

August 31, 2006

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

Dear Mr. Schmidt:

By letter dated April 4, 2002, we sent you the results of our review of the proposed changes to the Wisconsin regulations which were submitted to the NRC by letter dated December 30, 2003. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 30, 31, and 32, and the requirements of the General License (GL) amendment identified in the enclosed State Regulation Status (SRS) Data Sheet. The review we conducted omitted a specific review of Sections 10 CFR Parts 31.5 and 31.6. The text of these sections was not revised by the GL amendment, but the compatibility designations were changed from Compatibility Categories C and D respectively, to Category B.

As noted in All Agreement States letter STP-05-072, dated September 28, 2005, NRC staff will continue to review Agreement State GL Device proposed and final rules but will hold in abeyance any determination on those rules and compatibility of those rules, if the Agreement State has the essential elements of the NRC's rule and is more restrictive than the NRC's rule. For Agreement States without a GL Device rule or a GL Device rule less restrictive than the NRC rules, the staff will factor this determination into results of the NRC's review of the State's proposed and final rules and the compatibility findings during Integrated Materials Performance Evaluation Program (IMPEP) reviews.

We discussed our review of the GL Amendment with Cheryl Rogers on August 21, 2006. Although we had only 5 comments for the 2001-1 amendment stated in the April 4, 2002 letter, as a result of our re-review against the Compatibility Category B designation, we have 10 comments that have been identified in the enclosure. Comment 8 indicates that the State's regulation is more restrictive than the NRC's regulation, and there is no corrective action required for this comment at this point. However, Comments 1 to 7 and 9 thru 10 indicate that the State's regulations are less restrictive than the NRC's regulations, and they need to be addressed in the State's future rulemaking process. We request that when a final amended version of Wisconsin regulations is adopted and published in response to our comments, that 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 note that we have limited our review to regulations required for compatibility and/or health and safety. 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.hsrdo.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 Ms. Jennifer Tobin at (301) 415-2328 or by e-mail at JCT1@nrc.gov.

Sincerely,

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

Enclosures:
As stated

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 Ms. Jennifer Tobin at (301) 415-2328 or by e-mail at JCT1@nrc.gov.

Sincerely,

IRA By KNSchneider For

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

Enclosures:
As stated

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COMPATIBILITY COMMENTS ON WISCONSIN FINAL REGULATIONS

	STATE SECTION	NRC SECTION	RATS ID	CATE GORY	SUBJECT and COMMENTS
1	HFS 157.11(2)(b)3 .b.	31.5(c)(2)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Wisconsin does not require testing for leakage, testing of on-off mechanisms, or testing of indicators if a device contains only Krypton. The NRC only excludes Krypton-containing devices from the leak testing requirements.</p> <p>Wisconsin needs to require testing of the on-off mechanism and indicators of Krypton-containing devices to meet the Compatibility Category B designation assigned to 10 CFR 31.5(c)(2).</p>
2	157.11(2)(b)3 .c.	31.5(c)(3)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Wisconsin has omitted the reference to 10 CFR 31.5(c)(2) regarding the devices that are tested for leakage.</p> <p>Wisconsin needs to add the reference to HFS 157.11(2)(b)3.c. to meet the Compatibility Category B designation assigned to 10 CFR 31.5(c)(3).</p>
3	N/A	31.5(c)(7)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Wisconsin has omitted the provision of 10 CFR 31.5(c)(7) regarding the export of the device containing byproduct material. Omitting this provision also caused a missing reference to 10 CFR 31.5(c)(7) in HFS157.11(2)(b)3.</p> <p>Wisconsin needs to adopt the provision and add the equivalent reference to HFS157.11(2)(b)3.g. to meet the Compatibility Category B designation assigned to 10 CFR 31.5(c)(7) and 10 CFR 31.5(c)(8).</p>

	STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
4	HFS 157.11(2)(b)3.h.	10 CFR 31.5(c)(9)(i)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Wisconsin has omitted the serial number of the device and phone number of the responsible individual identified by the transferee.</p> <p>Wisconsin needs to add the two missing elements to HFS 157.11(2)(b)3.h. to meet the Compatibility Category B designation assigned to 10 CFR 31.5(c)(9)(i).</p>
5	157.12(3)	31.5(c)(11)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Wisconsin has omitted the 30 calendar days requirement in 10 CFR 31.5(c)(11) for providing information relating to the general license.</p> <p>Wisconsin needs to add the 30 days requirement to 157.12(3) to meet the Compatibility Category B designation assigned to 10 CFR 31.5(c)(11).</p>
6	N/A	31.5(c)(12)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Wisconsin has omitted the requirement in 10 CFR 31.5(c)(12) regarding the appointment of an individual being responsible for having knowledge of the appropriate regulations. Omitting this requirement cause a missing reference in HFS 157.11(2)(b)3.h., which is equivalent to 10 CFR 31.5(c)(9)(i)(D).</p> <p>Wisconsin needs to add the requirement and the reference to meet the Compatibility Category B designation assigned to 10 CFR 31.5(c)(12).</p>

	STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
7	HFS 157.12 (1), (5)	31.5(c)(13)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Wisconsin has omitted the bankruptcy notification requirement.</p> <p>Wisconsin needs to adopt the requirement to to 157.12 to meet the Compatibility Category B designation assigned to 10 CFR 31.5(c)(13).</p>
8	N/A	31.5(c)(13)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Wisconsin does not exclude the registration requirements for devices used in areas subject to NRC jurisdiction for less that 180 days.</p> <p>Wisconsin's rule has the essential elements of the NRC, but is more restrictive than the NRC's GL rule.</p> <p>As noted in the September 28, 2005 All Agreement States Letter STP-05-072, the determination on this provision will be held in abeyance until such time that the NRC completes its review and response to the Organization of Agreement State petition and State of Florida's request on compatibility changes for the GL rule.</p>
9	N/A	31.5(c)(15)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Wisconsin has omitted the provision of 10 CFR 31.5(c)(15) regarding the devices that are not in use for longer than 2 years.</p> <p>Wisconsin needs to adopt the requirement to meet the Compatibility Category B designation assigned to 10 CFR 31.5(c)(15).</p>

	STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
10	HFS 157.11(2)(b)4	31.5(d)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Wisconsin has omitted the import requirement of 10 CFR 31.5(d) in HFS 157.11(2)(b)4.</p> <p>Wisconsin needs to adopt the requirements to meet the Compatibility Category B designation assigned to 10 CFR 31.5(d).</p>

STATE REGULATION STATUS

State: Wisconsin

Tracking Ticket Number: 6-16

[1 Amendment reviewed identified by a ★
at the beginning of the equivalent NRC requirement.]

Date: August 31, 2006

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁵	NRC Review / Y, N ² / Date / ML # ⁵	Final State Regulation ¹ (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1			08/01/02 ⁶
ASNT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2			08/01/02 ⁶
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			08/01/02 ⁶
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4			08/01/02 ⁶
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1			08/01/02 ⁶
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions- Parts 30, 35	57 FR 45566; (none)	1992-2			08/01/02 ⁶
Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]-Parts 30, 40	58 FR 39628; (10/25/96)	1993-1			08/01/02 ⁶
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2			08/01/02 ⁶
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3			08/01/02 ⁶
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618; (none)	1994-1			08/01/02 ⁶
Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2			Not required ³
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3			08/01/02 ⁶
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			08/01/02 ⁶
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2			08/01/02 ⁶
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983; (3/1/98)	1995-3			08/01/02 ⁶
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4			08/01/02 ⁶
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5			08/01/02 ⁶

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁵	NRC Review / Y, N ² / Date / ML # ⁵	Final State Regulation ¹ (Effective Date)
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6			08/01/02 ⁶
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7			08/01/02 ⁶
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28724; (4/1/99)	1996-1			08/01/02 ⁶
One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses-Parts 30, 40, 70	61 FR 1109; (none)	1996-2			08/01/02 ⁶
Termination or Transfer of Licensed Activities: Recordkeeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3			08/01/02 ⁶
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1			08/01/02 ⁶
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			08/01/02 ⁶
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3			08/01/02 ⁶
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4			08/01/02 ⁶
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			08/01/02 ⁶
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6			08/01/02 ⁶
Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7			08/01/02 ⁶
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773; (2/12/01)	1998-1			08/01/02 ⁶
Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees-Parts 30, 40, 70	63 FR 29535; (none)	1998-2			08/01/02 ⁶
License Term for Medical Use Licenses-Part 35	63 FR 31604; (none)	1998-3			08/01/02 ⁶
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34	63 FR 37059; (7/9/01)	1998-4			08/01/02 ⁶
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393; (10/26/01)	1998-5			08/01/02 ⁶

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁵	NRC Review / Y, N ² / Date / ML # ⁵	Final State Regulation ¹ (Effective Date)
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6			08/01/02 ⁶
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1			08/01/02 ⁶
Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information-Part 31	64 FR 42269; (none)	1999-2			08/01/02 ⁶
Respiratory Protection and Controls to Restrict Internal Exposure-Part 20	64 FR 54543; 64 FR 55524; (2/2/03)	1999-3			08/01/02 ⁶
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1			08/01/02 ⁶
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2			08/01/02 ⁶
★Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	P ⁸ ML012770029	08/31/2006 ML	08/01/02 ⁶
Revision of the Skin Dose Limit-Part 20	67 FR 1629; (4/5/05)	2002-1	P ML060740270	N 05/11/06 ML061310350	08/01/02 ⁶
Medical Use of Byproduct Material-Parts 20, 32, 35	67 FR 20249; (10/24/05)	2002-2	P ML060740270	Y 05/11/06 ML061310350	
Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1	P ML060740270	N 05/11/06 ML061310350	
Compatibility with IAEA Transportation Safety Standards and Other Transportation Safety Amendments - Part 71	69 FR 3697; (10/01/07)	2004-1	P ML060740270	Y 05/11/06 ML061310350	
Security Requirements for Portable Gauges Containing Byproduct Material - Part 30	70 FR 2001; (7/11/08)	2005-1	P ML060740270	N 05/11/06 ML061310350	
Medical Use of Byproduct Material - Recognition of Specialty Boards - Part 35	70 FR 16336; 71 FR 1926 (4/29/08)	2005-2	P ML060740270	Y 05/11/06 ML061310350	
Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) ⁷	70 FR 72128; (12/1/05)	2005-3	LC ML052560315	N 09/14/05 ML052580010	
Minor Amendments - Parts 20, 30, 32, 35, 40, and 70	71 FR 15005 (3/27/09)	2006-1			

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
8. A re-review was completed on this item due to the change in compatibility category of 31.5 and 31.6. More information can be found in the All Agreement States letter STP 05-072.