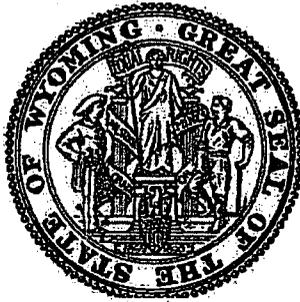


EXHIBIT B



Office of the Attorney General

Governor
Matthew H. Mead

Water and Natural Resources Division
123 State Capitol
Cheyenne, Wyoming 82002
307-777-6946 Telephone
307-777-3542 Fax

Chief Deputy Attorney General
John G. Knepper

Attorney General
Peter K. Michael

Division Deputy
James Kaste

November 19, 2015

ATTN: Document Control Desk U.S. Nuclear Regulatory Commission
Ms. Pamela Henderson
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Ms. Henderson:

Our office represents the Wyoming Department of Environmental Quality ("WYDEQ"). This letter is in response to a letter from you and the Nuclear Regulatory Commission ("Commission") dated September 28, 2015. In that letter, the Commission provided 27 comments related to the proposed bill containing amendments and additions to Wyoming House Bill HB0027, sent to you by Ryan Schierman, Program Manager, on August 13, 2015.¹

Although we discussed the Commission's comments on September 24, 2015, the Commission requested that the WYDEQ respond to the Commission's concerns by either directing the Commission to already established Wyoming statutes, or through interpretation of state law provided by the State Attorney General's office or a legal advisor to the radioactive materials program. Accordingly, on behalf of WYDEQ, please find responses to the Commission's comments in sequential order below. For your convenience, we have restated the Commission's comments in bold. For your reference, we have attached, hereto as *Exhibit A*, the

¹ On approximately September 21, 2015, Mr. Schierman sent the Commission an updated proposed bill, which contained minor changes to the version sent to the Commission on August 13, 2015. Comments 23 through 27 in the Commission's September 28, 2015 letter specifically relate to the version sent to the Commission on September 21, 2015.

most current proposed bill which will be sponsored by the Joint Minerals Committee during the 2016 Legislative Session. Please let me know if you would like copies of the prior versions of the proposed bill sent to the Commission on August 13, 2015 and September 21, 2015.

1. **The Wyoming legislation does not directly establish a radioactive materials program or define its structure. Please see SA-700, Section 4.1.1.1, "Information Needed," paragraph (a).**

The proposed bill is only part of the legal framework that will establish Wyoming's Agreement State Program. Existing statutes, such as the Wyoming Environmental Quality Act and the Wyoming Administrative Procedure Act will also govern the program. Additionally, the WYDEQ is developing rules and regulations specific to the program. These rules and regulations will be submitted as part of the final packet presented to the Commission.

Section 4.1.1.1(a) of SA-700, Handbook for Processing an Agreement, requires that state law "[e]stablishes the Agreement materials program, defines its structure, and authorizes the Governor to enter into an Agreement with the Commission." The requirements of Section 4.1.1.1(a) are satisfied in the following ways:

- (1) Proposed Wyoming Statute § 35-11-2001(c) authorizes the Governor to enter into an Agreement with the Commission;
 - (2) Proposed Wyoming Statute § 35-11-2001(b) establishes that WYDEQ will serve as the lead agency for the program;
 - (3) Proposed Wyoming Statutes §§ 35-11-2003 through -2204 establishes regulatory authority over licensing and enforcement; and
 - (4) Proposed Wyoming Statute § 35-11-2002 authorizes WYDEQ to establish rules and regulations, which will better define the program and its structure.
2. **Although the Wyoming legislation does authorize the program to issue licenses, the Wyoming legislation does not clearly authorize the program to:**
 - recognize the licenses of other jurisdictions; or
 - make it unlawful to acquire, possess, store, use, transfer, or dispose of materials without a valid license, or to violate the conditions of a license; or
 - recognize licenses transferred from the U.S. Nuclear Regulatory Commission (NRC) under the Agreement as State licenses.

Please see SA-700 Handbook, Section 4.1.1.1, "Information Needed," paragraph (b) (2), (3), (4), and (5).

There is no need to recognize the licenses of other jurisdictions because Wyoming seeks authority only over source material from recovery or milling and byproduct material. Unlike other States which regulate all categories of materials under Section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2021), Wyoming's program will not trigger the need for reciprocity, and any such statute would be superfluous. This is an ongoing topic of conversation

with the Commission, and it is our understanding this issue will be addressed in a future Commission paper.

The remaining requirements of SA-700, Handbook for Processing an Agreement, Section 4.1.1.1(b) are satisfied. Proposed Wyoming Statute § 35-11-2002(a) governs unlicensed activities and makes it unlawful to “acquire, own, possess, transfer, offer or receive for transport or use any source material from recovery or milling” without a valid license. Proposed Wyoming Statutes §§ 35-11-2003 through -2004 provides additional authority to impose, regulate, and enforce licensing conditions. Proposed Wyoming Statute § 35-11-2003(f) authorizes enforcement actions for noncompliance with program requirements, which include licensing conditions.

With respect to licenses transferred from the Commission under the Agreement, proposed Wyoming Statute § 35-11-2003(a) provides that WYDEQ “shall recognize existing and effective licenses issued by the [Commission].”

3. **Although the Wyoming legislation does authorize the program to adopt regulations, the Wyoming legislation does not specify the procedures and requirements for adoption of regulations, including public participation. Please see SA-700 Handbook, Section 4.1.1.1, “Information Needed,” paragraph (c)(1).**

Wyoming’s Administrative Procedure Act, specifically Wyoming Statutes §§ 16-3-101 through -106, specifies the procedures and requirements for the adoption of rules for all Wyoming state agencies, including public participation requirements. These statutes are attached hereto as *Exhibit B*.

4. **The Wyoming legislation does not expressly authorize the program to require compliance with regulatory requirements by both licensees and unlicensed individuals. Please see SA-700 Handbook, Section 4.1.1.1, “Information needed,” paragraph (e) for information regarding this matter.**

Proposed Wyoming Statute § 35-11-2002(a) governs the regulation and penalization of unlicensed activities and individuals. Specifically, proposed Wyoming Statute § 35-11-2002(a) prohibits unlicensed activity and allows WYDEQ to regulate unlicensed activity and penalize unlicensed individuals.

Proposed Wyoming Statutes §§ 35-11-2003 through -2004 specifically requires compliance with regulatory requirements by licensed individuals.

5. **The Wyoming legislation does not expressly authorize the program to impose sanctions for violations of the regulations, orders, or license conditions. Please see SA-700 Handbook, Section 4.1.1.1, “Information needed,” paragraph (f) for information regarding this matter.**

Proposed Wyoming Statute § 35-11-2003(f) authorizes WYDEQ, through its director, to “suspend licenses and conduct enforcement actions” A sanction is a type of enforcement action.

Wyoming Statute § 35-11-901 of the Environmental Quality Act also authorizes WYDEQ to impose penalties for violations.

Additionally, Wyoming’s Agreement State Program is within the Land Quality Division of WYDEQ. Unless otherwise provided in Article 20, the Land Quality statutes, Article 4 of the Environmental Quality Act, apply. This includes Wyoming Statute § 35-11-412, which provides additional authority for license revocation and suspension.

6. **The Wyoming legislation does not establish conflict of interest and ethics regulations or procedures applicable to those portions of the State radiation control program covered by the Agreement. Please see SA-700 Handbook, Section 4.1.1.1, “Information needed,” paragraph (g) for information regarding this matter.**

The applicable general Wyoming statutes on conflict of interest and ethics are attached hereto as *Exhibit C*. Existing WYDEQ conflict of interest and ethics policies and procedures apply to the program. Any necessary and additional conflict of interest and ethics policies and procedures will be established through rules and regulations.

7. **Although the Wyoming legislation does not apply to nuclear reactors, the Wyoming legislation does not explicitly exclude other materials or activities reserved to the NRC under Section 274c of the Atomic Energy Act of 1954, as amended, and Title 10 of the Code of Federal Regulations Part 150. Please see SA-700 Handbook, Section 4.1.1.2, “Evaluation Criteria,” paragraph (b) for information regarding this matter.**

SA-700, Handbook for Processing an Agreement, Section 4.1.1.2(b), provides that state law “must not seek to regulate materials or activities reserved to the [Commission].” Proposed Wyoming Statute § 35-11-2001(a) mandates that the Commission “shall maintain regulation over the activities reserved under Section 274 of the Atomic Energy Act of 1954, 42 U.S.C. § 2021, as amended.”

8. **The Wyoming legislation does not provide for recognition of licenses transferred from the NRC to the State under the Agreement, and the Wyoming legislation does not authorize the reciprocal recognition of specific licenses issued by the NRC or other Agreement States. Please see SA-700 Handbook, Section 4.1.1.2, “Evaluation Criteria,” paragraph (c) for information regarding this matter.**

As previously discussed in Comment No. 2, there is no need to recognize the licenses of other jurisdictions because Wyoming seeks authority only over source material from recovery or milling and byproduct material.

With respect to Commission issued licenses, proposed Wyoming Statute § 35-11-2003(a) provides that WYDEQ "shall recognize existing and effective licenses issued by the [Commission]."

9. **The Wyoming legislation does not contain a general authorization to conduct inspections of licensee operations to ensure compliance with regulatory requirements. The Wyoming legislation also does not authorize inspections of unlicensed facilities to assess the risk resulting from accidents or environmental releases of materials. Please see SA-700 Handbook, Section 4.1.1.2, "Evaluation Criteria," paragraph (g) for information regarding this matter.**

Proposed Wyoming Statute § 35-11-2003(d) authorizes WYDEQ to conduct inspections of licensee operations to ensure compliance with regulatory requirements.

Proposed Wyoming Statute § 35-11-2002(a) authorizes WYDEQ to regulate and penalize unlicensed activities. Additionally, WYDEQ can issue emergency orders pursuant to Wyoming Statute § 35-11-115. WYDEQ can also obtain an administrative warrant for inspections of unlicensed facilities when there is a threat to public health and safety.

10. **The Wyoming legislation does not provide for imposition of civil penalties, and the Wyoming legislation does not provide general authority to take prompt enforcement action and does not authorize a variety of legal sanctions, including suspension of licenses and impoundment of materials. In cases of imminent threat to public health and safety, the law should authorize immediate suspension without prior hearing. Please see SA-700 Handbook, Section 4.1.1.2, "Evaluation Criteria," paragraph (h) for information regarding this matter.**

Wyoming Statute § 35-11-901 of the Environmental Quality Act authorizes WYDEQ to impose penalties for violations.

Proposed Wyoming Statute § 35-11-2003(f) authorizes WYDEQ to immediately suspend a license. WYDEQ can take other enforcement actions as dictated by Article 4, including permit revocation and license revocation and suspension. See Wyo. Stat. §§ 35-11-409 through -412. Additionally, the director has the authority to issue emergency orders pursuant to Wyoming Statute § 35-11-115.

The impoundment of materials will be further defined in rules and regulations.

11. **The Wyoming legislation does not provide for the imposition of civil penalties, and the Wyoming legislation does not:**

- **authorize suspension or revocation of a license for repeated or continued noncompliance;**
- **authorize the program to seek injunctive relief; or**
- **authorize the program to refer licensees for criminal prosecution.**

Please see SA-700 Handbook, Section 4.1.1.2, "Evaluation Criteria," paragraph (i) for information regarding this matter.

Wyoming Statute § 35-11-901 of the Environmental Quality Act authorizes WYDEQ to impose penalties for violations.

Proposed Wyoming Statute § 35-11-2003(f) also authorizes suspension and revocation of a license for repeated or continued noncompliance and injunctive relief.

Rules and regulations will authorize the program to refer licensees for criminal prosecution.

- 12. The Wyoming legislation does not require the program, before issuing an 11e.(2) byproduct material license, to do the following:**
- give notice of the proposed licensing action and accept written comments during a public comment period;**
 - prepare a written analysis of the impact on the environment of the licensed activity;**
 - hold a public hearing with a transcript and cross examination;**
 - prepare a written decision based on evidence presented during the public comment period. The decision must be subject to judicial review; and**
 - ban major construction before the completion of the written environmental analysis.**

Please see SA-700 Handbook, Section 4.1.1.4, "Additional Evaluation Criteria for 11e.(2) Byproduct Material Agreements," paragraph (c) for information regarding this matter.

The requirements of SA-700, Handbook for Processing an Agreement, Section 4.1.1.4(c) will be satisfied through rules and regulations.

- 13. The Wyoming legislation does not require the Agreement materials program to provide an opportunity for public participation through written comments or public hearings during rulemaking. The legislation must also make rules subject to judicial review;**
- Please see SA-700 Handbook, Section 4.1.1.4, "Additional Evaluation Criteria for 11e.(2) Byproduct Material Agreements," paragraph (d) for information regarding this matter.**

SA-700, Handbook for Processing an Agreement, Section 4.1.1.4(d) requires "the Agreement materials program to provide an opportunity for public participation through written comments or public hearings during rulemaking." The Wyoming Administrative Procedure Act governs the rulemaking process. Specifically, Wyoming Statute § 16-3-103 provides an opportunity for public participation during the rulemaking process through written and oral

comments and public hearing. Wyoming Statute § 16-3-114 authorizes judicial review of rules promulgated by the WYDEQ.

14. **The Wyoming legislation does not require the Agreement materials program, before terminating an 11e.(2) byproduct material license, to do the following:**
- **transfer funds collected for decommissioning and long-term surveillance and maintenance to the United States. The legislation must require this transfer when custody of the disposal site transfers to the United States. Funds transferred must include all funds collected from a licensee or its surety. The only exceptions are funds collected for decommissioning if it is completed;**
 - **choose whether or not to take title to the disposal site and byproduct material; and**
 - **obtain a determination from the Commission that all applicable standards are satisfied.**

Please see SA-700 Handbook, Section 4.1.1.4, "Additional Evaluation Criteria for 11e.(2) Byproduct Material Agreements," paragraph (e) for information regarding this matter.

After the receipt of the Commission's letter, the proposed bill was amended to include proposed Wyoming Statute § 35-11-2004, which satisfies the requirements of SA-700, Handbook for Processing an Agreement, Section 4.1.1.4(e).

15. **The Wyoming legislation must consider the authorities reserved to the NRC under the Uranium Mill Tailings Radiation Control Act (UMTRCA) (see 10 CFR 150.15(a)), including the authority to:**
- **establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of the 11e.(2) byproduct material;**
 - **determine, before the termination of a license, that the licensee has complied with decontamination, decommissioning and reclamation standards, and ownership requirements for sites at which 11e.(2) byproduct material is present;**
 - **require, before termination of a license for 11e.(2) byproduct material or for any activity that results in the production of such material, that the title to the 11e.(2) byproduct material and the disposal site are transferred to the Federal Government (or the State at the option of the State, provided the State exercises the option before termination of the license);**
 - **require monitoring, maintenance, and emergency measures after the license is terminated as may be necessary to protect the public health and safety for those materials and property for which the State has assumed custody;**
 - **permit use of the surface or subsurface estate, or both, of the disposal site land transferred to the United States or the State; and**

- exempt land ownership transfer requirements of Section 83(b)(1)(A) of the Atomic Energy Act of 1954, as amended (AEA).

Please see SA-700 Handbook, Section 4.1.1.4, "Additional Evaluation Criteria for 11e.(2) Byproduct Material Agreements" for information regarding this matter.

Proposed Wyoming Statute § 35-11-2004 recognizes the authorities reserved to the Commission under UMTRCA and requires that WYDEQ obtain a final determination from the Commission prior to terminating a license.

16. On page 1 line 17, it states, "authorizing the Department to implement and administer the program." The Enrolled Act No. 61 in Wyoming that restricts inspection activities creates an incompatible obstacle to assuming regulatory responsibility over the NRC responsibility for source and byproduct material. See,
**ENROLLED ACT NO. 61, SENATE
SIXTY-THIRD LEGISLATURE OF THE STATE OF WYOMING
2015 GENERAL SESSION**

Trespassing to unlawfully collect resource data and unlawful collection of resource data.

The language referenced in the above comment was taken from the bill summary. This is merely an introduction for the Wyoming legislature and is not part of the law. The bill summary has since been revised to more accurately reflect the amended bill. *See Exhibit A.*

Enrolled Act No. 61, SF0012, codified as Wyoming Statute § 6-3-414, will not restrict inspections of licensed operations. Wyoming Statute § 6-3-414 allows the collection of resource data if there is "other legal authorization to enter or access the land." Proposed Wyoming Statute § 35-11-2003 clearly authorizes inspections and requires that licensees both obtain and grant WYDEQ access to inspect their operations. Further, licensing conditions will require that licensees obtain and grant WYDEQ access to inspect their operations. The failure to satisfy licensing conditions will result in enforcement actions, including the suspension and revocation of licenses. Unannounced inspections of unauthorized facilities must be conducted through the use of an administrative warrant. This is true regardless of Wyoming Statute § 6-3-414. Accordingly, future WYDEQ inspectors will not be restricted from conducting inspections of licensed operations and Wyoming Statute § 6-3-414 does not create an incompatible obstacle.

Like other states, Wyoming has never condoned illegal trespass onto private property. Wyoming Statute § 6-3-414 merely establishes criminal remedies for trespass onto private property in the context of data collection. The Commission does not require that Wyoming's Agreement State Program authorize illegal trespass onto private property and there is no such compatibility requirement in SA-700, Handbook for Processing an Agreement. We are happy to address any additional questions regarding Wyoming Statute § 6-3-414.

17. On page 2 line 40, it states, "Authorization to negotiate transfer of certain nuclear regulatory functions to the state." "Assumption" of certain nuclear regulatory functions "by" the State is more accurate phrasing.

The language from the comment above refers to the title of proposed Wyoming Statute § 35-11-2001. This statute provides authority to the Governor to negotiate and enter into an agreement with the Commission, as required by SA-700, Handbook for Processing an Agreement, Section 4.1.1.1, and is discussed in the response to Comment No. 1, above. Accordingly, the use of "assumption" and "by" with respect to the authority granted to the Governor does not appear generally applicable to this statute. However, as appropriate, the phrase "assumption by the state . . ." is utilized in the body of proposed Wyoming Statute § 35-11-2001.

18. **On page 3 line 51, it states, "The Department is authorized to issue licenses as the means of authorizing licensees to possess and use source material from milling and byproduct materials." Possession and use must be clarified and defined. The State of Wyoming cannot authorize a utilization facility under its Agreement State program.**

Proposed Wyoming Statute § 35-11-2003(a), provides that "[l]icenses issued under this section shall also authorize the possession and use of source materials from recovery or milling and byproduct material as provided in this article." "Byproduct material," "source material," and "recovery or milling" are defined in proposed Wyoming Statute § 35-11-103. Proposed Wyoming Statute § 35-11-103, read as a whole, indicates no intention to assume regulatory authority over utilization facilities.

Furthermore, Section 274(c)(1) of the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2014) provides that "[n]o agreement entered into pursuant to subsection b, shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of - the construction and operation of any production or utilization facility or any uranium enrichment facility." Proposed Wyoming Statutes §§ 35-11-2001(a) and -2003 only authorizes the issuance of licenses in accordance with the Atomic Energy Act of 1954, as amended. Therefore, it is not possible for the Commission to delegate or WYDEQ to assume authority over utilization or enrichment facilities.

19. **On page 4 line 68, the first paragraph contains the phrase, "consistent with the Wyoming Administrative Procedure Act." The state will need to ensure that the Wyoming Administrative Procedures Act is consistent with AEA 274o procedures. If it is not consistent, then this legislation will need to authorize the Wyoming Department of Environmental Quality (the Department) to create rules consistent with 274o.**

Proposed Wyoming Statute § 35-11-2002(b) authorizes WYDEQ to promulgate rules consistent to Section 274(o) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014). Rules and regulations will govern the procedure for issuing licenses, as required by Section 274(o).

20. On page 4 line 80, it states “if the exemption(s) provide adequate protection of public health and safety.” Wyoming needs to include the phrase, “and are compatible with NRC regulations.”

The suggested language has been incorporated into proposed Wyoming Statute § 35-11-2003(c).

21. On page 4 line 86, it states “To facilitate inspections, licensees and proposed licensees shall obtain and grant access to the Department at all reasonable times.” There should be an explicit (rather than implied) repeal of the sampling trespass law.

As previously discussed in response to Comment No. 16, Wyoming Statute § 6-3-414 does not render the program incompatible with the Commission’s requirements as set forth in SA-700, Handbook for Processing an Agreement. Pursuant to proposed Wyoming Statute § 35-11-2003(d) and through licensing conditions, WYDEQ maintains authority to conduct inspections of licensed facilities. Therefore, it is unnecessary to explicitly repeal Wyoming Statute § 6-3-414.

22. On page 5 line 107, it states “The Department is authorized to implement through rulemaking and licensing the enforcement of the requirements of the AEA (42 U.S.C. § 2011 et seq. (2015)) under the agreement reached between the State and NRC for the AEA materials and activities described in W.S. 35-11-2001(a).” This could be stated clearer by including the phrase, “that are assumed by agreement under Section 274 of the AEA,” after the initial reference to the AEA in the sentence above.

Proposed Wyoming Statute § 35-11-2003(a) has been revised for clarity.

23. On page 2 line 13, the phrase, “source material from recovery or milling,” is used. This phrase can be interpreted to mean that Wyoming will be looking to assume authority over all source material. If that is the intent, it should say, “source material as defined in AEA section 11z.” If the intent is to assume authority over the milling and recovery operations that handle source material, then the wording needs to be revised (e.g. The extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, and the possession and transfer of such source material in the recovery or milling process).

Proposed Wyoming Statute § 35-11-2001 provides definitions for “Source Material” and for “Recovery or Milling.” This clearly defines the limited scope of authority that Wyoming is seeking to assume.

24. On page 2 line 13, the phrase, “byproduct material generated under section 274,” is used. Byproduct material is not “generated” under section 274. Please revise to state that “byproduct material included under section 274.”

The definition of “Byproduct material” has been revised to eliminate the use of the word “generate” in this context.

25. On page 3 line 9, the phrases, “source material from recovery or milling”, and “byproduct material generated,” are used. See comments 23 and 24.

Please see the responses to Comments 23 and 24.

26. On page 4 line 17, it states, “The director shall grant an exemption from a license requirement, including an exemption from the requirement to obtain a license, if the exemption provides adequate protection of public health and safety.” This language is too broad and could lead to incompatible exemptions. The exemption authority should be no broader than the NRC exemption criteria – particularly for exemptions that are non-discretionary.

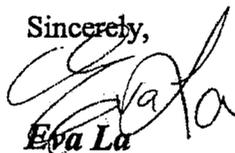
Proposed Wyoming Statute § 35-11-2003(c) has been revised to state “[t]he director shall grant an exemption . . . if the exemption provides adequate protection of public health and safety and is compatible with [Commission] requirements.”

27. On page 5 line 5, it states, “Licensees, permittees, and applicants for a license or permit shall obtain and grant the department access to inspect their mining operations, source material recovery or milling operations and the byproduct material generated at such times and frequencies as determined necessary by the department to protect public health and safety.” This language implies that a positive determination is necessary from the Department. It could be interpreted to limit the Department’s ability to conduct routine or unannounced inspections. This phrase needs to be rephrased to state, “Licensees, permittees, and applicants for a license or permit shall obtain and grant the Department access to inspect their mining operations, source material recovery or milling operations and the byproduct material generated at such times and frequencies as conducted by the Department to protect public health and safety.”

Proposed Wyoming Statute § 35-11-2003(d) authorizes WYDEQ to conduct inspections when necessary to protect public health and safety. In addition to this statute, licensing conditions will be imposed to further allow for inspections. It is our position that this language could not be interpreted to limit WYDEQ’s ability to conduct inspections.

We appreciate the opportunity to address the Commission's comments and welcome any additional questions or comments. Please feel free to contact me or Ryan Schierman, Program Manager, by telephone (307-777-7757) or email (Ryan.Schierman@wyo.gov).

Sincerely,



Eva La

Assistant Attorney General
Wyoming's Attorney General's Office
Water and Natural Resources Division
123 State Capitol
Cheyenne, WY 82002
(307) 777-7376
Eva.La@wyo.gov

cc: Stephen Poy
Michelle Beardsley
Chris Einberg
Duncan White
Todd Parfitt
Kyle Wendtland
Ryan Schierman

EXHIBIT B

West's Wyoming Statutes Annotated
Title 16. City, County, State and Local Powers (Refs & Annos)
Chapter 3. Administrative Procedure (Refs & Annos)

W.S.1977 § 16-3-101

§ 16-3-101. Short title; definitions

Currentness

(a) This act may be cited as the "Wyoming Administrative Procedure Act".

(b) As used in this act:

(i) "Agency" means any authority, bureau, board, commission, department, division, officer or employee of the state, a county, city or town or other political subdivision of the state, except the governing body of a city or town, the state legislature, the University of Wyoming and the judiciary;

(ii) "Contested case" means a proceeding including but not restricted to ratemaking, price fixing and licensing, in which legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing but excludes designations under W.S. 9-2-1022(h)(i);

(iii) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but it does not include a license required solely for revenue purposes;

(iv) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license;

(v) "Local agency" means any agency with responsibilities limited to less than statewide jurisdiction, except the governing body of a city or town;

(vi) "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party;

(vii) "Person" means any individual, partnership, corporation, association, municipality, governmental subdivision or public or private organization of any character other than an agency;

(viii) "Registrar of rules" for state agency rules means the secretary of state. "Registrar of rules" for local agency rules means the county clerk of the county in which the rule is to be effective;

(ix) "Rule" means each agency statement of general applicability that implements, interprets and prescribes law, policy or ordinances of cities and towns, or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(A) Statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or

(B) Rulings issued pursuant to W.S. 16-3-106; or

(C) Intraagency memoranda; or

(D) Agency decisions and findings in contested cases; or

(E) Rules concerning the use of public roads or facilities which are indicated to the public by means of signs and signals; or

(F) Ordinances of cities and towns; or

(G) Designations under W.S. 9-2-1022(h)(i); or

(H) A general permit.

(x) "State agency" means any agency with statewide responsibilities;

(xi) "General permit" means a permit issued by the department of environmental quality which authorizes a category or categories of discharges or emissions;

(xii) "Internet" means as defined in W.S. 9-2-1035(a)(iii);

(xiii) "This act" means W.S. 16-3-101 through 16-3-115.

Credits

Laws 1965, ch. 108, § 1; Laws 1977, ch. 107, § 1; Laws 1979, ch. 154, § 1; Laws 1982, ch. 16, § 1; Laws 1982, ch. 62, § 3; Laws 1993, ch. 80, § 1; Laws 1997, ch. 83, § 1, eff. Feb. 20, 1997; Laws 2004, ch. 130, § 1, eff. March 19, 2004; Laws 2012, ch. 109, § 1, eff. March 23, 2012; Laws 2014, ch. 62, § 1, eff. July 1, 2014.

Codifications: W.S. 1957, § 9-276.19; W.S. 1977, § 9-4-101.

W. S. 1977 § 16-3-101, WY ST § 16-3-101

Current through the 2015 General Session

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

West's Wyoming Statutes Annotated
Title 16 - City, County, State and Local Powers (Refs & Annos)
Chapter 3. Administrative Procedure (Refs & Annos)

W.S.1977 § 16-3-102

§ 16-3-102. General rulemaking requirements; assistance and authority of attorney general

Currentness

(a) In addition to other rulemaking requirements imposed by law, each agency shall:

(i) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available in connection with contested cases;

(ii) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted or used by the agency in the discharge of its functions;

(iii) Make available for public inspection all final orders, decisions and opinions.

(b) No agency rule, order or decision is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been filed with the registrar of rules and made available for public inspection as required by this act. This subsection does not apply to orders or decisions in favor of any person or party with actual knowledge of the rule, order or decision.

(c) In formulating rules of practice as required by this section, each agency may request the assistance of the attorney general and upon request the attorney general shall assist the agency or agencies in the preparation of rules of practice.

(d) The office of administrative hearings shall adopt uniform rules for the use of state agencies setting forth the nature and requirements of all formal and informal procedures available in connection with contested cases.

(e) The attorney general may repeal administrative rules of a state agency in accordance with this act if the rules have become obsolete and no other existing agency has authority to repeal the rules.

Credits

Laws 1965, ch. 108, § 2; Laws 1977, ch. 190, § 2; Laws 1982, ch. 16, § 1; Laws 1982, ch. 62, § 3; Laws 2014, ch. 109, § 1, eff. July 1, 2014.

Codifications: W.S. 1957, § 9-276.20; W.S. 1977, § 9-4-102.

W. S. 1977 § 16-3-102, WY ST § 16-3-102

Current through the 2015 General Session

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

West's Wyoming Statutes Annotated
Title 16. City, County, State and Local Powers (Refs & Annos)
Chapter 3. Administrative Procedure (Refs & Annos)

W.S.1977 § 16-3-103

§ 16-3-103. Adoption, amendment and repeal of rules; notice; hearing;
emergency rules; proceedings to contest; review and approval by governor

Currentness

(a) Prior to an agency's adoption, amendment or repeal of all rules other than interpretative rules or statements of general policy, the agency shall:

(i) Give at least forty-five (45) days notice of its intended action. Notice shall be mailed to all persons making timely requests of the agency for advanced notice of its rulemaking proceedings and to the attorney general, the secretary of state's office as registrar of rules, and the legislative service office if a state agency. The agency shall submit a copy of the proposed rules, in a format conforming to any requirements prescribed pursuant to subsection (f) of this section, with the notice given to the legislative service office. The notice shall include:

(A) The time when, the place where and the manner in which interested persons may present their views on the intended action;

(B) A statement of the terms and substance of the proposed rule or a description of the subjects and issues involved;

(C) If an amendment or a repeal, the citation to the agency rule to be amended or repealed;

(D) If new rules, a statement that they are new rules and a citation of the statute which authorizes adoption of the rules;

(E) The place where an interested person may obtain a copy of the proposed rules in a format conforming to any requirements prescribed pursuant to subsection (f) of this section;

(F) If the agency asserts that all or a portion of a rule is proposed to be adopted, amended or repealed in order for the state to comply with federal law or regulatory requirements:

(I) A statement that the adoption, amendment or repeal of the rule is required by federal law or regulation together with citations to the applicable federal law or regulation; and

(II) A statement whether the proposed rule change meets minimum federal requirements or whether the proposed rule change exceeds minimum federal requirements.

(G) A statement whether the proposed rule change meets minimum substantive state statutory requirements or whether the proposed rule change exceeds minimum substantive state statutory requirements. If the rule change exceeds minimum substantive state statutory requirements, the agency shall include a statement explaining the reason why the rule exceeds minimum substantive statutory requirements;

(H) A statement that the agency has complied with the requirements of W.S. 9-5-304 and the location where an interested person may obtain a copy of the assessment used to evaluate the proposed rule pursuant to W.S. 9-5-304.

(J) A concise statement of the principal reasons for adoption of the rule. In compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979), the statement shall include a brief explanation of the substance or terms of the rule and the basis and purpose of the rule;

(K) If a state agency is proposing a rule that differs from the uniform rules listed in subsection (j) of this section, a statement of the reasons for varying from the uniform rules.

(ii) Afford all interested persons reasonable opportunity to submit data, views or arguments, orally or in writing, provided this period shall consist of at least forty-five (45) days from the later of the dates specified under subparagraph (A) of this paragraph, and provided:

(A) In the case of substantive rules, opportunity for oral hearing shall be granted if requested by twenty-five (25) persons, or by a governmental subdivision, or by an association having not less than twenty-five (25) members. No hearing under this subparagraph shall be conducted until at least forty-five (45) days after the later of:

(I) The date notice of intended action is given under paragraph (i) of this subsection; or

(II) The date notice is published if publication is required by subsection (e) of this section.

(B) The agency shall consider fully all written and oral submissions respecting the proposed rule;

(C) If prior to final adoption any person objects to the accuracy of a statement made by the agency pursuant to W.S. 16-3-103(a)(i)(F)(I) or (II), the agency shall:

(I) Provide the objecting person with a written response explaining and substantiating the agency's position by reference to federal law or regulations; and

(II) Include with the final rules submitted for review to the governor and legislative service office a concise statement of the objection and the agency's response.

(D) Upon adoption of the rule, the agency, if requested to do so by an interested person, either prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for overruling the consideration urged against its adoption.

(iii) Comply with the requirements of W.S. 9-5-304.

(b) When an agency finds that an emergency requires the agency to proceed without notice or opportunity for hearing required by subsection (a) of this section, it may adopt emergency rules. An emergency rule is effective when filed. A state agency emergency rule shall bear the endorsement of the governor's concurrence on the finding of emergency before the registrar of rules accepts the rule for filing. The rule so adopted shall be effective for no longer than one hundred twenty (120) days but the adoption of an identical rule under W.S. 16-3-103(a) or of an emergency rule under this subsection is not precluded. In no case shall identical or substantially similar emergency rules be effective for a total period of more than two hundred forty (240) days. A local agency may proceed with the emergency rule when notice of the emergency is filed with the local registrar of rules.

(c) No rule is valid unless submitted, filed and adopted in substantial compliance with this section. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this section must be commenced within two (2) years from the effective date of the rule.

(d) No state agency rule or any amendment, repeal, modification or revision of the rule may be filed with the registrar of rules unless the rule has been submitted to the governor for review and the governor has approved and signed the rule. Except in the case of emergency rules and rules adopted by the game and fish commission fixing general hunting or fishing regulations, season or bag limits or establishing hunting areas, the governor shall not approve any rule until the date of receipt of the legislative management council's recommendation under W.S. 28-9-106(a) or until forty (40) days after the rule is filed with the legislative service office pursuant to W.S. 28-9-103(b), whichever is sooner. During the process of approving rules, the governor may disapprove any portion of a rule not conforming to paragraphs (d)(i), (ii) or (iii) of this section by clearly indicating the portion of the rule disapproved and the basis for the disapproval. Only those portions of a rule approved by the governor shall be filed with the registrar of rules as provided by W.S. 16-3-104(a). Any portion of a rule disapproved by the governor shall be returned to the agency and shall be null and void and shall not be filed, implemented or enforced. The governor shall report his disapproval of any rule or portion thereof to the management council within fifteen (15) days. The governor shall not approve any rule or any amendment, repeal, modification or revision of the rule unless it:

(i) Is within the scope of the statutory authority delegated to the adopting agency;

(ii) Appears to be within the scope of the legislative purpose of the statutory authority; and

(iii) Has been adopted in compliance with the procedural requirements of this act. For the purposes of this subsection, an "agency" means any authority, bureau, board, commission, department, division, officer or employee of the state, excluding the state legislature and the judiciary.

(e) If a state agency created as a licensing or regulatory board or commission for any profession or occupation regulated under title 33 regularly publishes a newsletter, memorandum or other written or electronic communication which serves as a medium to provide information to members of the regulated profession or occupation, then in addition to the notice requirements of subsection (a) of this section, the agency shall publish within that medium the proposed rules in a format conforming to any

requirements prescribed pursuant to subsection (f) of this section. If the agency determines publication in such manner is not practicable, it shall publish within the chosen medium at least once prior to taking final action to adopt, amend or repeal any rule notice of its intended rulemaking proceedings and make available the full text of all proposed changes in the format conforming to any requirements prescribed pursuant to subsection (f) of this section. This subsection shall not apply to emergency rules adopted pursuant to subsection (b) of this section.

(f) The state registrar of rules shall prescribe a format for state agencies to follow in preparing proposed amendments to existing rules which shall ensure that additions to and deletions from existing language are clearly indicated.

(g) Upon receipt of a notice of intended action from a state agency under paragraph (a)(i) of this section, the secretary of state's office shall maintain a file of these notices and make them available for public inspection during regular business hours. A notice shall remain in the file until the rules are adopted or until the agency determines not to take action to adopt the proposed rules. To the extent that resources enable the office to do so, the secretary of state's office shall make these notices available to the public electronically. The secretary of state may promulgate rules specifying the format of notices submitted by state agencies under this subsection. Compliance with this subsection shall not affect the validity of rules promulgated by state agencies.

(h) An agency may incorporate, by reference in its rules and without publishing the incorporated matter in full, all or any part of a code, standard, rule or regulation that has been adopted by an agency of the United States or of this state, another state or by a nationally recognized organization or association, provided:

(i) The agency determines that incorporation of the full text in agency rules would be cumbersome or inefficient given the length or nature of the rules;

(ii) The reference in the rules of the incorporating agency fully identifies the incorporated matter by location, date and otherwise, and states that the rule does not include any later amendments or editions of the incorporated matter;

(iii) The agency, organization or association originally issuing the incorporated matter makes copies of it readily available to the public;

(iv) The incorporating agency maintains and makes available for public inspection a copy of the incorporated matter at cost from the agency and the rules of the incorporating agency state where the incorporated matter is available on the internet as defined in W.S. 9-2-1035(a)(iii); and

(v) The incorporating agency otherwise complies with all procedural requirements under this act and the rules of the registrar of state agency rules governing the promulgation and filing of agency rules.

(j) Each state agency shall adopt as much of the uniform rules promulgated pursuant to the following provisions as is consistent with the specific and distinct requirements of the agency and state or federal law governing or applicable to the agency:

(i) W.S. 16-3-102(d);

(ii) W.S. 16-4-204(e).

Credits

Laws 1965, ch. 108, § 3; Laws 1977, ch. 190, § 2; Laws 1982, ch. 16, § 1; Laws 1982, ch. 62, § 3; Laws 1985, ch. 57, § 1; Laws 1991, ch. 81, § 1; Laws 1995, ch. 84, § 1, eff. July 1, 1995; Laws 1995, ch. 168, § 1, eff. July 1, 1995; Laws 1997, ch. 62, § 1, eff. July 1, 1997; Laws 1997, ch. 85, § 1, eff. July 1, 1997; Laws 2001, ch. 175, § 1, eff. July 1, 2001; Laws 2003, ch. 139, § 1, eff. March 6, 2003; Laws 2004, ch. 75, § 1, eff. March 5, 2004; Laws 2006, ch. 114, § 1, eff. March 24, 2006; Laws 2007, ch. 215, § 1, eff. March 8, 2007; Laws 2013, ch. 161, § 1, eff. July 1, 2013; Laws 2014, ch. 109, § 1, eff. July 1, 2014; Laws 2015, ch. 131, § 1, eff. March 4, 2015.

Codifications: W.S. 1957, § 9-276.21; W.S. 1977, § 9-4-103.

W. S. 1977 § 16-3-103, WY ST § 16-3-103

Current through the 2015 General Session

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

West's Wyoming Statutes Annotated
Title 16. City, County, State and Local Powers (Refs & Annos)
Chapter 3. Administrative Procedure (Refs & Annos)

W.S.1977 § 16-3-104

§ 16-3-104. Filing of copies of rules; permanent register; effective dates; manner of preparation; advice and assistance of attorney general

Currentness

(a) Each agency shall file in the office of the registrar of rules a certified copy of each rule adopted by it as approved by the governor. State agencies shall file each rule within seventy-five (75) days of the date of agency action adopting the rule or it is not effective. There shall be noted upon the rule a citation of the authority by which it or any part of it was adopted. The registrar of rules shall keep a permanent register of the rules open to public inspection. Not more than ten (10) days after a state agency files a copy of a rule in the office of the registrar of rules, the agency shall mail a notice that the rule has been filed to each person who was sent a notice under W.S. 16-3-103(a)(i). The notice shall contain a citation to the rule and the date it was filed. Failure to send the notice required under this subsection does not affect the effectiveness of the rule.

(b) Each rule and any amendment or repeal adopted after June 1, 1982 is effective after filing in accordance with subsection (a) of this section and W.S. 28-9-108 except:

(i) If a later date is required by statute or specified in the rule, the later date is the effective date;

(ii) Where the agency finds that an emergency exists and the finding is concurred in by the governor, a rule or amendment or repeal may be effective immediately upon filing with the registrar of rules and if a state agency, also with the legislative service office. Existing rules remain in effect unless amended or repealed, subject to this section or W.S. 28-9-105 or 28-9-106.

(c) Rules shall be prepared in the manner and form prescribed by the state registrar of rules. The registrar of rules may refuse to accept for filing any rule that does not conform to the prescribed form.

(d) The attorney general shall furnish advice and assistance to all state agencies in the preparation of their regulations, and in revising, codifying and editing existing or new regulations.

Credits

Laws 1965, ch. 108, § 4; Laws 1977, ch. 190, § 2; Laws 1982, ch. 16, § 1; Laws 1982, ch. 62, § 3; Laws 1985, ch. 57, § 1; Laws 1997, ch. 85, § 1, eff. July 1, 1997; Laws 2003, ch. 139, § 1, eff. March 6, 2003; Laws 2004, ch. 75, § 1, eff. March 5, 2004.

Codifications: W.S. 1957, § 9-276.22; W.S. 1977, § 9-4-104.

W. S. 1977 § 16-3-104, WY ST § 16-3-104

Current through the 2015 General Session

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

West's Wyoming Statutes Annotated
Title 16. City, County, State and Local Powers (Refs & Annos)
Chapter 3. Administrative Procedure (Refs & Annos)

W.S.1977 § 16-3-105

§ 16-3-105. Compilation and indexing of administrative code; charges for copies; authentication by registrar

Currentness

- (a) The registrar of state agency rules shall compile, index and publish a Wyoming administrative code. The code shall:
- (i) Contain each rule adopted by a state agency, but shall not contain emergency rules;
 - (ii) Be compiled, numbered and indexed in a unified manner that permits the code to be easily amended and affords ease of use and accessibility to the public, including strong and effective word search capabilities;
 - (iii) Be available to the public at no charge through the Internet;
 - (iv) Be updated on the Internet as soon as practicable after the effective date of newly filed or amended rules.
- (b) The registrar of state agency rules may make a reasonable charge for any rules published except those furnished to state officers, agencies, members of the legislature or the legislative service office and others in the employment of the state and its political subdivisions requiring the rules in the performance of their duties. The registrar of local agency rules may make a reasonable charge for copies of any rule on file.
- (c) The registrar's authenticated file stamp on a rule or publication of a rule shall raise a rebuttable presumption that the rule was adopted and filed in compliance with all requirements necessary to make it effective.
- (d) The registrar of state agency rules shall maintain and publish a current index of all state agency rules filed with the registrar. The index shall list the effective date of each set of rules or the effective date of each set of amendments to an agency's rules. Copies of the index shall be distributed as provided by W.S. 16-3-105(b).

Credits

Laws 1965, ch. 108, § 5; Laws 1977, ch. 190, § 2; Laws 1982, ch. 16, § 1; Laws 1982, ch. 62, § 3; Laws 1983, ch. 17, § 1; Laws 2014, ch. 62, § 1, eff. July 1, 2014.

Codifications: W.S. 1957, § 9-276.23; W.S. 1977, § 9-4-105.

W. S. 1977 § 16-3-105, WY ST § 16-3-105

Current through the 2015 General Session

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

West's Wyoming Statutes Annotated
Title 16. City, County, State and Local Powers (Refs & Annos)
Chapter 3. Administrative Procedure (Refs & Annos)

W.S.1977 § 16-3-106

§ 16-3-106. Petition for promulgation, amendment or repeal of rules

Currentness

Any interested person may petition an agency requesting the promulgation, amendment or repeal of any rule and may accompany his petition with relevant data, views and arguments. Each agency may prescribe by rule the form of the petition and the procedure for its submission, consideration and disposition. Upon submission of a petition, the agency as soon as practicable either shall deny the petition in writing (stating its reasons for the denials) or initiate rulemaking proceedings in accordance with W.S. 16-3-103. The action of the agency in denying a petition is final and not subject to review.

Credits

Laws 1965, ch. 108, § 6; Laws 1982, ch. 62, § 3.

Codifications: W.S. 1957, § 9-276.24; W.S. 1977, § 9-4-106.

W. S. 1977 § 16-3-106, WY ST § 16-3-106

Current through the 2015 General Session

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.