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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 150

[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:** Nuclear Regulatory Commission.

**ACTION:** Final State agreement.

**SUMMARY:** This document is announcing that on September 25, 2018, 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. 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:** Please refer to Docket ID NRC-2018-0104 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Website:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2018-0104. Address questions about dockets in *Regulations.gov* to Jennifer Borges; telephone: 301-287-9127; email: [Jennifer.Borges@nrc.gov](mailto:Jennifer.Borges@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **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 email to [pdr.resource@nrc.gov](mailto: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).

- **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.

**FOR FURTHER INFORMATION CONTACT:** Stephen Poy, 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](mailto: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 the NRC staff's finding that the Wyoming Agreement State program is adequate to 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 the NRC's Web site. Based on the staff's assessment, the Commission determined on September 10, 2018, 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 25th day of September, 2018.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**  
*Secretary of the Commission.*

## ATTACHMENT

AN AGREEMENT BETWEEN THE UNITED STATES NUCLEAR REGULATORY COMMISSION AND THE STATE OF WYOMING FOR THE DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY AND RESPONSIBILITY WITHIN THE STATE PURSUANT TO SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

WHEREAS, The United States Nuclear Regulatory Commission (hereinafter referred to as "the Commission") is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 et seq. (hereinafter referred to as "the Act"), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with

respect to byproduct material as defined in Section 11e.(2) of the Act and source material involved in the extraction or concentration of uranium or thorium in source material or ores at milling facilities; and,

WHEREAS, The Governor of the State of Wyoming is authorized under Wyoming Statute Section 35–11–2001 to enter into this Agreement with the Commission; and,

WHEREAS, The Governor of the State of Wyoming certified on November 14, 2017, that the State of Wyoming (hereinafter referred to as “the State”) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement and that the State desires to assume regulatory responsibility for such materials; and,

WHEREAS, The Commission found on September 10, 2018, that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission’s program for the regulation of such materials and is adequate to protect public health and safety; and,

WHEREAS, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, The Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

WHEREAS, This Agreement is entered into pursuant to the Act; NOW, THEREFORE, It is hereby agreed between the Commission and the Governor of the State of Wyoming acting on behalf of the State as follows:

#### ARTICLE I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters, 7, and 8, and Section 161 of the Act with respect to the following materials:

- A. Byproduct material as defined in Section 11e.(2) of the Act; and,
- B. Source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities

(hereinafter referred to as “source material associated with milling activities”).

#### ARTICLE II

A. This Agreement does not provide for the discontinuance of any authority, and the Commission shall retain authority and responsibility, with respect to:

1. Byproduct material as defined in Section 11e.(1) of the Act;
2. Byproduct material as defined in Section 11e.(3) of the Act;
3. Byproduct material as defined in Section 11e.(4) of the Act;
4. Source material except for source material as defined in Article I.B. of this Agreement;
5. Special nuclear material;
6. The regulation of the land disposal of byproduct, source, or special nuclear material received from other persons, excluding 11e.(2) byproduct material or source material described in Article I.A. and B. of this Agreement;
7. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear material and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;
8. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
9. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
10. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear material waste as defined in the regulations or orders of the Commission;
11. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not to be so disposed without a license from the Commission;
12. The regulation of activities not exempt from Commission regulation as stated in 10 CFR part 150;
13. The regulation of laboratory facilities that are not located at facilities licensed under the authority relinquished under Article I.A. and B. of this Agreement; and,
14. Notwithstanding this Agreement,

the Commission shall retain regulatory authority over the American Nuclear Corporation license (License No. SUA–667; Docket No. 040–04492).

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.
2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as its disposal site for such material. Such reserved authority includes:
  - a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission and with ownership requirements for such material and its disposal site;
  - b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);
  - d. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment;
  - e. The authority to require, in the case of a license for any activity that produces such byproduct material

(which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein and the ability of the licensee to transfer title and custody thereof to the United States or a State;

- f. The authority to require the Secretary of the United States Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety and other actions as the Commission deems necessary; and,
- g. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States.
3. The Commission retains the authority to reject any State request to terminate a license that proposes to bifurcate the ownership of 11e.(2) byproduct material and its disposal site between the State and the Federal government. Upon passage of a revised Wyoming Statute Section 35-11-2004(c) that the NRC finds compatible with Section 83b.(1)(A) of the Act, this paragraph expires and is no longer part of this Agreement.

#### ARTICLE III

With the exception of those activities identified in Article II, A.8 through A.11, this Agreement may be amended, upon application by the State and approval by the Commission to include one or more of the additional activities specified in Article II, A.1 through A.7, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

#### ARTICLE IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant

to a license or an exemption for licensing issued by the Commission.

#### ARTICLE V

This Agreement shall not affect the authority of the Commission under Subsection 161b. or 161i. of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

#### ARTICLE VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations and to provide each other the opportunity for early and substantive contribution to the proposed changes. The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

#### ARTICLE VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which reciprocity will be accorded.

#### ARTICLE VIII

A. The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is

required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act.

1. This Agreement will terminate without further NRC action if the State does not amend Wyoming Statute Section 35-11-2004(c) to be compatible with Section 83b.(1)(A) of the Act by the end of the 2019 Wyoming legislative session. Upon passage of a revised Wyoming Statute Section 35-11-2004(c) that the NRC finds compatible with Section 83b.(1)(A) of the Act, this paragraph expires and is no longer part of the Agreement.
- B. The Commission may also, pursuant to Section 274j. of the Act, temporarily suspend all or part of this Agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act, which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

#### ARTICLE IX

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity that results in production of such material, the State shall comply with the provisions of Section 274o. of the Act, if in such licensing and regulation, the State requires financial surety arrangements for reclamation or long-term surveillance and maintenance of such material.

- A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity that results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and,
- B. Such surety or other financial requirements must be sufficient to

ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.

ARTICLE X

This Agreement shall become effective on September 30, 2018, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Cheyenne, Wyoming, in triplicate, this 25th day of September, 2018.

FOR THE UNITED STATES  
NUCLEAR REGULATORY  
COMMISSION.

/RA/  
Kristine L. Svinicki, Chairman

FOR THE STATE OF WYOMING.

/RA/  
Matthew H. Mead, Governor

[FR Doc. 2018-21229 Filed 9-27-18; 8:45 am]

BILLING CODE 7590-01-P

**SMALL BUSINESS ADMINISTRATION**

**13 CFR Part 125**

**RIN 3245-AG85**

**Ownership and Control of Service-Disabled Veteran-Owned Small Business Concerns**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Small Business Administration (SBA or Agency) is amending its regulations to implement provisions of the National Defense Authorization Act for Fiscal Year 2017 (NDAA 2017). The NDAA 2017 placed the responsibility for issuing regulations relating to ownership and control for the Department of Veterans Affairs verification of Veteran-Owned (VO) and Service-Disabled Veteran-Owned (SDVO) Small Business Concerns (SBCs) with the SBA. Pursuant to NDAA 2017, SBA issues one definition of ownership and control for these concerns, which applies to the Department of Veterans Affairs in its verification and Vets First Contracting Program procurements, and all other government acquisitions which require self-certification. The legislation also provided that in certain circumstances a firm can qualify as VO or SDVO when there is a surviving

spouse or an employee stock ownership plan (ESOP).

**DATES:** This rule is effective October 1, 2018.

**FOR FURTHER INFORMATION CONTACT:** Brenda Fernandez, Office of Policy, Planning and Liaison, 409 Third Street SW, Washington, DC 20416; (202) 205-7337; [brenda.fernandez@sba.gov](mailto:brenda.fernandez@sba.gov).

**SUPPLEMENTARY INFORMATION:**

**Introduction**

The Vets First Contracting Program within the Department of Veterans Affairs (VA) was created under the Veterans Benefits, Health Care, and Information Technology Act of 2006 (Pub. L. 109-461), 38 U.S.C. 501, 513. This contracting program was created for Veteran-Owned Small Businesses and expanded the Service-Disabled Veteran-Owned contracting program for VA procurements. Approved firms are eligible to participate in Veteran-Owned Small Business (VOSB) and Service-Disabled Veteran-Owned Small Business (SDVOSB) set-asides issued by VA. More information regarding the Vets First Contracting Program can be found on the Department of Veterans Affairs website at <https://www.va.gov/osdbu/faqs/109461.asp>.

This rule complies with the directive in the National Defense Authorization Act of 2017 (Pub. L. 114-328), section 1832, to standardize definitions for VOSBs and SDVOSBs between VA and SBA. As required by section 1832, the Secretary of Veterans Affairs will use SBA's regulations to determine ownership and control of VOSBs and SDVOSBs. The Secretary would continue to determine whether individuals are veterans or service-disabled veterans and would be responsible for verification of applicant firms. Challenges to the status of a VOSB or SDVOSB based upon issues of ownership or control would be decided by the administrative judges at the SBA's Office of Hearings and Appeals (OHA).

The VA proposed its companion rule, VA Veteran-Owned Small Business (VOSB) Verification Guidelines (RIN 2900-AP97) on January 10, 2018 (83 FR 1203)(Docket Number: VA-2018-VACO-0004). Their proposed rule sought to remove all references related to ownership and control and to add and clarify certain terms and references that are currently part of the verification process. The NDAA also provides that in certain circumstances a firm can qualify as VOSB or Service-Disabled Veteran Owned Small Business (SDVOSB) when there is a surviving spouse or an employee stock ownership

plan (ESOP). The final VA rule was issued on September 24, 2018 and is effective October 1, 2018. 83 FR 48221.

Similarly, SBA has finalized another related rule on March 30, 2018. SBA Final Rule: Rules of Practice for Protests and Appeals Regarding Eligibility for Inclusion in the U.S. Department of Veterans Affairs Center for Verification and Evaluation Database (83 FR 13626; RIN: 3245-AG87; Docket Number: SBA-2017-0007). This rule, also effective October 1, 2018, amends the rules of practice of SBA's Office of Hearings and Appeals (OHA) to implement procedures for protests of eligibility for inclusion in the Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) database, and procedures for appeals of denials and cancellations of inclusion in the CVE database. OHA added two subparts to 13 CFR part 134: one for protests; the other for appeals. These amendments are issued in accordance with sections 1832 and 1833 of the National Defense Authorization Act for Fiscal Year 2017 (NDAA 2017).

SBA proposed this rule on January 29, 2018 (83 FR 4005; Docket Number: SBA-2018-0001). Sixty-eight comments were received, not all of which were germane to the rulemaking.

SBA received several comments related to this rulemaking as a whole. Two comments were supportive of the rule because the rule would align SBA's and VA's regulations, and would help to define elements previously addressed only outside the regulations through OHA decisions or case-by-case determinations. Six commenters opposed the proposed rule for addressing issues beyond just standardizing SBA's and VA's definitions. As explained in the section-by-section analysis, this rule codifies standards and practices that SBA has applied consistently through determinations and OHA decisions. SBA believes it benefits VOSB and SDVOSBs to have these standards and practices reflected in the regulations.

One commenter stated that SBA and VA should jointly issue regulations. SBA has consulted with VA in order to properly understand VA's positions and implement the statutory requirements in a way that is consistent with both SBA's and VA's interpretations. SBA and VA will each issue regulations effective on October 1, 2018, which will have the effect of creating a single ownership and control rule for both agencies.