



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

October 13, 2016

Mr. Kyle Wendtland, Administrator  
Wyoming Department of Environmental Quality  
Land Quality Division  
122 W. 25<sup>th</sup> Street  
Herschler 4W  
Cheyenne, WY 82002

Dear Mr. Wendtland:

We have reviewed the proposed revisions to the Wyoming regulations Chapter 1, General Provisions; Chapter 4, Licensing Requirements; Chapter 6, Financial Assurance; and Chapter 10, General Licensing; received by our office on July 8, 2016. 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 (CFR) Parts 40 and 150. We discussed our review of the regulations with Ryan Schierman on October 11, 2016.

As a result of our review, we have nine comments that have been identified in the enclosure. Please note that we have limited our review to regulations required for compatibility and/or health and safety. 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 Material Safety, State, Tribal, and Rulemaking Programs, NMSS.

The State Regulation Status (SRS) Data Sheet summarizes our knowledge of the status of 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 the NMSS State Communication Portal:

<https://scp.nrc.gov/rulemaking.html>.

K. Wendtland

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If you have any questions regarding the comments, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact Michelle Beardsley, State Regulation Review Coordinator, at (267) 884-2305 ([Michelle.Beardsley@nrc.gov](mailto:Michelle.Beardsley@nrc.gov)) or Stephen Poy at (301) 415-7135 ([Stephen.Poy@nrc.gov](mailto:Stephen.Poy@nrc.gov)).

Sincerely,

***/RA Paul Michalak for Pamela Henderson/***

Pamela J. Henderson, Deputy Director  
Division of Material Safety, State, Tribal  
and Rulemaking Programs  
Office of Nuclear Material Safety  
and Safeguards

Enclosure:  
Compatibility Comments

K. Wendtland

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Sincerely,

Pamela J. Henderson, Deputy Director  
Division of Material Safety, State, Tribal  
and Rulemaking Programs  
Office of Nuclear Material Safety  
and Safeguards

Enclosure:  
Compatibility Comments

DISTRIBUTION: SP08  
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**ML16229A259**

**OFFICIAL RECORD COPY**

**Package ML16194A048**

## COMPATIBILITY COMMENTS ON WYOMING PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	Chapter 4, Section 1 (a)	N/A	N/A	N/A	<p><b>Purpose</b></p> <p>Wyoming Chapter 4 in Section 1(a) states, "This Chapter establishes the criteria for issuance and terms of conditions upon which the Department may issue licenses to receive title to, acquire, own, possess, transfer, offer or receive for transport, or deliver any source material from recovery or milling and the created byproduct material."</p> <p>Wyoming needs to replace the phrase:</p> <p>"source material from recovery or milling and the created byproduct material"</p> <p>with the phrase:</p> <p>"source material involved in uranium or thorium recovery or milling, and byproduct material as defined in Section 11e.(2) of the Atomic Energy Act of 1954, 42 U.S.C. § 2014, as amended."</p> <p>Wyoming needs to make the above change in order to be consistent with language that will be in their Agreement and enabling legislation.</p>
2	Chapter 4, Section 2 (a)	N/A	N/A	N/A	<p><b>Scope</b></p> <p>Wyoming Chapter 4 in Section 2(a) states,</p> <p>"This Chapter establishes performance objectives and procedural requirements applicable to any source material recovery or milling operation and to waste</p>

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					<p>systems for byproduct material including specific technical and financial requirements for siting, construction, operating, monitoring, decontamination, reclamation, and ultimate stabilization, as well as requirements for licensee transfer and termination, long-term site monitoring, surveillance, ownership, and ultimate custody of source material milling facilities and byproduct material impoundments.”</p> <p>Wyoming needs to replace the phrase:</p> <p>“source material recovery or milling operation”</p> <p>with the phrase:</p> <p>“operation related to source material involved in uranium or thorium recovery or milling, and byproduct material as defined in Section 11e.(2) of the Atomic Energy Act of 1954, 42 U.S.C. § 2014, as amended.”</p> <p>Wyoming needs to make the above change in order to be consistent with language that will be in their Agreement and enabling legislation.</p>
3	Chapter 4, Section 2 (b)	10 CFR §40.2a	N/A	A	<p><b>Coverage of inactive tailings sites</b></p> <p>Wyoming Chapter 4 does not address licensing of mill operations at sites no longer active if the site is covered by the remedial action program of Title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended.</p> <p>Wyoming needs to include language in their equivalent to §40.2a that addresses the licensing of mill</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>operations at sites no longer active if the site is covered by the remedial action program of Title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended.</p> <p>Wyoming needs to make the above change in order to meet the Compatibility Category A designation assigned to 10 CFR 40.2a.</p>
4	Chapter 4, Section 2 (c)	10 CFR §40.3	N/A	C	<p><b>License requirements</b></p> <p>In Chapter 4, Section 2 (c), Wyoming needs to include the phrase “or residual radioactive material as defined in Chapter 1, General Provisions,” as follows:</p> <p>“A person subject to regulation of the Chapter may not receive title to, acquire, own, possess, transfer, offer or receive for transport, provide for long term care, or deliver or dispose or byproduct material, <b>or residual radioactive material as defined in Chapter 1, General Provisions</b>, or any source material after removal from its place of deposit in nature, unless authorized in a specific license issued by the Department pursuant to this Chapter.”</p> <p>Wyoming needs to make the above change in order to meet the Compatibility Category C designation assigned to 10 CFR 40.3.</p>
5	Chapter 1, Section 5	10 CFR §40.4	N/A	C	<p><b>Definition: Construction</b> Paragraph 1-8, 9i</p> <p>In Chapter 1 Section 5 (ab) (viii), Wyoming needs to replace the phrase, “Procurement of fabrication of components” with the phrase “Procurement or fabrication of</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>components.”</p> <p>Wyoming needs to make the above change in order to meet the Compatibility Category C designation assigned to 10 CFR 40.4.</p>
6	N/A	10 CFR §40.31(i)	N/A	H&S	<p><b>Application for specific licenses</b></p> <p>Wyoming omits equivalent requirements for decommissioning as defined in 10 CFR 40.31 (i).</p> <p>Wyoming needs to submit requirements that meet the essential health and safety objectives in order to meet the Compatibility Category H&amp;S designation assigned to 40.31(i).</p>
7	N/A	10 CFR §40.36(f)	N/A	H&S	<p><b>Financial assurance and recordkeeping for decommissioning</b></p> <p>Wyoming omits equivalent recordkeeping requirements for decommissioning as defined in 10 CFR 40.36 (f).</p> <p>Wyoming needs to submit requirements that meet the essential health and safety objectives in order to meet the Compatibility Category H&amp;S designation assigned to 40.36(f).</p>
8	Chapter 1, General Provisions, Section 5, Definitions	10 CFR 150.3	N/A	A	<p><b>Definitions: Discrete Source</b></p> <p>Wyoming has excluded this definition and considers this definition outside the scope of its agreement.</p> <p>However, accumulated radium as a byproduct of the uranium milling</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>process at a mill may be considered as a discrete source.</p> <p>Wyoming needs to submit the definition of "Discrete Source" in order to meet the Compatibility Category A designation assigned to 10 CFR 150.3.</p>
9	N/A	10 CFR §150.20	N/A	C	<p><b>Recognition of Agreement State licenses</b></p> <p>Wyoming has excluded this regulation and considers this regulation outside the scope of its agreement.</p> <p>Wyoming has provided unique reciprocity requirements in their enabling legislation.</p> <p>Wyoming needs to submit requirements that meet the essential objectives in order to meet the Compatibility Category C designation assigned to 10 CFR 150.20.</p> <p>Wyoming also needs to address its unique reciprocity regulations contained in its enabling legislation.</p>



**STATE REGULATION STATUS****State: Wyoming****Tracking Ticket Number:16-76  
Date: 10/13/2016**

<b>Wyoming Submittal Description</b>	<b>Incoming Letter</b>	<b>Outgoing Package</b>	<b>Notes</b>
Proposed Enabling Legislation Wyoming House Bill HB0027	ML15225A439 8/13/2015	Comments 9/28/2015 ML15225A433	
Revised Proposed Enabling Legislation Proposed Wyoming Statutes 35-11-103 and 35-11-2001 through -2004; Wyoming Statutes 16-3-101 through -106; Wyoming Statutes 6-5-101 through -108, -110, -111, -113, and -118; Wyoming Statutes 9-13-102 through -106, -108, and -109.	ML15324A391 11/19/2015	Comments 09/26/2016 ML15324A388	
Wyoming DEQ Proposed Regulations to 10 CFR Part 20 Chapter 1: General Provisions Chapter 3: Radiation Protection Standards	ML16014A133 1/11/2016	Comments 03/15/2016 ML16014A131	
Wyoming DEQ Proposed 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	ML16095A093 03/29/2016	Comments 07/25/2016 ML16095A091	
Wyoming DEQ Proposed Regulations to 10 CFR Part 20 Chapter 1: General Provisions Chapter 3: Radiation Protection Standards	ML16014A133 01/11/2016  ML16097A348 04/05/2016	Comments 03/15/2016 ML16014A131  Comments 10/04/2016 ML16097A339	

Wyoming Submittal Description	Incoming Letter	Outgoing Package	Notes
*Wyoming DEQ Proposed 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	ML16194A168 07/08/2016	Comments 10/13/2016 ML16194A048	