



SECRETARY

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

September 10, 2018

COMMISSION VOTING RECORD

DECISION ITEM: SECY-18-0082

TITLE: SECTION 274b. AGREEMENT WITH THE STATE OF WYOMING

The Commission acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of September 10, 2018.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in blue ink, appearing to read "Annette L. Vietti-Cook", written over a horizontal line.

Annette L. Vietti-Cook
Secretary of the Commission

Enclosures:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Svinicki
Commissioner Baran
Commissioner Burns
Commissioner Caputo
Commissioner Wright
OGC
EDO
PDR

VOTING SUMMARY – SECY-18-0082

RECORDED VOTES

	<u>APPROVED</u>	<u>DISAPPROVED</u>	<u>ABSTAIN</u>	<u>NOT PARTICIPATING</u>	<u>COMMENTS</u>	<u>DATE</u>
Cmr. Svinicki	X				X	09/06/18
Cmr. Baran	X				X	09/05/18
Cmr. Burns	X					08/30/18
Cmr. Caputo	X				X	08/31/18
Cmr. Wright	X				X	09/06/18

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN SVINICKI
SUBJECT: SECY-18-0082: Section 274b Agreement with the State of Wyoming

Approved XX Disapproved _____ Abstain _____ Not Participating _____

COMMENTS: Below XX Attached XX None _____

I approve the proposed Agreement between the State of Wyoming and the NRC. I also approve publication of the draft *Federal Register* notice, subject to the edits provided by Commissioner Baran in his vote (attached).



SIGNATURE

09/ 6 /18

DATE

Entered on "STARS" Yes No _____

U. S. Nuclear Regulatory Commission [NRC-2018-0104]

State of Wyoming: Discontinuance of Certain Commission Regulatory Authority Within the State; Notice of Agreement Between the NRC and the State of Wyoming

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Agreement between the U.S. Nuclear Regulatory Commission and the State of Wyoming.

SUMMARY: This notice is announcing that on [TBD - signature date], Kristine L. Svinicki, Chairman of the U.S. Nuclear Regulatory Commission (NRC or Commission), and Governor Matthew H. Mead of the State of Wyoming, signed an Agreement as authorized by Section 274b. of the Atomic Energy Act of 1954, as amended (the Act). Under the Agreement the Commission discontinues its regulatory authority, and the State of Wyoming assumes regulatory authority over the management and disposal of byproduct material as defined in Section 11e.(2) of the Act and a subcategory of source material or ores involved in extraction or concentration of uranium or thorium milling in the State. As of the effective date of the Agreement, a person in Wyoming possessing these materials is exempt from certain Commission regulations. The exemptions have been previously published in the *Federal Register (FR)* and are codified in the Commission's regulations at 10 CFR Part 150. The Agreement is published here as required by Section 274e. of the Act.

DATES: The effective date of the Agreement is September 30, 2018.

ADDRESSES: You can access publicly available documents, including public comments related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and purchase copies of public documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly available documents online in the ADAMS Public Document collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search". For problems with ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS Accession numbers for the request for an Agreement by the Governor of Wyoming, including all information and documentation submitted in support of the request, and the NRC staff assessment are: ML16300A294, ML17319A921, ML18094B074, and ML18192B111 (includes final staff assessment).

FOR FURTHER INFORMATION CONTACT: Stephen Poy, Division of Material Safety, Security, State, and Tribal Programs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone (301) 415-7135; e-mail: Stephen.Poy@nrc.gov.

SUPPLEMENTARY INFORMATION: The NRC published the proposed Agreement in the *Federal Register* for comment once each week for 4 consecutive weeks on June 26, 2018 (83 FR 29828), July 3, 2018 (83 FR 31174), July 10, 2018 (83 FR 31981), and July 17, 2018 (83 FR 33257), as required by the Act. The comment period ended on July 26, 2018. The Commission received 11 comment letters and responses—two supporting the Agreement, three opposing the Agreement, and the remaining not stating an opinion or providing statements related to the proposed Agreement. The comments did not alter affect the NRC staff's assessment, which findings that the Wyoming Agreement State program is adequate to

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Baran
SUBJECT: SECY-18-0082: Section 274b Agreement with the State of Wyoming

Approved Disapproved Abstain Not Participating

COMMENTS: Below Attached None

Entered in "STARS"

Yes

No



SIGNATURE

9/5/18

DATE

**Commissioner Baran's Comments on SECY-18-0082,
"Section 274b. Agreement with the State of Wyoming"**

In this paper, the NRC staff recommends approving the proposed NRC Agreement with the State of Wyoming pursuant to Section 274 of the Atomic Energy Act. The proposed Agreement would provide for the state to assume regulatory authority over source material related to milling activities and the management and disposal of 11e.(2) byproduct material.

In reaching its conclusion that Wyoming's proposed program would be compatible with NRC's program and adequate to protect public health and safety, the NRC staff evaluated Wyoming's proposed program against 36 criteria related to radiation protection standards, inspection, enforcement, personnel, administration, and other key aspects of an effective program. I found the staff's evaluation to be thorough and its findings well-reasoned.

During its evaluation, the NRC staff did identify one conflict between Wyoming's statute and the Atomic Energy Act. Specifically, Wyoming's statute currently allows the ownership of a uranium or thorium milling site and the resulting byproduct material to be separated between the state and federal government when a license is terminated, whereas federal law does not permit such bifurcation. To address this misalignment, the Commission's finding of compatibility in the proposed Agreement is contingent on Wyoming revising the incompatible statutory provision by the end of the state's next legislative session in 2019.

Although I appreciate the concerns of the Cheyenne, Arapaho, and Shoshone-Bannock Tribes regarding the potential reduction in tribal consultation, the federal trust responsibility and Section 106 of National Historic Preservation Act do not apply to states. As a result, NRC is not in a position to require the State of Wyoming to assume tribal consultation obligations that apply only to federal agencies.

For these reasons, I approve the proposed Agreement between the State of Wyoming and NRC. I also approve publication of the draft *Federal Register* notice, subject to the attached edits.

U. S. Nuclear Regulatory Commission [NRC-2018-0104]**State of Wyoming: Discontinuance of Certain Commission Regulatory Authority Within the State; Notice of Agreement Between the NRC and the State of Wyoming**

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Agreement between the U.S. Nuclear Regulatory Commission and the State of Wyoming.

SUMMARY: This notice is announcing that on **[TBD - signature date]**, Kristine L. Svinicki, Chairman of the U.S. Nuclear Regulatory Commission (NRC or Commission), and Governor Matthew H. Mead of the State of Wyoming, signed an Agreement as authorized by Section 274b. of the Atomic Energy Act of 1954, as amended (the Act). Under the Agreement the Commission discontinues its regulatory authority, and the State of Wyoming assumes regulatory authority over the management and disposal of byproduct material as defined in Section 11e.(2) of the Act and a subcategory of source material or ores involved in extraction or concentration of uranium or thorium milling in the State. As of the effective date of the Agreement, a person in Wyoming possessing these materials is exempt from certain Commission regulations. The exemptions have been previously published in the *Federal Register (FR)* and are codified in the Commission's regulations at 10 CFR Part 150. The Agreement is published here as required by Section 274e. of the Act.

DATES: The effective date of the Agreement is September 30, 2018.

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Telephone (301) 415-7135; e-mail: Stephen.Poy@nrc.gov.

SUPPLEMENTARY INFORMATION: The NRC published the proposed Agreement in the *Federal Register* for comment once each week for 4 consecutive weeks on June 26, 2018 (83 FR 29828), July 3, 2018 (83 FR 31174), July 10, 2018 (83 FR 31981), and July 17, 2018 (83 FR 33257), as required by the Act. The comment period ended on July 26, 2018. The Commission received 11 comment letters and responses—two supporting the Agreement, three opposing the Agreement, and the remaining not stating an opinion or providing statements related to the proposed Agreement. The comments did not ~~alter affect~~ the NRC staff's ~~assessment, which~~ findings that the Wyoming Agreement State program is adequate to

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Burns
SUBJECT: SECY-18-0082: Section 274b Agreement with the State of Wyoming

Approved X Disapproved _____ Abstain _____ Not Participating _____

COMMENTS: Below _____ Attached _____ None X

Entered in STARS

Yes X
No _____



Signature
30 August 2018

Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER CAPUTO
SUBJECT: SECY-18-0082: Section 274b Agreement with the State of Wyoming

Approved XX Disapproved _____ Abstain _____ Not Participating _____

COMMENTS: Below XX Attached XX None _____

I commend the staff on its thorough and timely evaluation of the Wyoming Agreement State program. The staff's approach was consistent with processes followed in the past, and its findings were well supported. I support the staff's finding that the proposed Wyoming program is compatible with the Commission's program for regulation of like materials and is adequate to protect public health and safety within the State with respect to the materials and uses covered by the proposed Agreement. I therefore approve the proposed Agreement between the State of Wyoming and the NRC pursuant to Section 274 of the Atomic Energy Act.

Entered in STARS

Yes _____

No _____



Signature

Date

8-31-2018

U. S. Nuclear Regulatory Commission [NRC-2018-0104]

State of Wyoming: Discontinuance of Certain Commission Regulatory Authority Within the State; Notice of Agreement Between the NRC and the State of Wyoming

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Agreement between the U.S. Nuclear Regulatory Commission and the State of Wyoming.

SUMMARY: This notice is announcing that on **[TBD - signature date]**, Kristine L. Svinicki, Chairman of the U.S. Nuclear Regulatory Commission (NRC or Commission), and Governor Matthew H. Mead of the State of Wyoming, signed an Agreement as authorized by Section 274b. of the Atomic Energy Act of 1954, as amended (the Act). Under the Agreement the Commission discontinues its regulatory authority, and the State of Wyoming assumes regulatory authority over the management and disposal of byproduct material as defined in Section 11e.(2) of the Act and a subcategory of source material or ores involved in extraction or concentration of uranium or thorium milling in the State. As of the effective date of the Agreement, a person in Wyoming possessing these materials is exempt from certain Commission regulations. The exemptions have been previously published in the *Federal Register (FR)* and are codified in the Commission's regulations at 10 CFR Part 150. The Agreement is published here as required by Section 274e. of the Act.

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protect public health and safety and compatible with the NRC's program. The Wyoming Agreement is consistent with Commission policy and thus meets the criteria for an Agreement with the Commission.

After considering the request for an Agreement by the Governor of Wyoming, the supporting documentation submitted with the request for an Agreement, and its interactions with the staff of the Wyoming Department of Environmental Quality, the NRC staff completed an assessment of the Wyoming program. The agency made a copy of the staff assessment available in the NRC's Public Document Room (PDR) and electronically on NRC's Web site. Based on the staff's assessment, the Commission determined on **[TBD-Date of SRM]**, that the Wyoming program for control of radiation hazards is adequate to protect public health and safety and compatible with the Commission's program. This Agreement is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this _____ day of _____, 2018.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Wright
SUBJECT: SECY-18-0082: Section 274b Agreement with the State of Wyoming

Approved X Disapproved Abstain Not Participating

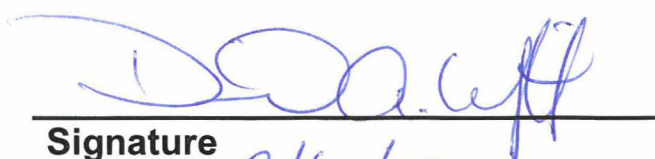
COMMENTS: Below X Attached None

I appreciate the staff's thorough assessment of the proposed Wyoming Agreement State program for the regulation of source material involved in the uranium milling process and the disposal of wastes produced from the process, as well as the staff's analysis of the public comments received in response to the *Federal Register* notices. I find that the proposed Wyoming program is compatible with the Commission's program for the regulation of like materials and that the proposed Wyoming program is adequate to protect public health and safety within the State with respect to the materials and uses covered by the proposed Agreement. Therefore, I approve the proposed Agreement between the State of Wyoming and the NRC pursuant to Section 274 of the Atomic Energy Act of 1954, as amended.

Entered in STARS

Yes ✓

No



Signature

9/6/18

Date