



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

January 3, 2024

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

SUBJECT: WYOMING PROPOSED REGULATIONS REGARDING RARE EARTH
MATERIALS

Dear Kyle Wendtland:

We have reviewed the Wyoming proposed regulations regarding rare earth materials received by our office on October 11, 2023. This is the first of three planned submissions to add new regulations 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 19 and 20. We discussed our review of the regulations with Brandi O'Brien on November 9, 2023.

As a result of our review, we have six comments and seven 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 the 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 01/03/24

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

SUBJECT: WYOMING PROPOSED REGULATIONS REGARDING RARE EARTH MATERIALS
AND ARE NOT A REVISION TO CURRENT WY REGULATIONS
DATE January 3, 2024

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COMPATIBILITY COMMENTS ON WYOMING PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
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>To reconcile those portions of provisions that address areas reserved to the NRC or not covered under Wyoming’s Agreement, Wyoming needs to include a statement to the effect: “In 10 CFR Part 19, any references to 10 CFR Part 52 are not incorporated by reference.”</p> <p>Since 19.11(e) is Category NRC, Wyoming may consider revising Chapter 5 Section 3(d) to state: “Each licensee shall prominently post the Department’s Source Material Program Form 3.”</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 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.”</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
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>
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>
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>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					In addition, 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 20.1401, references to 10 CFR Parts 50, 52, 54, 60, 63, 70, and 72, are not incorporated.
6	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. 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).</p>

EDITORIAL SUGGESTIONS ON WYOMING PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	N/A	19.3 20.1003 20.1004 20.1005	Parts 19 and 20	Various	Definitions Wyoming will be submitting their State Section with definitions in a later submission. This comment is to ensure that definitions associated with Parts 19 and 20 are tracked through completion.
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.
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.
4	Chapter 3 Section 4	20.2104	Part 20	D	Determination of prior occupational dose If applicable, Wyoming should 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."
5	Chapter 3 Section 4	Part 20	Part 20	Various	Reports Recommend Wyoming provide contact information in Chapter 3 Section 4, for reports made to the Department.

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
6	Chapter 3 Section 4	20.2202(e)	Part 20	D	<p>Notification of Incidents</p> <p>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.</p>
7	Chapter 3 Section 4	20.2206	Part 20	D/NRC	<p>Reports of Individuals Monitoring</p> <p>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).</p>

STATE REGULATION STATUS

State: Wyoming

Tracking Ticket Number: 23-55

Date: January 3, 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	Preliminary proposed revisions to the Wyoming proposed regulations regarding rare earth materials and are not a revision to current WY regulations.	NA	ML23290A062	Comments 01/03/2024 ML23285A135	