



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

August 31, 2021

Mr. David Adams, CHP, Manager  
Uranium Recovery Program  
Wyoming Department of Environmental Quality  
200 West 17<sup>th</sup> Street, Suite 10  
Cheyenne, WY 82002

Dear Mr. Adams:

We have reviewed your email dated July 8, 2021, transmitting the Wyoming Legislation in Article 15, "Radioactive Waste Storage Facilities," and Article 21, "Small Modular Nuclear Reactors."

The Nuclear Regulatory Commission (NRC) regulates the civilian use of radioactive materials to provide reasonable assurance of adequate protection of the public health and safety and to promote the common defense and security and to protect the environment. Section 274 of the Atomic Energy Act of 1954, as amended (AEA), allows the NRC to discontinue, and a state to assume through a Section 274 Agreement and a compatible regulatory program, certain regulatory authorities over materials enumerated in Section 274b. of the AEA.<sup>1</sup> These materials are byproduct material, source material, and special nuclear materials in quantities not sufficient to form a critical mass. Section 274c. of the AEA also requires the NRC to retain authority and responsibility with respect to regulation of the construction and operation of any production or utilization facility; this would include a small modular nuclear reactor. In addition, the NRC has determined that the disposal or storage of high-level radioactive waste requires a license from the Commission (10 CFR § 150.15(a)).

On September 25, 2018, Wyoming entered into a Section 274 Agreement where the NRC discontinued, and Wyoming assumed regulatory authority over byproduct material as defined in Section 11e.(2) of the AEA, and source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities. Wyoming does not have authority under its Section 274 Agreement to regulate disposal and storage of high-level waste or the construction of any production or utilization facility, including a small modular nuclear reactor. Moreover, as explained above, the NRC could not discontinue authority to regulate these activities.

In addition to being outside the scope of the Wyoming Agreement, Articles 15 and 21 of the legislation raise potential preemption concerns because they appear to be motivated by concerns for radiological safety and may present an obstacle to the NRC's regulation of production or utilization facilities, or spent fuel storage facilities, in the State of Wyoming.

---

<sup>1</sup> The AEA can be found in NUREG-0980, Vol. 1, "Nuclear Regulatory Legislation: 113th Congress."

The State Regulation Status (SRS) Data Sheet summarizes our knowledge of the status of other Wyoming regulations, legislation, and legally binding requirements, 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 Office of Nuclear Material Safety and Safeguards Web site: <http://scp.nrc.gov/rulemaking.html>. If you have any questions regarding the review, please contact Michelle Beardsley, State Regulation Review Coordinator ([Michelle.Beardsley@nrc.gov](mailto:Michelle.Beardsley@nrc.gov)).

Sincerely,



Signed by Anderson, Brian  
on 08/31/21

Brian C. Anderson, Chief  
State Agreement and Liaison Programs Branch  
Division of Material Safety, Security, State,  
and Tribal Programs  
Office of Nuclear Material Safety  
and Safeguards

State: Wyoming

**STATE REGULATION STATUS**

Tracking Ticket Number: 21-40  
Date: August 31, 2021

[ # 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			
*NA	Legislation, Articles 15 and 21	NA	ML21194A144	Comments 08/31/2021 ML21194A077	