

**NRC COMPATIBILITY COMMENTS ON
WYOMING PROPOSED REGULATIONS
AND DEQ RESPONSES**

Group 3 – NRC Comments Rcvd 5-8-24					
Chapter 4					
STATE SECTION	NRC SECTION	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE	
1	Chapter 4 Section 3	NA	NA	<p><i>Incorporation by Reference</i></p> <p><i>There is inconsistency in the language Wyoming uses to incorporate regulations by reference.</i></p> <p><i>Wyoming should revise Chapter 4 Section 3 to be consistent with Chapter 5 which provides more clarity. Additionally, there is conflicting and duplicative language that Wyoming needs to revise. Wyoming could revise Section 3 similar to the following:</i></p> <p style="margin-left: 40px;">(a) <i>The Department fully adopts and hereby incorporates by reference 10 CFR 40.2(a), 40.36(f), 40.51 (except 40.51(b)(6)), 40.54, 40.55, and 40.61 revised as of January 1, 2022. These rules do not include any later amendments or editions of incorporated matter. [Note: see comment 8 regarding 40.36(f)]</i></p> <p style="margin-left: 40px;">(b) <i>Delete</i></p> <p style="margin-left: 40px;">(c) <i>The Department fully adopts and hereby incorporates by</i></p>	<p style="color: red;">Revised (a), with the exception of keeping the exclusion in (b)</p> <p style="color: red;">Refers to Ch 6, where 40.36 is IBR</p>

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STATE SECTION		NRC SECTION	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
				<p><i>reference 10 CFR 150.20 revised as of January 1, 2022. These rules do not include any later amendments or editions of incorporated matter.</i></p> <p><i>(d) Delete</i></p> <p><i>Since Part 20 is already adopted in Chapter 3, Wyoming should not additionally adopt it in Chapter 4.</i></p> <p><i>Wyoming needs to make this change to avoid creating any conflicts, duplication, or gaps in its rules.</i></p>	<p><i>(b) Did not delete, but only kept the exclusion of 40.51(b)(6)</i></p> <p><i>Added this language to (c)</i></p> <p><i>Deleted (d)</i></p> <p><i>OK Done.</i></p>
2	Chapter 4 Section 2(b)	40.3	C	<p>License Requirements</p> <p><i>Chapter 4 Section 2 paragraph (b) includes the phrase “or residual radioactive material as defined in Chapter 1, General Provisions.” However, Wyoming has removed the definition for “residual radioactive material” from Chapter 1, as it is not applicable to these regulations.</i></p> <p><i>Wyoming needs to delete the phrase “or residual radioactive material as defined in Chapter 1, General Provisions,” from paragraph (b) to avoid creating any conflict in the regulations.</i></p>	<p><i>Deleted</i></p>

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STATE SECTION	NRC SECTION	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
3 <i>Chapter 4 Section 4</i>	40.10	C	<p><i>Deliberate misconduct</i></p> <p><i>Wyoming has omitted information contained in 10 CFR 40.10 that is needed to meet its Compatibility C designation.</i></p> <ol style="list-style-type: none"> 1. <i>WY needs to revise Ch 4 Section 4(a)(ii) to read “Deliberately submit to the Department, <u>a licensee, an applicant, or a licensee’s or applicant’s contractor or subcontractor...</u>”</i> 2. <i>In Ch 4 Section 4(b) WY needs to reference the WY equivalent to the procedures in 10 CFR part 2, subpart B.</i> 3. <i>WY needs to revise Ch 4 Section 4(c)(ii) to read “...of a licensee, applicant, <u>contractor, _____ or subcontractor...</u>”</i> <p><i>Wyoming also has the deliberate misconduct requirement in Chapter 1 Section 9. To prevent creating conflict and duplication Wyoming needs to delete one of the deliberate misconduct requirements.</i></p>	<p><i>Language added to 4 (a)(ii)</i></p> <p><i>Added reference to Ch 2 (Inspections, Violations, & Penalties) of these rules.</i></p> <p><i>Deleted 4(c), as it is already defined in Chapter 1</i></p> <p><i>Kept deliberate misconduct in Ch 4 but removed the definition.</i></p>

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				<i>Wyoming needs to make these changes to meet the Compatibility C designation of 10 CFR 40.10.</i>	
4	Chapter 4 Section 6(g)	40.11	B	<p>Persons using source material under certain Department of Energy and Nuclear Regulatory Commission contracts</p> <p><i>Wyoming needs to revise paragraph (g) of Chapter 4 Section 6 to be essentially identical to 10 CFR 40.11. Specifically, Wyoming needs to make the following edits:</i></p> <ol style="list-style-type: none"> 1. <i>In the introductory statement replace “81 and 82 of the Act” with “62, 63, 64 of the Act”</i> 2. <i>In subparagraph (g)(i) replace “byproduct material” with “source material”</i> 3. <i>After subparagraph (g)(iii) add the following: “In addition to the foregoing exemptions, and subject to the requirement for licensing of DOE facilities and activities pursuant to section 202 of the Energy</i> 	<p>Replaced</p> <p>Replaced</p> <p>Language added</p>

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				<p><i>Reorganization Act of 1974 or the Uranium Mill Tailings Radiation Control Act of 1980, any prime contractor or subcontractor of the DOE or the Nuclear Regulatory Commission is exempt from the requirements for a license set forth in sections 62, 63, and 64 of the Act and from the regulations in this Chapter to the extent that such prime contractor or subcontractor receives, possesses, uses, transfers or delivers source material under his prime contract or subcontract when the Department determines that the exemption of the prime contractor or subcontractor is authorized by law; and that, under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished</i></p>	

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				<p><i>without undue risk to the public health and safety.”</i></p> <p><i>Wyoming needs to make these changes to meet the Compatibility B designation of 10 CFR 40.11.</i></p>	
5	Chapter 4 Section 6(f)	40.12(a)	B	<p>Carriers</p> <p><i>Wyoming needs to revise paragraph (f) of Chapter 4 Section 6 to reference the correct section of the Atomic Energy Act of 1954, as amended.</i></p> <p><i>Specifically, Wyoming needs to replace “Section 81” with “Section 62.”</i></p> <p><i>Wyoming needs to make this change to meet the Compatibility B designation of 10 CFR 40.12.</i></p>	Replaced
6	None	40.21	C	<p>General license to receive title to source or byproduct material</p> <p><i>Wyoming has not adopted 10 CFR 40.21.</i></p> <p><i>Wyoming needs to include 10 CFR 40.21 in its regulations to meet the Compatibility C designation of 10 CFR 40.21.</i></p>	Added 40.21 to Ch 4, IBR section 3

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STATE SECTION		NRC SECTION	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
7	None	40.22	B/C	<p><i>Small quantities of source material</i></p> <p><i>Wyoming has not adopted 10 CFR 40.22.</i></p> <p><i>Wyoming needs to adopt 10 CFR 40.22 except for paragraph (b)(4). Wyoming needs to adopt these requirements to meet the Compatibility B and C designations of 10 CFR 40.22.</i></p>	<p>Added to Ch 4, IBR section 3(a). Added 40.22(b)(4) to the exclusions in Section 3(b)</p>
8	Chapter 4 Section 3	40.36(f)	H&S	<p><i>Financial assurance and recordkeeping for decommissioning</i></p> <p><i>Wyoming incorporates 10 CFR 40.36(f) by reference in Chapter 4. However, all other portions of 10 CFR 40.36 are adopted in Chapter 6, which is dedicated to financial assurance requirements.</i></p> <p><i>Since Wyoming has a chapter dedicated to financial assurance requirements, all applicable requirements should be included in that chapter, included any requirements incorporated by reference.</i></p> <p><i>Wyoming should move the incorporation by reference of 10 CFR 40.36(f) to Chapter 6 to avoid creating any conflict or gaps in the rules.</i></p>	<p>40.36 IBR previously added to Ch 6 per NRC comment</p>

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STATE SECTION		NRC SECTION	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
9	Chapter 4 Section 8	40.41(a) & (b)	C	<p>Terms and conditions of licenses</p> <p>Wyoming does not adopt 10 CFR 40.41(a) & (b).</p> <p>Wyoming needs to adopt 10 CFR 40.41(a) & (b). Wyoming needs to adopt these requirements to meet the Compatibility designation of 10 CFR 40.41(a) and (b).</p>	Added to Ch. 4, Section 3
10	Chapter 4 Section 17(a)(i)	40.42(g)(1)	H&S	<p>Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas</p> <p>Paragraph (a)(i) of Chapter 4 Section 17, ends with an “or” statement, however, this should be an “and” sentence. Wyoming needs to revise paragraph (a)(i) to “Have not been previously approved by the Department; <u>and</u>”.</p> <p>Wyoming needs to make this change to meet the H&S designation of 10 CFR 40.42(g)(1).</p>	Revised to “and” instead of “or”
11	Chapter 4	40.42(g)(5)	H&S	<p>Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas</p> <p>Wyoming does not adopt 10 CFR 40.42(g)(5). To meet the health and</p>	

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STATE SECTION		NRC SECTION	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
				<p><i>safety designation of 10 CFR 40.42(g)(5), Wyoming needs to add language to Chapter 4 stating that a proposed decommissioning plan will be approved by the Department if the plan demonstrates decommissioning will be completed as soon as practical while adequately protecting the health and safety of workers and the public.</i></p> <p><i>Wyoming needs to make this change to meet the H&S designation of 10 CFR 40.42(g)(5).</i></p>	<p>Added this language to Section 17 Ch. 4</p>
12	Chapter 4 Section 16(i)(iii)	40.42(k)(3)	H&S	<p>Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas</p> <p>Wyoming needs to revise paragraph (i)(iii) of Chapter 4 Section 16 as follows:</p> <ol style="list-style-type: none"> 1. Delete the introductory statement "A radiation survey has been performed which demonstrates that:" 2. Revise subparagraph (A) to read "<u>A radiation survey has been performed which</u> 	<p>Deleted intro statement</p> <p>Revised (A)</p>

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				<p><i>demonstrates that the premises are suitable for release in accordance with the applicable criteria for decommissioning found in 10 CFR Part 20.1401 through 20.1406; or”</i></p> <p><i>Wyoming needs to make this change to meet the H&S designation of 10 CFR 40.42(k).</i></p>	
13	Chapter 4 Section 8(e)	40.46	C	<p><i>Inalienability of licenses</i></p> <p><i>Wyoming does not adopt paragraph (b) of 10 CFR 40.46.</i></p> <p><i>Wyoming needs to amend Chapter 4 Section 8(e) to add language that is at least as restrictive as 10 CFR 40.46(b) providing the information to be included in an application for transfer of a license.</i></p> <p><i>Wyoming needs to make the above change to meet the Compatibility C designation of 10 CFR 40.46.</i></p>	<p>Language from 40.46(b) added to Ch. 4 Sec. 8(e)</p>

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	STATE SECTION	NRC SECTION	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
14	Chapter 4 Section 10(c)	40.60	C	<p>Reporting Requirements</p> <p>Wyoming has included in Chapter 4 Section 10(c)(i)(A) and (B) examples of events requiring immediate reporting. These examples appear to be specific to uranium recovery activities and not rare earths. Wyoming should either:</p> <ol style="list-style-type: none"> 1. Remove the two examples or 2. Modify the examples to remove reference to tailings. <p>Additionally, if Wyoming keeps these examples, the last sentence of Chapter 4 Section 10(c)(i) should be clarified to state that the examples are not an exhaustive list.</p> <p>Wyoming is missing information contained in 10 CFR 40.60(c)(2). Wyoming needs to make the following changes to Chapter 4 Section 10(c)(iii):</p> <ol style="list-style-type: none"> 1. The reference to "Section 10(c)(iii)" in paragraph (c)(iii)(B) needs to be revised to "Sections 10(c)(i) and 10(c)(ii)." 2. In paragraph (c)(iii)(B) needs to delete the statement "as prescribed in Chapter 11 of the 	<p>Removed</p> <p>Did not keep language</p> <p>Revised</p> <p>Deleted and revised.</p>

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STATE SECTION		NRC SECTION	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
				<p>Non-Coal Rules and Regulations” and replace with “within 30 days of the initial report.” Note: Wyoming may opt for a shorter timeframe than 30 days.</p> <p>Wyoming needs to make these changes to meet the Compatibility C designation of 10 CFR 40.60.</p>	
15	Chapter 4 Section 3(a)	40.61	C, D, H&S	<p>Records</p> <p><i>Wyoming incorporates 10 CFR 40.61 by reference in Chapter 4 Section 3(a), however, Wyoming also discusses record requirements in Chapter 1 Section 11. This duplication could create conflict in the requirements. Wyoming should either keep the incorporation by reference or 10 CFR 40.61 in Chapter 4 and delete Chapter 1 Section 11 or remove the incorporation by reference in Chapter 4 and keep the record requirements in Chapter 1 Section 11.</i></p> <p><i>Note – If keeping Chapter 1 Section 11, the section would need to be revised as described in the comments of our letter dated January 3, 2024.</i></p>	<p>Deleted/ removed 40.61 in Chapter 4 and kept Ch 1, Section 11</p> <p>Revised previously from Ch. 1 draft comments</p>

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STATE SECTION		NRC SECTION	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
16	Chapter 4 Section 16	NA	NA	Paragraphs (g) and (h) of Chapter 4 Section 16 contain incomplete language that is duplicative from Section 17. Wyoming should delete paragraphs (g) and (h) to avoid creating duplication and gaps.	Deleted (g) and (h) in Sec. 16
17	Chapter 4	NA	NA	<p>Incorrect references to NRC</p> <p>In several instances Wyoming incorrect references, the NRC in Chapter 4. To correct this, Wyoming should amend Chapter 4 as follow:</p> <ol style="list-style-type: none"> 1. In paragraph (a)(ii) of Section 4 delete “NRC or” 2. In the first line of paragraph (e) of Section 8 delete “the NRC or” 3. In the last line of paragraph (b) of Section 16 revise “NRC regulations” to reference Wyoming’s rules (e.g., “these rules”) <p>In paragraph (i)(iv) of Section 16 replace “NRC” with “Department”</p>	<p>Previously deleted</p> <p>Deleted</p> <p>Revised</p> <p>Replaced</p>

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STATE SECTION		NRC SECTION	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
18	None	Part 61	B/H&S	<p>Part 61</p> <p>Wyoming has not adopted 10 CFR 61.55, 56, and 57. Wyoming needs to adopt these requirements as they are necessary to ensure that waste generators classify and label low level waste appropriately.</p>	<p>Added 61,55, 61.56, and 61.57 to IBR Section 3 of Ch 4.</p>

EDITORIAL SUGGESTIONS ON WYOMING PROPOSED REGULATIONS

Group 3

Chapter 4

STATE SECTION		NRC SECTION	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
1	Chapter 4 Section 5	NA	NA	<p>In paragraph (a) of Chapter 4 Section 5, Wyoming discusses the application fee to be accompanied with an application. It is recommended that Wyoming also include a reference to Chapter 7 of these rules which discusses fees.</p>	<p>Added to paragraph (a)</p>
2	Chapter 4 Section 11	NA	NA	<p>In paragraph (a) of Chapter 4 Section 11, Wyoming sets the term for a license as 10 years. The NRC does not set license terms in regulations but in</p>	

STATE SECTION		NRC SECTION	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
				guidance instead. Since regulations are more difficult to amend, Wyoming may consider deleting this requirement.	Deleted (a) and renumbered subparagraphs
3	Chapter 4 Section 16	NA	NA	In paragraphs (i)(iii)(A) and (j) of Section 16, Wyoming states, "10 CFR Part 20.1401 through 20.1406," however, the correct nomenclature is "10 CFR 20.1201 through 20.1406" and does not include mention of "Part."	Removed "Part" per previous NRC comment.
4	Chapter 4 Section 17(b)	40.42(g)(3)	H&S	To provide clarity, Wyoming should consider adding a reference to which procedures paragraph 17(b) in Chapter 4 Section 17 is referring to. Specifically, Wyoming could state: " <u>Procedures listed in paragraph (a) of this section</u> with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.	Revised

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Chapters 1,6, and 9

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
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>	Revised definition
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>	Revised definition
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-</p>	

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Chapters 1,6, and 9

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
					<p>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>	Added definition
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>	Language added
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>	20.1004(c) is included in IBR in Ch. 3, Section 4

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Chapters 1,6, and 9

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
6	Chapter 6, Section 2(b)	20.1401		C, except portions of the provision are designated as NRC.*	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.	Added clarifying language that these references not IBR
7	Ch 1 Sec 9	40.10	Part 40	C	Deliberate misconduct Wyoming needs to make several revisions to the deliberate misconduct requirement. 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	Revised phrase

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STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
					<p>“applicants” or “applicant’s contractor or subcontractor” to the requirement.</p> <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>” <p>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.</p> <p>4. Wyoming needs to revise the number of paragraph 9(a)(ii) to be “9(c).</p> <p>Wyoming needs to make these changes to meet the Compatibility C designation.</p>	<p>Revised sentence</p> <p>Revised phrases now 9(c)</p> <p>Added paragraph 9(b)</p> <p>Revised 9(a)(ii) to 9(b)</p>

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Chapters 1,6, and 9

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
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>	<p>Paragraph replaced with verbiage from Part 40.11.</p> <p>Kept the introductory paragraph the same</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>	<p>Exemption added under exemptions in Section 10</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>	<p>Exemption added</p>

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Chapters 1,6, and 9

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
11	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>	Added to Chapter 1, Section 11
12	Ch 6 Sec 4(c)	40.36(d)(1)	Part 40	H&S	<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</p>	<p>Added (e) to Section 6</p> <p>Added</p>

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Chapters 1,6, and 9

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
					<p>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>	Added
13	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 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),</p>	Added

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STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
					<p>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>	Added
14	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)-(3) to meet the H&S designation of</p>	Added

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STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
					10 CFR 40.36.	
15	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.	Added clarification to Chapter 9, Section 3(d)
16	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	Put 71.12 in Section 3 (b) exclusions. Exemptions allowances equivalent to 71.12 without reference to “common defense and security” is in Chapter 1 Section 10(a)
17	Ch 9 Sec 3	71.85(d)	Part 71	B	Preliminary determinations Wyoming has not incorporated 10 CFR 71.85(d) by reference. Wyoming needs to remove 71.85 from the list of	Revised/ replaced

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Chapters 1,6, and 9

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
					<p>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>	
18	Ch 9 Sec 3	Part 71	NA	NA	<p>10 CFR 71 adoption by reference 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 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</p>	<p>Revised</p> <p>Deleted. This is already covered under</p>

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STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
				does not incorporate 71.9 by reference.	Chapter 5

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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>	<p>Corrected</p> <p>Corrected</p> <p>Added commas</p> <p>Deleted definition</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 	

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					<p>However, Wyoming also incorporates these definitions by reference in Chapter 9 Section 3(a).</p> <p>It is recommended that Wyoming delete these three definitions from Chapter 1.</p>	Deleted these three definitions
3	Ch 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>	Added
4	Chapter 6, Sec 2(b) and Sec 4(c)(ii)	20.1401-1405	Part 20		<p>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.”</p>	<p>Is actually Sec 4(c)(iii)</p> <p>Replaced “Parts” with “sections”.</p>

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Chapters 2, 3, and 5**

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
1	Chapter 5 Section 3	19.11	Part 19	C, except portions of paragraph (a), and all of paragraphs (b) and (e) are designated as NRC.	<p>Posting of notices to workers</p> <p>Wyoming has incorporated by reference 10 CFR 19.11. However, portions of 19.11 are designated as Category NRC.</p> <p>Wyoming needs to revise Chapter 5 Section 3(b) to add 19.11(b) and (e) to the list of rules excluded from incorporation.</p> <p>Wyoming needs to revise Chapter 5 Section 3(d) to state the requirement for the WY equivalent to the Form 3 as this cannot be incorporated by reference.</p> <p>To reconcile those portions of provisions that address areas reserved to the NRC, Wyoming needs to include a statement to the effect: "Any reference in the federal rules to 10 CFR Parts 50, 52, 54, 60, 63, 72, and 76 are not adopted under the incorporation by reference of 10 CFR Part 19."</p>	<p>Added to exclusions in Ch. 5 Sec 3(b)</p> <p>Added language to Ch 5 Sec 3(d)</p> <p>Statement added to Ch.5</p>
2	Chapter 5 Section 3	19.20	Part 19	D, except portions NRC	<p>Employee Protection</p> <p>Wyoming has incorporated by reference 10 CFR 19.20. However, portions of 19.20 are designated as Category NRC.</p> <p>To reconcile those portions of provisions that address areas reserved to the NRC or not</p>	

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STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
					covered under Wyoming's Agreement, Wyoming needs to include a statement to the effect: "In 10 CFR Part 19, any references to 10 CFR Parts 50, 52, 54, 60, 63, 70, 72, and 76 are not incorporated by reference."	Subpart (e) added to Section 3 with this language
3	Chapter 5 Section 3(a)/ Chapter 2	19.30 19.40	Part 19	D	<p>Violations/Criminal penalties</p> <p>In Chapter 5 Wyoming has incorporated by reference 10 CFR 19.30 "Violations" and 19.40 "Criminal penalties." However, the incorporation of 19.30 and 19.40 creates a conflict with Wyoming Chapter 2 "Inspections, Enforcement, and Penalties."</p> <p>Wyoming needs to revise Chapter 5 Section 3(b) to add 19.30 and 19.40 to the list of rules excluded from incorporation.</p>	Parts were added to Ch 5 exclusions

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	STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
4	Chapter 5 Section 3	19.32	Part 19	D	<p>Discrimination Prohibited</p> <p>Wyoming needs to revise Chapter 5 Section 3 to clearly state that mention of “the Atomic Energy Act of 1954, as amended, or under any title of the Energy Reorganization Act of 1974, as amended” in 10 CFR 19.32 refers to the Atomic Energy Act of 1954, as amended, or under any title of the Energy Reorganization Act of 1974, as amended and not to the Wyoming statute. Alternatively, Wyoming may choose to not incorporate 19.32 by reference.</p>	Language added
5	Chapter 3 Section 4	20.1401 20.1402 20.1403 20.1404 20.1405	Part 20	C	<p>Radiological Criteria for License Termination</p> <p>Wyoming has excluded the requirements in 10 CFR 20.1401, 20.1402, 20.1403, 20.1404, and 20.1405 from incorporation by reference.</p> <p>Wyoming needs to delete 20.1401, 20.1402, 20.1403, 20.1404, and 20.1405 from Chapter 3 Section 4(b) to meet the Compatibility Category C designation assigned to 10 CFR 20.1401, 20.1402, 20.1403, 20.1404, and 20.1405.</p> <p>In addition, to reconcile those portions of provisions that address areas reserved to the NRC or not covered under</p>	These parts were deleted from Ch. 3 Sec 4(b)

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	STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
					Wyoming's Agreement, Wyoming should make clear that when incorporating 10 CFR 20.1401, references to 10 CFR Parts 50, 52, 54, 60, 63, 70, and 72, are not incorporated.	See Section 3 (e), language added
6	Chapter 3 Section 4	NA	Part 20	NRC	<p>Incorporation by reference of 10 CFR Part 20</p> <p>To reconcile those portions of provisions that address areas reserved to the NRC, WY needs to include a statement to the effect: "Any reference in the federal rules to 10 CFR Parts 50, 52, 54, 60, 63, 72, and 76 are not adopted under the incorporation by reference of 10 CFR Part 20."</p>	Section 4(e) was added in order to reconcile portions of provisions that address areas reserved by the NRC
7	Chapter 3 Section 4	20.1406	Part 20	NRC	<p>Minimization of contamination</p> <p>To reconcile those portions of provisions that address areas reserved to the NRC or not covered under Wyoming's Agreement, Wyoming should make clear that when incorporating 10 CFR 20.1406(a), any references to 10 CFR Part 52 are not incorporated by reference.</p> <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 20.2203(d) compatibility NRC.</p>	Language added to Section 4 (g)

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	STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
					This provision should not be incorporated by reference. However, States should inform their regulated entities where to send the reports required under 20.2203(a).	Did not IBR- Wyoming will inform licensees via guidance

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STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
1	N/A	19.3 20.1003 20.1004 20.1005 20.1005	Parts 19 and 20	Various	Definitions Wyoming will be submitting their State Section with definitions in a later to ensure that definitions associated with Parts 19 and 20 are tracked through completion.	Comment is noted.
2	Chapter 5 Section 1 and 2 Chapter 3 Section 1 and 2	19.1 19.2 20.1001 20.1002	Parts 19 and 20	D	Purpose/Scope Recommend Wyoming revise the Purpose and Scope sections to clarify that this Chapter 3 and Chapter 5 are specific to licensees and licensed activities associated with the recovery of mineral resources processed for purposes other than obtaining the source material content.	Clarifying language added to Ch's 3 and 5
3	Chapter 3 Section 4	20.1301(e)	Part 20	D	Dose limits for individual members of the public Recommend that Wyoming not incorporate 10 CFR 20.1301(e) by reference since it is not applicable to the scope of these rules.	Added "and (e)" to 20.1301(c) since it is not applicable to the scope of these rules
4	Chapter 3 Section 4	20.2104	Part 20	D	Determination of prior occupational dose If applicable, Wyoming needs to revise Chapter 5 Section 3 to add a subsection stating, "Any reference in the federal rules adopted by reference to "Form 4" shall be deemed a reference to the Department Form XXX."	Not applicable

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	DEQ RESPONSE
5	Chapter 3 Section 4	Part 20	Part 20	Various	Reports Recommend Wyoming include contact information.	Wyoming has determined not to include this recommendation
6	Chapter 3 Section 4	20.2202(e)	Part 20	D	Notification of Incidents Recommend Wyoming add 10 CFR 20.2202(e) to the list of rules excluded from the incorporation by reference in Chapter 3 Section 4(b) since this requirement is regarding "planned special exposures" which Wyoming has not adopted.	Added 20.2202(e) to exclusions.
7	Chapter 3 Section 4	20.2206	Part 20	D/NRC	Reports of Individuals Monitoring Recommend Wyoming exclude from incorporation by reference the entirety of 10 CFR 20.2206 and not just the subsections designated as category NRC since they would not be applicable to licensed activities covered under Wyoming's Agreement (i.e., requirements specific to possession of material regulated under Parts 30,32,33,34,35,and 61)	Kept 10 CFR 20.2206 in exclusions and removed subparts of 20.2206.