May 11, 2006

Mr. Paul Schmidt, Chief
Radiation Protection Section
Division of Public Health
Department of Health and Family Services
PO Box 2659
Madison, WI 53701-2659

Dear Mr. Schmidt:

We have reviewed the proposed regulations in Wisconsin Administrative Code, Chapter HFS 157 entitled, "Radiation Protection,"received by our office on March 14, 2006. The regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 20, 30, 32, 35, 40, 70, and 71 and the requirements of the six amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with Jason Hunt on May 11, 2006.

As a result of our review, we have 19 comments that have been identified in the enclosure. Please note that we have limited our review to regulations required for compatibility and/or health and safety. Under our current procedure, a finding that the Wisconsin 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 Wisconsin 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 State and Tribal Programs (STP) Procedure SA-200.

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 STP Procedure SA-201, "Review of State Regulatory Requirements," please highlight the final changes and provide a copy to STP.

The SRS Data Sheet summarizes our knowledge of the status of other Wisconsin 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 the STP website: http://www.hsrd.ornl.gov/nrc/rulemaking.htm.

If you have any questions regarding the comments, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact me, or Osiris Siurano at 301-415-2307 or by e-mail at OSP@nrc.gov.

Sincerely,

\RA By K.N. Schneider For

Dennis K. Rathbun, Deputy Director
Office of State and Tribal Programs

Enclosures:
As stated

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Enclosures: As stated

Distribution:
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DATE	4/27/06*		4/27/2006*		5/10/2006*		5/112006*	

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COMPATIBILITY COMMENTS ON WISCONSIN PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	HFS157.03 (57r)	10 CFR 71.4	2004-1	B	**Definition – Certificate of Compliance** Wisconsin's proposed definition of "Certificate of Compliance" includes a reference to subpart I of 10 CFR 71. This subpart is not included in the new NRC amendment. Wisconsin needs to remove subpart I as a reference within this section to meet the Compatibility Category B designation assigned to 10 CFR 71.4.
2	HFS 157.03	10 CFR 71.4	2004-1	B	**Definition – DOT** Wisconsin omits the definition of "DOT" within HFS 157.03. Wisconsin needs to adopt this definition to meet the Compatibility Category B designation assigned to 10 CFR 71.4
3	HFS 157.03 (198)	10 CFR 71.4	2004-1	B	**Definition – Low Specific Activity (LSA)** Wisconsin omits the introductory paragraph which generally defines "Low Specific Activity (LSA)." Wisconsin needs to include the general introductory definition of "Low Specific Activity (LSA)" to meet the Compatibility Category B designation assigned to 10 CFR 71.4.

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
4	HFS 157.03 (210)	10 CFR 35.2	2002-2	B	**Definition of an Authorized Medical Physicist** - HFS 157.03(210) (a) through (c) is identical to 10 CFR 35.961, which requires board certification as an alternative to meet the qualifications for becoming an authorized medical physicist. 10 CFR Part 35.961 is no longer in effect after October 24, 2005, and is being replaced by 10 CFR Part 35.51. Wisconsin needs to delete sections (a) through (c) of HFS 157.03(210) to meet the Compatibility Category B designation assigned to this definition. - Wisconsin has omitted the provision that includes individuals identified as authorized medical physicists in a permit issued by an NRC's master material license broad scope medical use permitee to be recognized as an authorized medical physicist. Wisconsin needs to add a provision that will allow individuals identified as authorized medical physicists in a permit issued by an NRC's master material license broad scope medical use permitee to be recognized as an authorized medical physicist to HFS 157.03(33) to meet the Compatibility Category B designation assigned to this 10 CFR 35.2 definition.

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
5	HFS 157.03 (141) (242) (398)	10 CFR 71.4	2004-1	B	**Definition - Type B Package** Wisconsin adds the phrase "designed to transport greater than a A1 or A2 quantity of radioactive material" to the definition of "Type B package." The definition pertains only to the design specifications of the package. It is not meant to specify its contents. Wisconsin needs to delete the phrase "designed to transport greater than a A1 or A2 quantity of radioactive material" from this definition to meet Compatibility Category B designation assigned to 10 CFR 71.4.
6	157.13(1)(i)	10 CFR 20.1406	1991-3	C	**General Requirements for Issuance of Specific Licenses** In 157.13(1)(i), the phrase "...facility design procedures for..." is incorrect. The State omitted the word "and" between design & procedures. Wisconsin needs to include this text to meet the Compatibility Category C assigned to 10 CFR 20.1406.

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
7	157.53(1)(a)(2)	10 CFR 39.61(a)(4)	N/A	B	**Requirements for Personnel Safety** Wisconsin requires a well logging supervisor to demonstrate understanding of requirements, conditions of appropriate license or certificate of registration, and operating and emergency procedures by successfully completing an oral or written examination. However, oral examinations are not allowed for logging supervisors. Wisconsin needs to eliminate the oral examinations' requirement to meet the Compatibility Category B designation assigned to 10 CFR 39.61.
8	HFS 157.61(7)(b)(2)	10 CFR 35.50	2005-2	B	**Training for Radiation Safety Officer** Wisconsin has omitted the provision that includes individuals identified as radiation safety officers in a permit issued by an NRC's master material licensee as individuals who could supervise and attest training of radiation safety officers seeking recognition as required under 10 CFR 35.50 (b)(1)(ii). Wisconsin needs to add this requirement to HFS 157.61(7)(b)(2) to meet the Compatibility Category B designation assigned to 10 CFR 35.50.

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
9	HFS 157.61(10)(a)	10 CFR 35.57	2005-2	B	**Training for Experienced Radiation Safety Officer, Teletherapy or Medical Physicist, Authorized Medical Physicist, Authorized User, Nuclear Pharmacist, and Authorized Nuclear Pharmacist** Wisconsin has omitted the provision that includes individuals identified as radiation safety officers, teletherapy or medical physicist, authorized medical physicist or nuclear pharmacist in a permit issued by an NRC's master material licensee as individuals who do not need to comply with training requirements of 10 CFR 35.50, 35.51 or 35.55 respectively. Wisconsin needs to add this requirement to HFS 157.61(10)(a) to meet the Compatibility Category B designation assigned to 10 CFR 35.50.

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
10	HFS 157.61(10)(b)	10 CFR 35.57	2005-2	B	**Training for Experienced Radiation Safety Officer, Teletherapy or Medical Physicist, Authorized Medical Physicist, Authorized User, Nuclear Pharmacist, and Authorized Nuclear Pharmacist** Wisconsin has omitted the provision that includes physicians, dentists, or podiatrists identified as authorized users in a permit issued by an NRC's master material licensee as individuals who do not need to comply with training requirements of Subparts D through H of 10 CFR 35.57. Wisconsin needs to add this requirement to HFS 157.61(10)(b) to meet the Compatibility Category B designation assigned to 10 CFR 35.50.
11	HFS 157.61(12)(a)	10 CFR 35.50	2005-2	B	**Training for Radiation Safety Officer** Wisconsin has omitted the requirement that the written attestation certifies that the Radiation Safety Officer has received training in radiation safety, regulatory issues and emergency procedures as required under 10 CFR 35.50(e). Wisconsin needs to adopt this requirement to meet the Compatibility Category B designation assigned to 10 CFR 35.50.

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
12	HFS 157.61(12)(b)	10 CFR 35.51	2002-2	B	**Training for an Authorized Medical Physicist** Wisconsin's reference to sub. (8)(a)1.a. and b (1), is incorrect. The correct reference should be to sub. (8)(a)1.a. and b. However, this correction will not include the requirement that the individual meets the training requirement in 10 CFR 35.51 (c). - Wisconsin does not require that the written attestation certify that the individual has met the training requirements in 10 CFR 35.51(c). Wisconsin will need to relocate the training requirement from the introduction to HFS 157.61 (8) to a subsection within that section and revise HFS 157.61(12)(b) accordingly to require that the written attestation certifies that the individual meets the training requirements to meet the Compatibility Category B designation assigned to 10 CFR 35.51.

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
13	HFS 157.64(5)(c)3	10 CFR 35.392	2002-2	B	**Training for the Oral Administration of Sodium Iodide I-131 Requiring a Written Directive in Quantities Less Than or Equal to 1.22 Gigabecquerels (33 millicuries)** Wisconsin requires a supervising authorized user to have experience in administering the same category of I-131 uses as specified in sub. (4)(b)(2)(g). However, sub (4)(b)(2)(g) encompasses the entire 10 CFR 35.390(b)(1)(ii)(G). Wisconsin needs to exclude §35.390 (b)(1)(ii)(G)(3) and (4) in HFS 157.64(5)(c)3 to meet the Compatibility Category B designation assigned to 10 CFR 35.392.

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
14	HFS 157.72(1)	10 CFR 35.3045	2002-2	C	**Report and Notification of a Medical Event** - Wisconsin has omitted the skin and tissue dose related to reports of medical events involving dose greater than 50% of the expected dose. Wisconsin needs to include the skin and tissue dose in HFS 157.72(1)(a)(3) to meet the Compatibility Category C designation assigned to 10 CFR 35.3045. - In HFS 157.72(1)(h) Wisconsin has omitted a deadline of 15 days for providing a copy of the annotated event report to the referring physician. Wisconsin needs to include the 15 days requirement after the discovery of the event in HFS 157.72(1)(h) to meet the Compatibility Category C designation assigned to 10 CFR 35.3045.

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
15	HFS 157.92 (3)(a)(1)	10 CFR 71.5	2004-1	B	**Transportation of Licensed Material** - Wisconsin omitted the phrase "...who delivers licensed material..." before the phrase "to a carrier..." in the introductory paragraph. - Wisconsin did not include, in the introductory paragraph, a provision that the licensee shall comply with the applicable requirements of DOT regulations in 49 CFR Parts 107, 171 through 180, and 390 through 397, appropriate to the mode of transport. - Wisconsin did not include provisions equivalent to 10 CFR Part 71.5(a)(1)(vii) on Security Plans. Wisconsin needs to include the revisions noted above to meet the Compatibility Category B designation assigned to 10 CFR 71.5. - Wisconsin does not correctly reference the pertinent 49 CFR Parts for marking and labeling. Wisconsin needs to revise HFS 157.92(3) on marking and labeling to read "49 CFR Part 172: subpart D; and Sec. Sec. 172.400 through 172.407 and Sec. Sec. 172.436 through 172.441 of subpart E" to meet the Compatibility Category B designation assigned to 10 CFR 71.5.

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
16	HFS 157.92 (3)(a)(3)	10 CFR 71.89	2004-1	B	**Opening Instructions** Wisconsin did not specify that instructions to the carrier should be made available to the carrier "before" delivery. Wisconsin needs to specify that instructions needed to safely open a package should be sent or otherwise made available to the consignee before delivery of the package to meet the Compatibility Category B designation assigned to 10 CFR 71.89.
17	HFS 157.93 (7)(c)(1)	10 CFR 71.22	2004-1	B	**General License: Fissile Material** Wisconsin's proposed regulation excludes quantities equaling the maximal Type A quantity by requiring these quantities be "less than a Type A quantity..." HFS 157.93(7)(c)(1) should read: "Contain no more than a Type A quantity or radioactive material." Also, Wisconsin states that these quantities refer to "fissile materials." Wisconsin needs to revise HFS 157.93(7)(c)(1) to meet the Compatibility Category B assigned to 10 CFR 71.22.

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
18	HFS 157.93 Table A	10 CFR 71.22	2004-1	B	**General License: Fissile Material** Wisconsin identifies the (Y) variable in table HFS 157.93A as U-235. The (Y) variables in 10 CFR 71.22 table 71-1 is identified as U-233. Wisconsin needs to revise the (Y) variable in the table to read “U-233 (Y)” to meet the Compatibility Category B designation assigned to 10 CFR 71.22.
19	Determina-tion of A_1 and A_2	Appendix A to Part 71	2004-1	B	**Determination of A1 and A2** - In Appendix O, Subsection II, Wisconsin makes reference to values in Table VII for values that may be used without department approval. The correct table is Table VIII. Wisconsin needs to correct this to meet the Compatibility Category B designation assigned to 10 CFR 71. - Wisconsin did not include equivalent provisions for the following 10 CFR Part 71, Appendix A Subsections: II9b), II(c), II(e) and II(f). Wisconsin needs to include equivalent provisions for these 10 CFR Part 71 sections to meet the Compatibility Category B designation assigned to 10 CFR 71.

STATE REGULATION STATUS

State: Wisconsin

Tracking Ticket Number: 6-71, 6-72, 6-89

[6 amendments reviewed identified by a i

Date: May 11, 2006

at the beginning of the equivalent NRC requirement.]

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed / Final (F) Rule / MI
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1	
ASNT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2	
Standards for Protection Against Radiation-Part 20	56 FR 23360; 56 FR 61352; 57 FR 38588; 57 FR 57877; 58 FR 67657; 59 FR 41641; 60 FR 20183; (1/1/94)	1991-3	
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (½7/95)	1992-1	
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions-Parts 30, 35	57 FR 45566; (none)	1992-2	
Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]-Parts 30, 40	58 FR 39628; (10/25/96)	1993-1	
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2	
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3	
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618; (none)	1994-1	
Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2	
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	
Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use-Parts 30, 32, 35	59 FR 61767; 59 FR 65243; 60 FR 322; (1/1/98)	1995-1	
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983; (3/1/98)	1995-3	
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28724; (4/1/99)	1996-1	
One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses-Parts 30, 40, 70	61 FR 1109; (none)	1996-2	
Termination or Transfer of Licensed Activities: Recordkeeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3	
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed / Final (F) Rule / ML
Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State-Part 150	62 FR 1662; (2/27/00)	1997-2	
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4	
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations-Parts 30, 34, 71, 150	62 FR 28947; (6/27/00)	1997-5	
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6	
Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7	
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773; (2/12/01)	1998-1	
Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees-Parts 30, 40, 70	63 FR 29535; (none)	1998-2	
License Term for Medical Use Licenses-Part 35	63 FR 31604; (none)	1998-3	
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34	63 FR 37059; (7/9/01)	1998-4	
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393; (10/26/01)	1998-5	
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1	
Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information-Part 31	64 FR 42269; (none)	1999-2	
Respiratory Protection and Controls to Restrict Internal Exposure-Part 20	64 FR 54543; 64 FR 55524; (2/2/03)	1999-3	
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1	
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2	
Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	
i Revision of the Skin Dose Limit-Part 20	67 FR 1629; (4/5/05)	2002-1	P-N ML06074
i Medical Use of Byproduct Material-Parts 20, 32, 35	67 FR 20249; (10/24/05)	2002-2	P-Y ML06074
i Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1	P-N ML06074
i Compatibility with IAEA Transportation Safety Standards and Other Transportation Safety Amendments - Part 71	69 FR 3697; (10/01/07)	2004-1	P-Y ML06074
i Security Requirements for Portable Gauges Containing Byproduct Material - Part 30	70 FR 2001; (7/11/08)	2005-1	P-N ML06074
i Medical Use of Byproduct Material - Recognition of Specialty Boards - Part 35	70 FR 16336; 71 FR 1926 (4/29/08)	2005-2	P-Y ML06074
Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090)[7]	70 FR 72128; (12/1/05)	2005-3	LC

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed / Final (F) Rule / ML
			ML 05256

1. Or other generic Legally Binding Requirements.
2. (Y/N) Y means “Yes,” there are comments in the review letter that the State needs to address.
   N means “No,” there are no comments in the review letter.
3. Not Required means these regulations are not required for purposes of compatibility.
4. A State need not adopt a specific regulation if the State has no licensees that would be subject to the regulation. See: “Final Policy Statement on Adequacy and Compatibility of Agreement State Programs,” III.1.Time From For Adoption of Compatible State Regulations, p. 6, SECY-95-112, May 3, 1995.
5. ADAMS ML Number.
6. Wisconsin became an Agreement State effective 08/11/03. The State incorporated NRC regulations 08/01/02 and these regulations were found compatible.
7. By letter dated September 2, 2005, from Paul H. Lohaus, Director, Office of State and Tribal Programs, Agreement States were given 90 days to issue legally binding