

May 11, 2026

Chairman Ho K. Nieh and Fellow Commissioners
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Comments of Connecticut Department of Energy and Environmental Protection on
Modernizing Requirements Related to Physical Protection of Category 1 and Category 2
Quantities of Radiative Material

Docket ID: NRC-2025-1238

Dear Chairman Nieh, and Commissioners Wright, Crowell, Marzano, and Weaver,

The Connecticut Department of Energy and Environmental Protection (DEEP) appreciates the opportunity to provide comments on the U.S. Nuclear Regulatory Commission's (NRC's) proposed revisions to 10 CFR Part 37¹ as part of the NRC's regulatory modernization efforts under Executive Orders 14300.

The State of Connecticut (hereinafter "Connecticut" or "State") supports the development and utilization of atomic energy in a manner that protects public health and safety, promotes the common defense and security, and preserves the environment. This framework reflects a deliberate balance in Connecticut's state policy: the State is directed to adapt its laws and regulations to evolving conditions in ways that encourage the safe development of industries producing or utilizing atomic energy, while at the same time protecting the public interest. Connecticut remains committed to working with the NRC and to maintaining a regulatory program compatible with the Atomic Energy Act of 1954.

This statutory policy is implemented through a defined governance structure within the State's government. Pursuant to Section 16a-102 of the Connecticut General Statutes, the Commissioner of DEEP serves as the State's lead official responsible for coordinating all atomic energy development and regulatory activities and ensuring consistency across state agencies. The Commissioner's statutory role encompasses coordination with the federal government, including the NRC, and reinforces DEEP's responsibility to ensure that federal and state regulatory programs are comprehensive, compatible, and effectively implemented.

As the 40th and most recent NRC Agreement State, Connecticut has direct regulatory responsibility for the safe use of radioactive materials within the State. DEEP is a partner with the NRC in the National Materials Program and is responsible for implementing compatible requirements, conducting inspections, and performing licensing and enforcement activities.

¹ "Modernizing Requirements Relating to Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material," 91 FR 17893 (9 April 2026).

Accordingly, Connecticut has a strong interest in ensuring that NRC rulemakings support effective, consistent, and implementable requirements nationwide. In this regard, DEEP fully supports the comments submitted by the Organization of Agreement States Board on May 1, 2026 and offers the additional detailed, technical comments in Attachment A. This set of comments generally supports the NRC's goal of reducing unnecessary administrative burden but consistently emphasizes that any such reductions should be accompanied by risk-informed, performance-based alternatives rather than the outright elimination of requirements. Across multiple provisions, Connecticut underscores the importance of maintaining verifiable, auditable controls—particularly where changes could affect personnel reliability, coordination with law enforcement, material accountability, or security system performance. These comments reflect the State's preference for approaches that preserve deterrence, early detection, and defense-in-depth, while allowing flexibility in how licensees meet those objectives.

At the same time, the volume and pace of concurrent rulemakings—more than twenty (20) underway, including multiple direct final rules—present significant challenges for Agreement States and other stakeholders. This compressed timeline limits the ability of Connecticut to fully evaluate complex technical changes and the potential impacts, increasing the risk that implementation challenges may not be adequately addressed, and may render it pragmatically unfeasible to implement such technical changes within the timeframe prescribed.

It is essential that NRC rulemakings reflect a commitment to rigor, openness, and meaningful stakeholder engagement. Advancing significant regulatory changes without sufficient opportunity for review risks undermining public confidence—not only in existing programs, but also in the successful deployment of new technologies.

Given these considerations, DEEP respectfully recommends that the NRC:

- Provide public comment periods that are sufficiently long to allow Agreement States and other stakeholders to thoroughly review, analyze, and assess the technical, legal, operational, and implementation impacts of proposed rulemakings, particularly where changes are complex, far-reaching, or issued concurrently with other major regulatory actions;
- Sequence and pace rulemakings to provide meaningful spacing between significant regulatory changes and avoid requiring Agreement States to review and implement multiple complex rulemakings simultaneously; and
- Limit the use of direct final rules to truly non-controversial or minor administrative changes, ensuring that substantive or technically complex revisions are subject to full notice-and-comment rulemaking.

In closing, Connecticut remains supportive of the NRC's efforts to modernize its regulatory framework and to fulfill its mission to protect public health and safety and advance the nation's common defense and security by enabling the safe and secure use and deployment of civilian nuclear energy technologies and radioactive materials through efficient and reliable licensing, oversight, and regulation for the benefit of society and the environment. Achieving these objectives while maintaining public trust and strong oversight will require a deliberate,

transparent, and inclusive process that fully incorporates the experience and expertise of Agreement States.

Thank you for the opportunity to comment on this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Katie S. Dykes". The signature is written in a cursive, flowing style.

Katie S. Dykes
Commissioner
Connecticut Department of Energy and Environmental Protection

ATTACHMENT A

DEEP appreciates the NRC's request for specific input on the proposed changes to 10 CFR Part 37 requirements. In response to the NRC's questions, DEEP offers the following perspectives:

Response to Question #1: Removal of Certification Submission to NRC under § 37.23(b)(2)

DEEP supports this change and does not anticipate significant safety benefits from the continued routine transmission of reviewing official certifications to the NRC or Agreement States, provided that the underlying requirement—that reviewing officials be designated under oath or affirmation as trustworthy and reliable—remains in place and enforceable.

From an Agreement State perspective, maintaining appropriate documentation that is available for inspection is essential. If the NRC proceeds with this change, DEEP recommends that the NRC provide clear guidance to ensure that such certifications are retained, auditable, and readily accessible during inspections by regulators as records that are required to be retained pursuant to § 37.103.

Response to Question #2: Removal of 10-Year Reinvestigation Requirement under § 37.25(c)

DEEP has concerns regarding the removal of the 10-year reinvestigation requirement for individuals with unescorted access to Category 1 and Category 2 quantities of radioactive material. While recognizing that background investigations can be resource-intensive, the knowledge that individuals will be subject to periodic reinvestigation serves as a deterrent against misconduct, reinforcing expectations for continued compliance and responsible behavior over time. As such, periodic reinvestigations serve as an important safeguard to ensure the continued trustworthiness and reliability of individuals with access to high-risk materials.

Eliminating this requirement without a clearly defined alternative could create an assailable vulnerability, particularly given the long durations over which individuals may retain access authorization. DEEP recommends that, if the 10-year reinvestigation requirement is removed, the NRC consider implementing a risk-informed or performance-based alternative (e.g., continuous monitoring, event-triggered reviews, or shorter interval attestations) to ensure ongoing personnel reliability. Any such changes should maintain a high degree of confidence in the security framework and be supported by data demonstrating that safety and security will not be adversely impacted.

DEEP notes that the proposed removal of the 10-year reinvestigation requirement, while designated as Compatibility Category C, raises questions regarding how compatibility should be interpreted when a requirement is eliminated at the federal level. Specifically,

it is unclear whether Agreement States may retain or impose such a requirement without creating inconsistency within the National Materials Program. This scenario does not appear to fit cleanly within the existing Compatibility Category C framework as described in the NRC's Management Directive (MD) 5.6, which generally contemplates flexibility in how requirements are implemented, rather than whether they exist at all. Additional clarification from the NRC on this point would be beneficial to ensure consistent interpretation and implementation across Agreement States.

Response to Question #3: Reduction in Coordination Frequency with Law Enforcement under § 37.45(d)

DEEP has concerns regarding the proposed reduction in coordination frequency between licensees and local law enforcement agencies (LLEA) from annually to once every three years. Regular coordination between licensees and LLEAs is a critical component of emergency preparedness and security response, particularly for facilities possessing Category 1 and Category 2 quantities of radioactive material.

Reducing the frequency of engagement may lead to diminished familiarity with facility-specific hazards, response expectations, and points of contact—especially given turnover within both licensee organizations and law enforcement agencies. This could negatively impact response effectiveness during an actual event.

DEEP recommends maintaining at least an annual coordination requirement as a best practice. At a minimum, if the NRC adopts a reduced frequency, it should incorporate provisions for interim updates and targeted engagement triggers. Given typically high turnover rates within LLEAs, coordination and training should occur not only when there are significant changes to a licensee's security program, but also when there is turnover in key LLEA personnel or changes in jurisdiction. This should include, at a minimum, an annual verification by the licensee that the LLEA has not experienced significant personnel or jurisdictional changes, with additional coordination or training conducted as needed. Additional measures such as annual confirmation of contact information and supplemental engagement when conditions warrant (e.g., changes in threat environment, facility operations, or local response capabilities) would help ensure continued preparedness and effectiveness.

DEEP notes that this provision is designated as Compatibility Category C and appreciates that this approach allows Agreement States the flexibility to retain more frequent coordination requirements with LLEAs where warranted to support preparedness and public safety.

Summary Across these three areas, DEEP emphasizes the importance of maintaining a balanced approach that achieves administrative efficiency while preserving the integrity, transparency, and effectiveness of the security framework. As an Agreement State, Connecticut relies on clear, enforceable, and verifiable requirements to ensure consistent implementation and to maintain public confidence in the safe and secure use of radioactive materials.

DEEP hereby submits the following additional comments:

Comment 1 - Proposed Removal of Weekly Verification Requirement under § 37.49(a)(3)(ii)

DEEP appreciates the NRC's evaluation of the weekly verification requirement for Category 2 quantities of radioactive material and recognizes that, for certain licensees—particularly those using radiography or medical devices—frequent operational use may provide a level of assurance comparable to formal weekly checks. However, DEEP does not agree that this condition applies universally across all licensees and use cases.

While many Category 1 and 2 sources are used regularly, there are also numerous instances in which such sources are not used on a weekly basis, including storage periods, intermittent operations, or standby conditions. In these cases, the absence of a weekly verification requirement would pose a threat to public safety by increasing the duration over which loss, theft, or unauthorized access might go undetected.

Accordingly, DEEP recommends that the NRC adopt a conditional or performance-based approach rather than fully eliminating the weekly verification requirement. Specifically, the regulation could be revised to clarify that documented use of the material during the week satisfies the verification requirement. Conversely, for sources not used within a given week, licensees should be required to perform and document a physical verification (or equivalent measure such as tamper-indicating device checks) to confirm the continued presence and secure storage of the material.

This approach would preserve regulatory efficiency by eliminating redundant checks for frequently used sources, while maintaining an appropriate level of oversight and assurance for materials that remain in storage or are otherwise not routinely accessed. Such a modification would better align the requirement with actual operational practices while continuing to support timely detection of potential security issues.

Comment 2 - Proposed Removal of Maintenance and Testing Requirements of Security Systems in §§ 37.43(c)(3)(iv) and 37.51

DEEP acknowledges that under § 37.49 licensees would continue to be required to maintain intrusion alarms, associated communication systems, and other physical components of the systems used to secure or detect unauthorized access to radioactive material that are operable and capable of performing their intended security functions. However, DEEP has significant concerns with the proposed elimination of explicit maintenance and testing requirements for such systems.

Maintenance and testing programs for these security systems are fundamentally preventative and diagnostic in nature—they are designed to identify deficiencies *a priori*, before system performance is degraded or challenged during an actual security event. These programs provide a structured and reliable means of detecting latent failures (e.g., degraded sensors, communication faults, or component wear) that may not be apparent during routine operations. In contrast, reliance solely on system operability during normal

use shifts the framework to a *post hoc* or corrective model, where deficiencies are more likely to be discovered only after performance has already been impacted.

Eliminating these requirements increases the risk that failures will remain undetected for a potentially significant period of time until such failures: (1) are identified during regulatory inspection; (2) manifest during an actual security challenge; or, in a worst-case scenario, (3) contribute to a loss or unauthorized removal of security-sensitive material. This approach effectively reduces the security system by placing greater reliance on chance detection rather than systematic assurance.

DEEP notes that this comment is consistent with and supportive of the NRC's risk-informed, performance-based approach to regulation. A risk-informed framework prioritizes measures that most effectively reduce the likelihood and consequences of adverse events. Maintenance and testing programs are a proven, risk-reducing control that directly supports the reliability of security systems protecting Category 1 and Category 2 quantities of radioactive material. Eliminating these programs may reduce administrative burden, but doing so also removes a key defense-in-depth element that protects the public by helping to prevent failures from occurring or going undetected.

DEEP therefore recommends retaining maintenance and testing requirements to ensure that security systems remain in a preventative and detection-based posture, rather than shifting toward a primarily corrective model. If the NRC seeks to reduce burden, consideration could be given to a more explicitly risk-informed or performance-based approach to maintenance frequency and testing protocols. However, DEEP believes complete elimination of these programs would introduce unnecessary risk and reduce confidence in the reliability of systems intended to protect Category 1 and Category 2 quantities of radioactive material.

Comment 3 - Proposed Revision to § 37.53(b) – Use of Key Removal for Vehicle Disabling

DEEP supports the NRC's recognition of advancements in vehicle security technology and agrees that modern vehicles equipped with transponder (chip) keys or electronic fobs can provide an effective means of immobilization when the key or fob is removed. For these vehicles, key removal may provide a level of protection comparable to other disabling methods and can be considered an acceptable compliance option.

However, DEEP notes that not all vehicles currently in use incorporate these technologies. Older vehicles, as well as some newer fleet or specialty vehicles, may rely on traditional mechanical keys or lack integrated immobilization systems. In such cases, removal of the ignition key alone does not provide sufficient protection against theft or unauthorized movement of the vehicle and its radioactive contents.

Accordingly, DEEP recommends that the NRC adopt a conditional, performance-based approach rather than applying this change universally. Specifically, the regulation or associated guidance should clarify that reliance on key removal is acceptable only for vehicles equipped with manufacturer-installed or equivalently effective immobilization

technologies (e.g., transponder-based systems). For vehicles that do not incorporate such features, licensees should continue to be required to implement additional disabling measures (e.g., secondary locks, wheel immobilizers, or other engineered controls) to ensure adequate protection against unauthorized removal.

This approach appropriately accounts for differences in vehicle technology across the licensee population and ensures that the underlying security objective—preventing unauthorized movement of radioactive material—is consistently maintained.