

September 17, 2026

Via electronic submission and email
The Honorable David A. Wright, Chairman
Timothy Mossman
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
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**Re: Request to Extend the Public Comment Period and to Hold a Public Meeting
In Situ Recovery Monitoring and Decommissioning Timeliness
Docket ID NRC-2025-1204; RIN 3150-AL48**

Dear Chairman Wright and Mr. Mossman:

The State of New Mexico, by and through the New Mexico Attorney General, respectfully requests that the U.S. Nuclear Regulatory Commission (“NRC” or “the Commission”) extend the public comment period on the NRC’s proposed rule, *In Situ Monitoring and Decommissioning Timeliness*, 91 Fed. Reg. 57,728 (Sept. 10, 2026), from thirty (30) days to not less than ninety (90) days, convene a public meeting during the extended period, and place in the rulemaking docket certain predicate documents identified in Part IV below. The State submits this request pursuant to the Commission’s invitation for comment and in advance of the close of the current comment period so that the Commission may act before that period expires.

The State does not make this request lightly, and it is not a request for delay for its own sake. The proposed rule would, for the first time, codify generally applicable groundwater protection requirements for uranium in situ recovery (ISR) facilities; would reclassify long-standing Agreement State program elements in a manner that constrains State authority; would relax decommissioning timeliness requirements across seven Parts of Title 10 of the Code of Federal Regulations; and is accompanied by three draft guidance documents and a draft regulatory analysis. A thirty-day period is not sufficient for a State government to evaluate an action of that scope, to fully analyze the legal and technical ramifications of that action, to complete interagency review, or to submit comments that are most useful to the Commission.

I. The State’s Interests

New Mexico hosts uranium recovery facilities that are licensed and regulated directly by the NRC. The State has not assumed regulatory authority over uranium milling or AEA section 11e.(2) byproduct material, but it retains and exercises substantial authority over the same resources the proposed rule addresses, including its groundwater quality and discharge permitting programs, its water rights administration, and its delegated Underground Injection Control

program. The State also has a direct and continuing interest as a potential long-term custodian of licensed sites under AEA section 83b.(1)(A), 42 U.S.C. § 2113(b)(1)(A). The State regularly engages with NRC licensing proceedings concerning facilities within its borders and has a corresponding interest in the generic requirements this rulemaking would establish.

If given sufficient time, the State plans to submit substantive comments that will address matters within its distinctive competence and expertise—groundwater hydrology, water quality standards, permitting practice, and long-term site stewardship—that the Commission has expressly invited comment upon and that no other category of commenter is so well positioned to supply.

II. Relief Requested

The State respectfully requests that the Commission:

1. Extend the public comment period on the proposed rule and on the associated draft guidance to not less than ninety (90) days from the date of publication in the Federal Register;
2. Convene a public meeting during the extended comment period, as the notice contemplates the Commission may do, and provide not less than thirty (30) days' advance notice of that meeting;
3. Place in the rulemaking docket the documents identified in Part IV below, and provide not less than forty-five (45) days for comment following the date any such document is added to the docket;
4. In the alternative, and at a minimum, bifurcate the two unrelated regulatory actions combined in this notice and establish separate comment periods for the ISR groundwater provisions and for the decommissioning timeliness provisions; and
5. Offer direct consultation with affected States, both Agreement and non-Agreement, before issuing a final rule.

III. Grounds for the Request

A. The notice combines two regulatory actions of substantial scope.

The proposed rule spans 10 CFR Parts 30, 40, 50, 52, 53, 70, and 72. It contains the first generally applicable groundwater protection regime for ISR facilities—a new Criterion 14 with eight substantive subparts, nine new or revised definitions, a restructured Criterion 5, and the replacement of the Criterion 5C table with cross-references to Environmental Protection Agency (EPA) standards. It also contains a distinct set of amendments relaxing decommissioning timeliness requirements for every materials licensee and every power and non-power reactor licensee. The two actions share no obvious technical subject matter and no common regulatory history. They are accompanied by draft supplemental guidance to NUREG-1569, draft Interim Staff Guidance DUWP-ISG-04 and DUWP-ISG-05, and a draft regulatory analysis (ADAMS Accession No. ML25337A100), each of which are themselves open for comment.

A commenter cannot address the ISR provisions responsibly without also reviewing the draft NUREG-1569 markup, because the notice repeatedly locates implementing detail in guidance

rather than in regulatory text. The same is true of the decommissioning provisions and DUWP-ISG-04. The effective volume of material subject to comment is several times the length of the notice itself.

B. The proposed rule would alter the legal authority of States and evaluating that change requires review that cannot be completed in thirty days.

The Commission proposes to reclassify Criteria 5 and 6 of Appendix A to Part 40 from Compatibility Category C to Compatibility Category B. Under the Agreement State Program Policy Statement, 82 Fed. Reg. 48535 (Oct. 18, 2017), a Category C program element permits an Agreement State to be more restrictive than the Commission, while a Category B element must be “essentially identical.” Criteria 5 and 6 contain the groundwater protection standards and the stabilization and closure requirements that govern license termination at uranium milling and ISR facilities. The proposed reclassification could therefore convert a regulatory floor into a ceiling on precisely the subject matter that States are best equipped to regulate.

For an Agreement State with authority over source materials licensing, assessing that proposal requires review of the State’s radiation control regulations, its water quality standards and permitting rules, its existing license conditions, and the statutes underlying each—work that ordinarily involves the State’s environment department, its health department, its water resources agency, and its office of the attorney general. For a State without milling authority, the same proposal requires assessment of whether and to what extent the Commission’s expanded definition of byproduct material in § 40.4, which would newly encompass liquid wastes from ISR operations, may be asserted to preempt State groundwater and discharge permitting authority. Neither review can realistically be completed, coordinated, and reduced to written comment within thirty days.

C. Commission precedent supports an extension.

When the Commission last sought public input on whether to codify generic ISR groundwater protection requirements, it allowed a substantially longer period. The Commission published its request for comment on January 31, 2019, 84 Fed. Reg. 574, and then extended the period, 84 Fed. Reg. 6979 (Mar. 1, 2019), so that comments were due May 3, 2019—approximately ninety-two days in total. That was for a preliminary inquiry into *whether* to proceed with a rulemaking. The present notice proposes actual regulatory text implementing that rulemaking, together with an unrelated set of decommissioning amendments, and allows one-third the time.

D. Documents necessary to meaningful comment are not before the public.

Section 84a.(3) of the AEA, 42 U.S.C. § 2114(a)(3), provides that general requirements established by the Commission for the management of section 11e.(2) byproduct material must, to the maximum extent practicable, be at least comparable to requirements applicable to similar hazardous material under the Solid Waste Disposal Act, and provides for EPA concurrence in that determination. The draft regulatory analysis contemplates that EPA will “provide a required review of the final rule.” The comparability demonstration and any EPA concurrence or draft concurrence are therefore necessary for the lawfulness of the rule, yet are not in the docket. The

public cannot meaningfully comment on whether the proposed Criterion 14 is comparable to 40 CFR Part 264, Subpart F without seeing the Commission's analysis of that question.

The notice also states that the proposed post-restoration monitoring provision "could necessitate revisiting" the July 2020 Memorandum of Understanding between the Commission and EPA concerning the regulation of uranium ISR activities. A commenter cannot evaluate that statement, or the consequences of the conflict it acknowledges, without knowing what the agencies presently contemplate.

E. States were not adequately consulted in the development of the proposed rule.

Section XVII of the notice discloses that Agreement State participation in developing the proposed rule consisted of two representatives designated through the Organization of Agreement States, and that the rule was shared with the Standing Committee on Compatibility. No State that hosts an NRC-licensed uranium recovery facility but lacks milling authority participated. It appears from the notice that no Tribal governments participated in that process, and the notice contains no discussion of consultation with Tribes, notwithstanding that ISR operations occur or are proposed on and adjacent to Tribal lands and affect resources subject to treaty protection, including in New Mexico. Similarly, the notice contains no federalism analysis, although the Commission submitted the proposed rule to the Office of Information and Regulatory Affairs, which determined it to be a significant regulatory action.

Given the limited consultation, the comment period is the only opportunity for affected sovereigns to be heard. Compressing that opportunity to thirty days compounds the NRC's earlier omission.

F. The deregulatory purpose of the action does not diminish the need for an adequate comment period.

The Commission characterizes this rulemaking as responsive to Executive Order 14300 and as a deregulatory action under Executive Order 14192. Neither basis for the proposed rule alters the Commission's obligation under 5 U.S.C. § 553(c) to give interested persons a genuine opportunity to participate, and neither demonstrates a need to shorten that opportunity. To the contrary, the notice proposes to relax existing requirements—extending the permissible period of licensee inactivity at source material facilities from twenty-four to forty-eight months and replacing the existing standard for extension requests—in ways that shift risk and cost toward the States that would bear the consequences of any potential unremediated site. The States' views on that reallocation are precisely the input the notice-and-comment process exists to obtain.

IV. Documents Requested to Be Placed in the Docket

The State requests that the Commission place the following in the rulemaking docket and allow not less than forty-five days for comment thereafter:

1. The Commission's analysis supporting its determination that the proposed general requirements are, to the maximum extent practicable, at least comparable to the

requirements applicable to similar hazardous material under the Solid Waste Disposal Act, as required by AEA section 84a.(3);

2. Any correspondence with or concurrence, draft concurrence, or comment from EPA concerning the proposed rule, including any communication concerning the July 2020 Memorandum of Understanding;
3. Any technical basis for the proposed forty-eight-month period of no principal activities as applied to 10 CFR Part 40 uranium recovery licensees.

V. Conclusion

The State intends to submit substantive comments. A ninety-day period, a public meeting, and access to the predicate documents identified above would allow the State to provide the Commission with comments grounded in the State's own regulatory experience. The State respectfully requests that the Commission grant this request and publish notice of the extension in the Federal Register before the current comment period closes.

Respectfully submitted,

FOR THE STATE OF NEW MEXICO
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