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September 20, 2001

Mr. Frederick C. Combs  
Deputy Director  
Office of State and Tribal Programs  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Dear Mr. Combs:

Enclosed is a copy of the proposed new Wisconsin radiological health rule entitled Wisconsin Administrative Code, Chapter HFS 157, Radiation Protection for your review and comment. This rule will replace the existing state radiation protection rule, Chapter HSS 157 Radiation Protection, last updated in 1982. The proposed HFS 157 is scheduled to be available for public comment on October 1, 2001 with a request for comments by November 30, 2001. We have also scheduled three public hearings in Madison, Wausau and Waukesha, Wisconsin on October 26, November 2 and November 6, respectively. We request NRC's written comments on the proposed HFS 157 by November 30, 2001.

HFS 157 is based upon the Suggested State Regulations for the Control of Radiation (SSRCR), developed and maintained by the Conference of Radiation Control Program Directors (CRCPD). Since the SSRCR may not incorporate all NRC regulations required for purposes of compatibility, we have reviewed current federal regulations in 10 CFR Parts 19, 20, 31, 33-36, 39, 40, 70, 71 and 150 and incorporated additional components of these regulations, required for compatibility, into the proposed HFS 157. The enclosed compatibility chart identifies the federal regulations incorporated into the Wisconsin rule and the corresponding reference in HFS 157.

The following are two issues that we would like NRC to address:

1. We request permission to adopt as much of the proposed revisions to 10 CFR 35 as possible into HFS 157. As you will notice, the proposed HFS 157, Subchapter VI incorporates many of the changes NRC is proposing to 10 CFR 35. We are pursuing this option because a) the revision to 10 CFR 35 contains more performance based, less prescriptive regulations that mesh well with our regulatory philosophy, and b) compatibility requirements for 10 CFR 35 provide for some flexibility in a state rule. Based upon a comparison of the proposed HFS 157, Subchapter VI to the existing 10 CFR 35, we believe Subchapter VI is generally compatible with current NRC regulations. However, we recognize there may be some specific items in Subchapter VI, such as a change from a 65 day half-life (10 CFR 35.92) to a 120 day half-life for decay in storage, that may require modification to meet current NRC compatibility requirements. We request a detailed review of Subchapter VI for this reason. If flexibility in adopting portions of the new 10 CFR 35 into HFS 157 is not possible at this time, we are prepared to make any changes to our rule absolutely needed to meet NRC compatibility requirements. Please specify in your response the specific changes required.

2. Based on NRC experience with license termination, we would appreciate your detailed comments on HFS 157.33 Radiological criteria for license termination. 10 CFR 20.1403 contains the NRC criteria for license termination under restricted conditions. Chapter HFS 157 does not contain any corresponding criteria for license termination under restricted conditions. We feel that establishing criteria in HFS 157 for a license to be terminated under restricted use would subject the state to future, potential liability that can be avoided by omitting this option in state regulation. The proposed language in HFS 157.33 (2) – (3) does provide radiological criteria for unrestricted use (10 CFR 20.1402) and alternate criteria for license termination (10 CFR 20.1404). We feel that the license termination criteria in HFS 157.33 (2) – (3) allows the state to effectively evaluate a license termination request using firm criteria for unrestricted use and on a case by case basis using alternate criteria. Please specify in your response any real or potential negative consequences to the state of this approach.

We believe that adoption of the proposed HFS 157 satisfies the compatibility and health and safety categories established in the Office of State and Tribal Programs (STP) Procedure SA-200, with the possible exception of specific portions of Subchapter VI Medical Use of Radioactive Material. As mentioned earlier, we are prepared to modify HFS 157 in response to NRC comments, if necessary, in order to meet NRC compatibility requirements.

If you have any questions, please feel free to contact me at (608) 267-4792 or [schmips@dhfs.state.wi.us](mailto:schmips@dhfs.state.wi.us) or Cheryl Rogers, Materials Program Supervisor, at (608) 266-8135 or [rogerck@dhfs.state.wi.us](mailto:rogerck@dhfs.state.wi.us).

Sincerely,

Paul Schmidt, Chief  
Radiation Protection Section

cc: Tom Sieger, BEH  
Jim Lynch, NRC Region III

Attachments: Paper copy of HFS 157  
Compatibility chart  
CD containing:  
- HFS 157 in Word  
- HFS 157 in Pdf  
- Transmittal letter  
- Compatibility chart in Word  
- Compatibility chart in Word Perfect