



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 29, 2024

Kyle Wendtland, Administrator
Wyoming Department of Environmental
Quality
Land Quality Division
200 West 17th Street
Cheyenne, WY 82002

SUBJECT: WYOMING PRELIMINARY PROPOSED REVISIONS TO CHAPTERS 1, 6,
AND 9

Dear Kyle Wendtland:

We have reviewed the Wyoming preliminary proposed regulations in Chapters 1, 6, and 9, received by our office on December 14, 2023. This is the second of three planned submissions to add new rules for the regulation of source material recovered from any mineral resource processed primarily for purposes other than its uranium or thorium content. These regulations were reviewed by comparison to the equivalent U.S. Nuclear Regulatory Commission (NRC) regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) Parts 40 and 71. We discussed our review of the regulations with Brandi O'Brien on February 22, 2024.

As a result of our review, we have 17 comments and 4 editorial suggestions that have been identified in the Enclosure 1. Under our current procedure, a finding that the Wyoming regulations meet the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final Wyoming regulations. However, we have determined that if your proposed regulations were adopted, incorporating our comments and without other significant change, they would meet the compatibility and health and safety categories established in the Office of Nuclear Material Safety and Safeguards (NMSS) Procedure SA-200, "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements."

We request that when the proposed regulations are adopted and published as final regulations, a copy of the "as published" regulations be provided to us for review. As requested in NMSS Procedure SA-201, "Review of State Regulatory Requirements," please highlight the final changes and provide a copy to Division of Materials Safety, Security, State, and Tribal Programs, NMSS.

The State Regulation Status (SRS) Data Sheet in Enclosure 2 summarizes our knowledge of the status of other Wyoming regulations, as indicated. Please let us know if you note any inaccuracies or have any comments on the information contained in the SRS Data Sheet. This letter, including the SRS Data Sheet, is posted on: <https://www.nrc.gov/agreement-states>.

If you have any questions regarding the review, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact my staff at AgreementStateRegs.Resource@nrc.gov.

Sincerely,



Signed by Giantelli, Adelaide
on 02/29/24

Adelaide S. Giantelli, Chief
State Agreement and Liaison Programs Branch
Division of Materials Safety, Security, State,
and Tribal Programs
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. Compatibility Comments
2. Wyoming SRS Data Sheet

COMPATIBILITY COMMENTS ON WYOMING PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	Ch 1 Sec 5	20.1003	Part 20	A	<p>Definitions – Background radiation</p> <p>Wyoming needs to amend the definition of “Background radiation.” Specifically, Wyoming needs to add the final sentence that states: <i>“Background radiation”</i> does not include radiation from source, byproduct, or special nuclear materials regulated by the Commission.</p> <p>Wyoming needs to make this change to meet the Compatibility A designation for “Background radiation.”</p>
2	Ch 1 Sec 5	20.1003	Part 20	C	<p>Definitions – Individual monitoring</p> <p>Wyoming needs to revise the definition of “Individual monitoring,” to add an “or” statement.” Specifically, Wyoming needs to revise (bk)(i)(B) to read “survey data, or.”</p> <p>Wyoming needs to make this change to meet the Compatibility C designation for “Individual monitoring.”</p>
3	Ch 1 Sec 5	20.1003	Part 20	B	<p>Definitions – Nationally tracked source</p> <p>Wyoming did not define “nationally tracked source.” Since some source materials (thorium-228 and thorium-229) are radionuclides with nationally tracked source thresholds, Wyoming needs to include this definition.</p> <p>Wyoming needs to add the definition of “Nationally tracked source” to meet the Compatibility B designation for “Individual monitoring.”</p>

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4	Ch 1 Sec 5	20.1003	Part 20	C	<p>Definitions – Person</p> <p>Wyoming should amend its definition of “Person” to make clear that any legal successor, representative, agency, or agency of the listed entities also qualifies as a person under the regulations. Wyoming can address this issue by adding the following language to the definition: “and any legal successor, representative, agent, or agency of the foregoing”.</p> <p>Wyoming needs to make these changes to meet the Compatibility C designation.</p>
5	Ch 1 Sec 6	20.1004	Part 20	A	<p>Units of radiation dose</p> <p>Wyoming has not incorporated 10 CFR 20.1004(c).</p> <p>Wyoming needs to incorporate 10 CFR 20.1004(c) to meet the Compatibility A designation.</p>
6	Chapter 6, Section 2(b)	20.1401		C, except portions of the provision are designated as NRC.*	<p>We recently identified that the Part 20 RSS was not updated to incorporate the changes in compatibility from the "Licenses, Certifications, and Approvals for Nuclear Power Plants" (72 FR 49352) (Aug. 28, 2007) rule, which designated certain portions of 10 CFR 20.1401 as compatibility category NRC. To address this, Wyoming needs to clarify that 10 CFR 20.1401 references to 10 CFR Parts remaining under NRC’s regulatory authority (e.g., 10 CFR Parts 50, 52, 54, 60, 63, and 72) are not incorporated by reference.</p>
7	Ch 1 Sec 9	40.10	Part 40	C	<p>Deliberate misconduct</p> <p>Wyoming needs to make several</p>

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				<p>revisions to the deliberate misconduct requirement.</p> <ol style="list-style-type: none"> 1) In paragraph 9(a)(i), Wyoming states “under this chapter.” However, this requirement is inclusive of all chapters regulating the source materials program. Wyoming needs to replace “under this chapter” with another term such as “under these rules.” 2) In paragraphs 9(a) and 9(b), Wyoming does not include the applicability of “applicants” or “applicant’s contractor or subcontractor” to the requirement. <ul style="list-style-type: none"> • Wyoming needs to revise the first sentence in paragraph 9(a) to read: “a licensee <u>or applicant.</u>” • Wyoming needs to revise the second sentence in paragraph 9(b) to read: “licensees, <u>applicants,</u> and contractors and subcontractors to licensees <u>and applicants.</u>” 3) Wyoming did not incorporate 10 CFR 40.10(b). Wyoming needs to incorporate this requirement and reference their wrongdoing procedures in Chapter 2. Specifically, Wyoming should add a new paragraph [9(b)] that states: “A person who violates paragraph (a)(i) or (a)(ii) of this section may be subject to enforcement action in accordance with the procedures in Chapter 2. 4) Wyoming needs to revise the number of paragraph 9(a)(ii) to be “9(c).” <p>Wyoming needs to make these changes to meet the Compatibility C designation.</p>

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8	Ch 1 Sec 10(b)	40.11	Part 40	B	<p>Persons using source material under certain Department of Energy and Nuclear Regulatory Commission contracts</p> <p>Wyoming needs to revise paragraph 10(b) to ensure it is essentially identical to 10 CFR 40.11 to meet the Compatibility B designation.</p>
9	Ch 1 Sec 10	40.12(a)	Part 40	B	<p>Carriers</p> <p>Unless this is covered in another chapter, Wyoming needs to incorporate the exemption for carriers in 10 CFR 40.12(a) to meet the Compatibility B designation.</p>
10	Ch 1 Sec 10	40.13	Part 40	B	<p>Unimportant quantities of source material</p> <p>Unless this is covered in another chapter, Wyoming needs to incorporate requirements for unimportant quantities of source material in 10 CFR 40.13, with the exclusion of 40.13(c)(5)(iv), to meet the Compatibility B designation.</p>
10	Ch 1 Sec 11	40.61	Part 40	C / H&S	<p>Records</p> <p>Wyoming needs to incorporate the records keeping requirements in 10 CFR 40.61(a),(b),(d),(e), and (f). Unless incorporated in another chapter, Wyoming currently only incorporates the introductory paragraph of 10 CFR 40.61(a).</p> <p>Wyoming needs to add these requirements to meet the Compatibility C and H&S designations.</p>
11	Ch 6 Sec 4(c)	40.36(d)(1)	Part 40	H&S	

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>Financial assurance and recordkeeping for decommissioning</p> <p>Wyoming has not incorporated the requirement in 10 CFR 40.36(d)(1)(ii) that a decommissioning funding plan justify its key assumptions.</p> <p>Additionally, Wyoming has not incorporated the requirement in 10 CFR 40.36(d)(1)(iii) for a decommissioning funding plan to describe the method of assuring funds including a means to adjust cost estimates periodically.</p> <p>Without these requirements Wyoming does not meet the essential objective of 10 CFR 40.36 to ensure that funding is available for timely decommissioning. Specifically, without providing the key assumptions or a means to adjust the decommissioning cost estimate, a licensee may not demonstrate that sufficient funds will be available for timely decommissioning.</p> <p>Wyoming needs to incorporate the requirements in 10 CFR 40.36(d)(1)(ii) and (iii) to meet the H&S designation of 10 CFR 40.36.</p>
12	Ch 6 Sec 6	40.36(d)(2)	Part 40	H&S	<p>Financial assurance and recordkeeping for decommissioning</p> <p>Wyoming has not incorporated 10 CFR 40.36(d)(2)(i)-(viii) providing the criteria to be submitted with</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>updated decommissioning funding plans.</p> <p>Without these requirements Wyoming does not meet the essential objective of 10 CFR 40.36 to ensure that funding is available for timely decommissioning. Specifically, if an updated decommission plan that does not include all the criteria listed in 10 CFR 40.36(d)(2), a licensee may not demonstrate that sufficient funds will be available for timely decommissioning.</p> <p>Wyoming needs to incorporate the requirements in 10 CFR 40.36(d)(2)(i)-(viii) to meet the H&S designation of 10 CFR 40.36.</p>
13	Ch 6 Sec 7	40.36(f)	Part 40	H&S	<p>Financial assurance and recordkeeping for decommissioning</p> <p>Wyoming has not incorporated 10 CFR 40.36(f)(1)-(3) providing the records important to decommissioning and need to be transferred during a change of control.</p> <p>Without these requirements Wyoming does not meet the essential objective of 10 CFR 40.36 to ensure that funding is available for timely decommissioning. Specifically, retention of these records is necessary to ensure that accurate assumptions are used in ensuring sufficient funds will be available for timely decommissioning and that any changes of control will not impact funding.</p> <p>Wyoming needs to incorporate the requirements in 10 CFR 40.36(f)(1)-</p>

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					(3) to meet the H&S designation of 10 CFR 40.36.
14	Ch. 9, Section 3	The definitions of “certificate holder” and “certificate of compliance (CoC)” in 71.4	Part 71	B	Wyoming must make clear that in the definitions of “certificate holder” and “certificate of compliance (CoC)” in 71.4, reference to the Commission” means the “U.S. Nuclear Regulatory Commission” and not the state.
15	Ch. 9 Sec	71.12	Part 71	D	Wyoming should not incorporate by reference the words “common defense and security” in 71.12. Common defense and security authority under the Atomic Energy Act (AEA) is reserved to the NRC
16	Ch 9 Sec 3	71.85(d)	Part 71	B	<p>Preliminary determinations</p> <p>Wyoming has not incorporated 10 CFR 71.85(d) by reference. Wyoming needs to remove 71.85 from the list of exclusions in Chapter 9 Section 3(b) and replace it with 71.85(a)-(c).</p> <p>Note: 71.85(a)-(c) are Category NRC since these requirements relate to certificate holders, however, 71.85(d) relates to licensees and is therefore Compatibility Category B.</p> <p>Wyoming needs to make this change to meet the Category B designation of 10 CFR 71.85(d).</p>
17	Ch 9 Sec 3	Part 71	NA	NA	<p>10 CFR 71 adoption by reference</p> <p>Wyoming needs to revise Chapter 9 Section 3(d) to “Any references in the federal rules adopted by reference to the United States Nuclear Regulatory Commission (NRC), or any component thereof, shall be deemed to be a reference</p>

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					<p>to the Department and the Source Material Program, except when used in 10 C.F.R. §§ 71.5(b), 71.10, 71.17(c)(3), 71.17(e), 71.85(c), and 71.93(c).”</p> <p>Wyoming needs to delete Chapter 9 Section 3(e) regarding references to NRC Form 3 in 71.9(e)(1) and (2), since Wyoming does not incorporate 71.9 by reference.</p>

EDITORIAL SUGGESTIONS ON WYOMING PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	Ch 1 Sec 5	19.3 and 20.1003 40.4	NA	Various	<p>Definitions</p> <p>Under the definition of “Activity” the term “becquerel” is misspelled.</p> <p>The definition of “ALARA” stands for “as low as <u>is</u> reasonably achievable.”</p> <p>In the equation for committed effective dose equivalent there should be commas between “E” and “50” and between “T” and “50”</p> <p>The definition of “Construction” can be deleted since it is only applicable to uranium mill activities.</p>
2	Ch 1 Sec 5	71	Part 71	Various	<p>Definitions</p> <p>Wyoming includes the following definitions from Part 71 in Chapter 1 Section 5:</p> <ul style="list-style-type: none"> • Low Specific Activity • Natural Thorium • Natural Uranium <p>However, Wyoming also incorporates these definitions by reference in Chapter 9 Section 3(a).</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					It is recommended that Wyoming delete these three definitions from Chapter 1.
3	Chapter 9 Sec 3	71.101(g)	Part 71	C*	<p>Quality assurance requirements</p> <p>Wyoming has incorporated by reference 10 CFR 71.101(g). This requirement relates to radiography devices licensed under 10 CFR 34 and is outside the scope of Wyoming's Agreement. Wyoming needs to add 71.101(g) to the list of requirements excluded in Chapter 9 Section 3(b).</p>
4	Chapter 6, Sec 2(b) and Sec 4(c)(ii)	20.1401-1405	Part 20		Wyoming states "10 CFR <u>Parts</u> 20.1401-1405" in Chapter 6, Sec 2(b) Sec 4(c)(ii). "Part" is not the correct term and should be replaced with "section" to read "10 CFR <u>sections</u> 20.1401-1405."

STATE REGULATION STATUS

State: Wyoming

Tracking Ticket Number: 23-62

Date: February 29, 2024

[Amendment(s) reviewed identified by a * at the beginning of the equivalent NRC requirement.]

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
NA	Wyoming Enabling Legislation Wyoming House Bill HB0027	NA	Proposed ML15225A439 Revised Proposed ML15324A391 Revised Proposed ML17319A925 Revised Proposed ML19004A444 Final Agreement ML18267A261 09/30/2018	Comments 9/28/2015 ML15225A433 Comments 09/26/2016 ML15324A388 Comments 02/28/2018 ML18032A380 No Comments 01/23/2019 ML19004A436	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
NA	Wyoming DEQ Regulations to 10 CFR Part 20 Chapter 1: General Provisions Chapter 3: Radiation Protection Standards	NA	Proposed ML16014A133 Revised Proposed ML16097A348 Final ML17319A925	Comments 03/15/2016 ML16014A131 Comments 10/03/2016 ML16097A339 No Comments 02/18/2018 ML18032A380	
NA	Wyoming DEQ Regulations to 10 CFR Parts 19 and 71 Chapter 1: General Provisions Chapter 5: Notice, Instructions and Reports to Workers Chapter 9: Transportation of Licensed Material Chapter 10: Risk-Informed and Performance Based Licensing and Inspection	NA	Proposed ML16095A093 Final ML17319A925	Comments 07/25/2016 ML16095A091 No Comments 02/18/2018 ML18032A380	
NA	Wyoming DEQ Regulations to 10 CFR Parts 40 and 150 Chapter 1: General Provisions Chapter 4: Licensing Requirements for Source and Byproduct Material Chapter 6: Financial Assurance Chapter 10: General Licenses	NA	Proposed ML16194A168 Final ML17319A925	Comments 10/13/2016 ML16194A048 No Comments 02/18/2018 ML18032A380	
2018-2	Miscellaneous Corrections – Organizational Changes 10 CFR Parts 37, 40, 70 and 71	12/21/2021	ML19030B773	ML19030B770 01/30/2019	This rulemaking does not contain provisions applicable to Wyoming's program.
2018-3	Miscellaneous Corrections Parts 1, 2, 34, 37, 50, 71, 73, and 140	07/30/2022			

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
2019-1	Miscellaneous Corrections Parts 2, 21, 37, 50, 52, 73, and 110	12/18/2022			
2019-2	Organizational Changes and Conforming Amendments Parts 1, 2, 37, 40, 50, 51, 52, 55, 71, 72, 73, 74, 100, 140, and 150	12/30/2022			
2020-1	Individual Monitoring Devices 10 CFR Parts 34, 36, and 39	06/16/2023			
2020-2	Social Security Number Fraud Prevention 10 CFR Parts 9 and 35	08/17/2023			
2020-3	Miscellaneous Corrections 10 CFR Parts 1, 2, 19, 20, 21, 30, 34, 35, 40, 50, 51, 52, 60, 61, 62, 63, 70, 71, 72, 73, 74, 75, 76, 110, and 140	11/16/2023			
2021-1	Miscellaneous Corrections 10 CFR Parts 2, 11, 20, 25, 32, 35, 37, 50, 52, 55, 70, 72, 73, 95, and 110	09/08/2024			
2021-2	Miscellaneous Corrections 10 CFR Parts 9, 37, 40, 50, 51, 52, 55, 71, 73, and 110	12/30/2024			
2022-1	Miscellaneous Corrections 10 CFR 1, 2, 20, 30, 40, 50, 55, 70, 73, and 170	none			Provisions are not required for compatibility.
2022-2	Miscellaneous Corrections 10 CFR Parts 20, 35, 50, 51, 52, 72, 73, 110, and 150	none			Provisions are not required for compatibility.
2023-1	Miscellaneous Corrections 10 CFR PARTS 1, 2, 26, 32, 40, 50, 51, 52, 72, and 73	09/25/2026			

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
NA	Legislation, Articles 15 and 21	NA	ML21194A144	Comments 08/31/2021 ML21194A077	
NA	Proposed Legislation	NA	ML22364A006	No Comments 01/04/2023 ML22364A003	
NA	Final Legislation	NA	ML23059A393	No Comments 03/03/2023 ML23059A385	
NA	Wyoming DEQ Regulations to 10 CFR Parts 19 and 20 Chapter 1: General Provisions Chapter 3: Radiation Protection Standards Chapter 5: Notice, Instructions and Reports to Workers	NA	Proposed ML23290A062	Comments 01/03/2024 ML23285A135	
*NA	Wyoming DEQ Regulations to Part 71 and Misc Chapter 1: General Provisions Chapter 6: Financial Assurance Chapter 9: Transportation of Licensed Material	NA	Proposed ML23355A017	Comments 02/29/2024 ML23355A015	

WYOMING PRELIMINARY PROPOSED REVISIONS TO CHAPTERS 1, 6, AND 9 DATE February 29, 2024

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