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August 31, 2026

Ms. Annette L. Vietti-Cook
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Secretary Vietti-Cook:

SUBJECT: COMMENTS ON PROPOSED RULE “REFORMING AND MODERNIZING THE NRC’S RADIATION PROTECTION FRAMEWORK” (DOCKET ID NRC-2025-1140) – REQUEST FOR UNIFORM COMPATIBILITY CATEGORY B DESIGNATION FOR 10 CFR §§ 20.1402–20.1404

I. Introduction

The Department of the Navy appreciates the opportunity to comment on the Nuclear Regulatory Commission’s (NRC) proposed rule to reform its radiation protection framework. We support the Commission’s effort to reduce subjectivity and align the framework with the Principles of Good Regulation.

We are writing to express concern regarding a potential critical flaw in the proposed rule: the decision to retain Compatibility Category C for the License Termination Criteria (LTC) (10 C.F.R. §§ 20.1402–20.1404) for most licensees, while upgrading it to Compatibility Category B only for a select few. We are concerned this bifurcated approach may undermine the rule’s stated objectives and could create significant negative impacts from the standpoint of fiscal responsibility, risk management, good governance, and public confidence. We offer these comments in the hope that the final rule establishes the objective, predictable, and uniform standards necessary for effective governance.

II. The Imperative for Uniform Category B Designation

The proposed rule correctly identifies that national security and an orderly regulatory pattern justify a Category B designation for licensees mining critical minerals. This same logic applies with equal, if not greater, force to all license terminations, particularly for federal facilities and multi-state operators essential to national interests.

Retaining Category C for the LTC in other contexts would perpetuate and potentially exacerbate a fragmented and unpredictable regulatory landscape. This ambiguity raises concerns that go beyond procedural preference, as it has severe real-world consequences:

- **Fiscal and Governance Concerns:** Subjective and divergent state-level standards have created untenable planning, funding, and execution challenges. This regulatory patchwork

has led to wasteful expenditures of taxpayer dollars on unnecessary remediation and disposal activities, which constitutes avoidable fiscal irresponsibility and poor governance.

- **Potential for Increased Risk and Transboundary Impacts:** When an Agreement State imposes ill-defined or ultra-conservative cleanup standards, it forces the unnecessary excavation and out-of-state disposal of vast quantities of materials that may not be contaminated, but are merely distinguishable from any readily identified background. This practice does not effectively enhance public safety. Instead, it transfers low-level radiological risks across state lines and simultaneously increases risks related to transportation incidents—a factor that regulations require to be considered in the overall risk-balancing evaluation. Such outcomes represent a physical and economic transboundary impact that appears to meet the definition of a matter requiring Category B designation under NRC Management Directive 5.9.

Opportunity Costs: Regulatory ambiguity has created paralysis. The inability or unwillingness of states to codify clear, objective standards for release has prevented the timely and productive reuse of valuable national assets, which has resulted in significant lost opportunity costs that hinder economic development and other beneficial public uses, without any objective determinations related to potential health risks. Arbitrary, overly conservative state requirements for license termination impose expenses and uncertainty on cleanups that increase the risk of creating Brownfields, abandoned contaminated properties with unrealized redevelopment and reuse potential.

- **Public Relations Risks:** A system that produces significantly different outcomes based on arbitrary geography or individual discretion erodes public trust. When one state implies that any radiation above background is a “health risk” while the federal framework determines it is not, it creates public confusion and undermines the credibility of the science-based federal standard. This contradiction reinforces the harmful public misconception that any and all radiation is “deadly,” and the appearance of arbitrary, inconsistent regulation damages public confidence in the entire regulatory framework. Overestimation and inconsistent communication of risk create massive barriers to the release, sale, and future development and use of remediated properties.

To achieve a truly objective and graded approach, uniform application of Category B is essential.

III. Retaining Category C Contradicts the Rule’s Core Objectives

Retaining Category C for the LTC subverts the central purpose of this rulemaking. The proposed rule properly upgrades other regulations, like air emission constraints and public dose limits, from Category C to more prescriptive categories, such as Category A, precisely to replace subjective guidelines with objective standards. We encourage applying this same essential logic to the LTC.

Category C is designed to permit more restrictive state standards. By retaining it for the LTC, the NRC risks preserving the very subjectivity and potential for unwarranted conservatism it seeks to eliminate. Furthermore, it raises a critical governance question: how might the NRC effectively audit an Agreement State’s program for compatibility under the Integrated Materials Performance Evaluation Program (IMPEP) if the state’s standard remains undefined or relies heavily on ad-hoc discretion?

An objective standard is generally auditable, whereas a subjective one is difficult to assess. If the essential objective of this rulemaking is to implement an objective standard, a state program relying on undefined, case-by-case judgment may struggle to be deemed compatible. Current implementation highlights these potential challenges:

- **The California Example (Subjective Governance):** California’s refusal to adopt a numerical standard for unrestricted release has created an unpredictable, ad-hoc system that is antithetical to the rule’s goal of objectivity. This model illustrates the potential governance challenges permitted under Category C. In addition, California’s refusal to adopt any regulations compatible with restricted release has historically been accepted by the NRC as meeting the essential objectives of Category C compatibility, although the state has refused to promulgate any practicable standards and has effectively prohibited a regulatory pathway for restricted release. As a result, there are federal facilities in California unable to achieve or even fully discern sufficient remediation levels to satisfy state regulators, leaving properties encumbered with indefinite cleanup cost and time overruns.
- **The Ohio Example (Functional Governance):** In contrast, Ohio uses a defined “decommissioning possession only license” that provides durable institutional controls, which helps achieve federal goals with clarity and predictability.

To resolve this potential conflict and encourage good governance, we request that the Commission uniformly elevate 10 C.F.R. §§ 20.1402–20.1404 to Compatibility Category B. If the Commission declines, we ask that it, at a minimum, clarify how it will evaluate more restrictive state standards against the federal objective of reducing conservatism and clarify whether undefined, case-by-case reviews satisfy the essential objectives of Subpart E.

IV. Conclusion

The Navy strongly supports the Commission’s goal of modernizing the radiation protection framework to be more objective, predictable, and risk-informed. To fully realize that goal, the final rule should address the potential deficiencies created by retaining Category C for license termination criteria. We respectfully request that the Commission address the uniform Category B compatibility treatment of 10 C.F.R. §§ 20.1402–20.1404 in the Statement of Considerations accompanying the final rule.

Respectfully Submitted,

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Environmental Director