to provide input to NRC on the licensing, regulation, and oversight of nuclear power and offer the following feedback.

Comments on the Proposed Rule

New York supports NRC's goal of efficient and effective regulation of fuel cycle facilities. New York agrees that several of the provisions of the proposed rule would be worthwhile updates. Other provisions raise concerns for the State. In those cases, we offer constructive, concrete suggestions for improving the rule.

Spent Fuel Reprocessing Framework

New York supports a fully developed regulatory framework for spent fuel reprocessing. We endorse NRC's proposed requirement for an Appendix B quality assurance program for reprocessing facilities. New York opposes the graded, technology-tailored quality assurance alternative that the NRC is considering because the high-risk nature of these facilities warrants the full Appendix B criteria to ensure the availability and reliability of items relied on for safety. New York also agrees that applying Part 140 indemnification and liability-insurance requirements to reprocessing facilities is appropriate for facilities of this risk profile.

The NRC has specifically requested comment on whether to identify the applicable regulatory gaps in the rule text rather than leaving them to case-by-case treatment. To develop a complete, well-vetted regulatory framework, we recommend addressing each of the 23 regulatory gaps NRC identified in 2009 in regulatory text. While flexibility has value for novel technologies, resolving fundamental safety, security, and environmental requirements outside the rule text risks inconsistency across applications, reduces public visibility into what is required, and shifts the burden of completeness onto the applicant and NRC reviewers operating without codified standards. New York believes addressing the specific gaps in regulation better serves predictability and public confidence than a case-by-case approach using exemptions and license conditions proposed by applicants.

For the reasons discussed in the Federal Register notice, New York supports the proposed operator licensing program requirement for reprocessing facilities. However, in our view, the definition of "control," which triggers the requirement, should be revised. The

current proposed definition would limit “controls” to those items “the manipulation of which could result in unmitigated high consequences ... to any individual located outside the controlled area.”³ This is a high bar for requiring a basic operator licensing program. New York supports the NRC’s alternative of revising the definition of “control” to capture both onsite and offsite consequences of concern, which would better reflect the hazards to workers as well as the public. Because of the risk profile of reprocessing facilities, New York further recommends requiring specific rather than general licenses for operators.

New York is concerned about the proposed distinction between production and non-production reprocessing facilities. As NRC points out, there is no current technology that would fall outside the “production facility” definition. Attempting to address a theoretical set of reprocessing technologies that would not be production facilities adds unnecessary complexity to the rule. Moreover, the proposed rule would relieve reprocessing facilities that do not meet the production facility definition of technical specifications, ITAAC, the under-oath application, and the mandatory hearing. In New York’s view, it is unwise to provide reduced requirements for an unknown and potentially null set of facilities whose attributes cannot be defined at this time. New York is concerned that these reduced requirements could create safety, security, and nonproliferation gaps if a future applicant is classified as non-production.

New York’s West Valley provides a demonstration that reprocessing decommissioning cleanup obligations and costs can be enormous, long-lived, and difficult to estimate in advance. Applying the existing Part 70 decommissioning funding provisions to reprocessing facilities without reprocessing-specific financial assurance could underestimate this cost risk. We recommend that the rule include robust financial assurance requirements that are tailored to reprocessing facilities, including a provision analogous to Section 70.38(a), which the NRC has expressly invited comment on, informed by the documented cost and duration of reprocessing site cleanup.

Reprocessing generates high-level waste that may require extended onsite management and storage. The proposal would require applicants to describe waste management but does not establish substantive expectations for interim onsite high-level waste storage, solidification or vitrification, or disposal pathways. New York suggests addressing these gaps in the rule by specifying in Part 70 or Part 72 the requirements for interim onsite high-level waste management and storage at reprocessing facilities, including expectations for stabilization and for addressing disposal pathway uncertainty.

Dry Cask Storage

The proposed rule would revise the dry cask storage regulations. The main proposed change is to eliminate the direct final rule process for cask certifications. NRC

³ U.S. Nuclear Regulatory Commission, Proposed Rule: Modernizing Materials Licensing, 91 Fed. Reg. 38124 (June 24, 2026) at 38136.

notes that “[t]he proposed amendment does not alter the safety review or the conditions of use under the general license; rather, it only removes the ministerial step of codifying each” certificate of compliance in regulation.⁴ New York supports this change as an efficiency improvement because it will save NRC staff resources to prepare the rulemaking and accelerate the cask certification process by about 6 months without curtailing the safety review. However, New York recommends building a public comment period into the cask certification process so that stakeholder engagement is not diminished with the elimination of the rulemaking step.

In addition, the proposed rule would change the definition of “spent fuel” to remove the requirement that spent fuel be aged for at least one year before storage. Although the change would have the benefit of accommodating advanced reactor technologies, it could allow storage of more recently discharged fuel with higher decay heat. Before proceeding with this change, New York recommends that NRC confirm that cask thermal and structural analyses, fuel characterization, and aging-management programs adequately address shorter-cooled and advanced reactor fuels.

The proposed rule also would “eliminate the need for license amendments for [method-of-evaluation] changes that have low safety significance.”⁵ The rule would adopt a standard of “no more than a minimal” decrease in the safety margin and eliminate the associated reporting under Section 72.48(d)(2). New York opposes these revisions because they would pare back NRC safety reviews and reduce the visibility states and the public have into modifications at spent fuel storage installations within their borders. Similarly, New York contends that annual reporting for licensee effluent monitoring programs should continue in order to provide transparency to host states and communities.

Pilot Fuel Lines

The proposed rule would create a streamlined NRC pathway for a Department of Energy (DOE) authorized pilot fuel line to apply for a license for commercial operation. The Federal Register notice states: “The proposed amendments provide that an applicant for an NRC license for a facility that was originally constructed and operated as a DOE authorized pilot fuel line would need to describe in its application how it meets all applicable NRC regulations and statutory requirements, including how the DOE authorization satisfies them in part or whole.”⁶ NRC explains that the proposed rule would streamline the NRC licensing process by focusing “on any potential differences rather than revisiting areas already addressed by the DOE authorization that are consistent with the NRC’s regulatory and statutory requirements.”⁷

⁴ *Id.* at 38134.

⁵ *Id.*

⁶ *Id.* at 38127.

⁷ *Id.* at 38125.

New York agrees that it is valuable and efficient for NRC to leverage the testing data and operating experience generated from DOE pilot fuel line projects in its licensing reviews for any conversion of these projects to commercial operation. However, New York contends that NRC must conduct an independent licensing review for commercial applications based on DOE pilot projects, be clearly required to do so in the final rule, and be clearly seen to do so in practice. We are concerned that the proposed rule language is ambiguous on this key point.

New York encourages NRC to refine the rule language to make clear that NRC will conduct an independent safety review that properly considers the testing data and operating experience produced by DOE pilot fuel line projects. The rule should also make clear that the NRC staff's risk-informed review of an application cannot avoid independently assessing the testing data and operating experience or reduce the level of effort associated with such an examination in a way that amounts to simply crediting the authorization findings from DOE.

An independent, substantive safety review by NRC is crucial for several reasons. First, under the Atomic Energy Act of 1954 and Energy Reorganization Act of 1974, it is NRC's statutory duty to ensure the safety of commercial nuclear facilities. Through the Energy Reorganization Act, Congress explicitly charged the newly established NRC with this role deliberately separating independent safety regulation from DOE or another organization with promotional responsibilities. Deferring to DOE's authorization findings would shirk NRC's statutory duty and undermine the division of functions laid out by Congress. Second, NRC is much more experienced and expert in licensing new commercial facilities than DOE. Because NRC has been doing this work for half a century, it has the right people and processes to conduct thorough, independent licensing reviews. In fact, DOE needed to borrow twelve NRC experts through interagency details to pursue its recent authorization efforts.⁸ Third, any diminishment of NRC independent safety review activities in deference to DOE authorization findings would not reassure the public. To speed the deployment of new commercial nuclear technologies, it is vital that host communities and other stakeholders are confident that NRC has thoroughly evaluated the safety aspects of new designs. Finally, if NRC were to merely credit DOE safety findings rather than performing its own meaningful independent review and allowing public comment, that reduced level of effort would undermine the ability of American vendors to export nuclear technology abroad. Anything perceived as NRC approval of a project based on another agency's promotional activities without sufficient and necessary independent

⁸ Statement of Ted Garrish, Department of Energy, at U.S. Nuclear Regulatory Commission meeting, Advanced Reactor Landscape: Current Status and Moving Forward (July 21, 2026).

review would not be seen as consistent with NRC's international reputation as the gold standard in nuclear safety regulation.

Facility Construction Timelines

In an effort to expedite materials and fuel cycle facility construction timelines, the proposed rule would allow for at-risk construction prior to obtaining a license and eliminate the current requirement to submit applications at least nine months before construction.

Removing the nine-month advance application requirement and allowing construction to proceed at the applicant's own risk improves applicant flexibility, but it also reduces the advance notice that host states and their emergency planners, environmental reviewers, and inspectors need to prepare for a facility and coordinate with NRC. The NRC staff would rely on pre-application engagement as a substitute, but that engagement is not codified and does not guarantee timely state awareness. In light of the at-risk construction provision, New York requests that the Commission retain the existing requirement for early host-state notification of major materials and fuel cycle facility construction.

Fuel Cycle Facility Licensing

Among the many proposed changes to fuel cycle facility licensing, the proposed rule would waive the criticality accident alarm requirement where criticality is not credible based on the laws of physics, relax numerous reporting and recordkeeping requirements, and extend several reporting deadlines. New York supports applying the criticality accident alarm requirement only where criticality is shown to be credible based on the laws of physics. This approach does not reduce safety. The State also supports deleting the obsolete gaseous diffusion plant regulations as no new facilities using this technology are likely. Moreover, consolidating scattered reporting requirements into a single Appendix A can improve clarity and consistency.

However, New York is concerned with the proposed reduction and relaxation of several important reporting requirements. The proposed rule would convert annual effluent monitoring reports under Part 72 from a submission to a recordkeeping-and-inspection obligation, narrow unplanned contamination reporting for fuel cycle facilities, and limit medical treatment contamination reporting. In addition, the rule would extend the Part 70 follow-up report deadline from 30 to 60 days, double the reporting intervals for material control and accounting program changes, and extend the reporting deadline for physical protection plan and security plan changes from two to twelve months. Effluent and event reporting are a key source of information that states, the public, and NRC depend on to maintain awareness of facility performance and offsite dose. Prompt reporting of program changes also assists NRC, states, and stakeholders in monitoring

facility performance. New York recommends that the Commission preserve these valuable reporting requirements as they are consolidated in Appendix A.

Physical Protection for Large Components

The proposed rule would create a new exemption from certain physical protection requirements for Category 1 and Category 2 quantities of radioactive material contained in large components or robust structures. This codifies NRC's long-standing exercise of enforcement discretion in these circumstances.

New York supports this codification, which advances transparency and regulatory certainty. Codified, publicly adopted requirements with defined conditions are preferable to open-ended discretion. Furthermore, the conditions in proposed rule, including a written security analysis and a demonstration that the measures do not decrease the effectiveness of the Part 73 security plan, are appropriate guard rails.

Because the Part 37 exemption is a Compatibility Category B element, New York must adopt essentially identical regulations. Two issues follow. First, the exemption is conditioned on an approved Part 73 security plan or a written Part 37 security plan. New York needs the Part 37 pathway to be genuinely workable for materials licensees that do not maintain Part 73 plans. Otherwise, the exemption would effectively only apply to reactors. Second, the exemption depends on a licensee's written analysis that available response time is adequate and that the measures do not decrease security effectiveness. The State requests the Commission to clarify how those analyses will be reviewed and verified so that the exemption does not, in practice, weaken the physical protection of Category 1 and Category 2 material. New York also recommends that NRC provide model rule language and a defined adoption schedule for Agreement States.

Conclusion

New York shares NRC's goal of efficient, risk-informed regulation of reprocessing and fuel cycle facilities, as well as dry cask storage. Several provisions in this rule are constructive, and New York endorses them. We also urge NRC to incorporate New York's recommended improvements to the proposed rule. New York looks forward to continued coordination with the Commission, including through the Agreement State process, and is available to discuss these comments.

Thank you for the opportunity to comment. If you have any questions or concerns, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Alyse Peterson". The signature is written in a cursive style with a large initial 'A' and a long, sweeping underline.

Alyse Peterson, P.E.
NRC State Liaison Officer – Designee

Associate Director for Nuclear Coordination &
Radioactive Waste Policy