

**From:** "Paul Schmidt" <SCHMIPS@dhfs.state.wi.us>  
**To:** <mlo1@nrc.gov>  
**Date:** 01/31/2007 11:36:46 AM  
**Subject:** Fwd: Response to letter

Monica: See attached - resend of original e-mail to correct address.  
Thanks.

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**Creation Date** 01/31/2007 11:36:06 AM  
**From:** "Paul Schmidt" <[SCHMIPS@dhfs.state.wi.us](mailto:SCHMIPS@dhfs.state.wi.us)>

**Created By:** [SCHMIPS@dhfs.state.wi.us](mailto:SCHMIPS@dhfs.state.wi.us)

**Recipients**

nrc.gov  
TWGWPO03.HQGWDO01  
MLO1 (Monica Orendi)

**Post Office**

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**ReplyRequested:** No  
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**Security:** Standard

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Jim Doyle  
Governor

Kevin R. Hayden  
Secretary

## State of Wisconsin

### Department of Health and Family Services

DIVISION OF PUBLIC HEALTH

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January 31, 2007

Scott Moore, Deputy Director  
Division of Materials Safety and State Agreements  
Office of Federal and State Materials and Environmental Management Programs  
U. S. Nuclear Regulatory Commission  
11555 Rockville Pike, MS T8F3  
Rockville, MD 20852

Dear Mr. Moore:

This letter is in response to your letter dated January 9, 2007 transmitting 10 comments that were identified during the Nuclear Regulatory Commission's (NRC) review of State of Wisconsin Chapter HFS 157, 'Radiation Protection'. The Department of Health and Family Services agrees with NRC comments 1-7 and will correct HFS 157 during the next scheduled rule revision. However, we disagree with comments 8-10 and suggest further analysis by NRC staff.

Specifically, the Department of Health and Family Services would like to offer the following response on NRC comments 8-10:

#### **Comment #8 -**

*Wisconsin needs to add paragraph (2) in the 10 CFR 35.2 definition to its definition of Radiation Safety Officer to meet the Compatibility Category B designation assigned to this definition in 10 CFR 35.2.*

HFS 157 uses the term "Radiation Safety Officer" [HFS 157.03 (294)] in a generic fashion that applies to both x-ray registrants and materials licensees. In order to address the specific requirements for a medical RSO, we created the term "Radiation Safety Officer for medical use" which can be found in HFS 157.03 (295m). This definition is equivalent to the definition of 'Radiation Safety Officer' (10 CFR 35.2) used in 10 CFR 35. As a result, we believe that HFS 157 'Radiation Protection' meets the Compatibility Category B designation assigned to 10 CFR 35.2.

#### **Comment #9 -**

*Wisconsin needs to change 157.61(10) (a) to remove the phrase "authorized medical physicist" and add 'before October 24, 2002' to meet the Compatibility Category B designation assigned to 10 CFR 35.57(a) (1).*

Chapter HFS 157 uses the terms 'medical physicist' and 'authorized medical physicist'. The definition of "authorized medical physicist" in HFS 157.03 (32m) is equivalent to the same term defined in 10 CFR 35.2 and used in 10 CFR 35.57 (a) (1).

Wisconsin became an Agreement State on August 11, 2003. The phrase 'before October 24, 2002' in 10 CFR 35.57 is relevant in NRC regulations because they have existed both before and after the referenced date. In addition, there were different requirements before and after that date. However, the phrase 'before October 24, 2002' has no relevance to Wisconsin regulations prior to August 11, 2003. Since there were no different requirements "before October 24, 2002", the phrase has thus been removed. In other words, placement of this date in Chapter 157 would require the Department to inappropriately reference a point in time before the state was an Agreement State. In addition, the effective date of Chapter HFS 157 does not need to be reiterated because it is maintained in the 'history' published with each rule section [see history at end of HFS 157.61 (12) for example]. As a result, we believe that Chapter HFS 157 'Radiation Protection' meets the Compatibility Category B designation assigned to 10 CFR 35.57(a) (1).

**Comment #10 -**

*Wisconsin needs to add 10 CFR 35.57(a) (2) to HFS 157.61(10) to meet the Compatibility Category B designation assigned to 10 CFR 35.57.*

The requirements listed in 10 CFR 35.57(a) (1) and 10 CFR 35.57(a) (2) were merged together into HFS 157.61(10). As a result, we believe that Chapter HFS 157 'Radiation Protection' meets the Compatibility Category B designation assigned to 10 CFR 35.57.

In addition to these comments, the Department would also like NRC to add the effective date of November 1, 2006 for Chapter HFS 157 'Radiation Protection' to the Final State Regulation column of the NRC's State Regulation Status for the following NRC Chronology Identifications;

- Medical Use of Byproduct Material - Parts 20, 32, 25 - RATS ID 2002-2
- Financial Assurance for Materials Licensees - Parts 30, 40, 70 - RATS ID 2003-1
- Compatibility with IAEA Transportation Safety Standards and Other Transportation Safety Amendments - Part 71 - RATS ID 2004-1
- Security Requirements for Portable Gauges Containing Byproduct Material - Part 30 - RATS ID 2005-1
- Medical Use of Byproduct Material - Recognition of Specialty Boards - Part 35 - RATS ID 2005-2

The effective date of the 'Increased Controls for Risk-Significant Radioactive Sources for the State of Wisconsin was November 11, 2006.

The Department would also request that NRC update the following items from 'proposed' to 'final' on the NRC's State Regulation Status:

- Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Part 30, 31, 31

- o Medical Use of Byproduct Materials - Part 20, 32, 35

The above requirements were implemented as 'final' when Chapter HFS 157 'Radiation Protection', Subchapters II, VI and VII became effective on August 3, 2003 (30 days after signature by the Governor of the agreement which occurred on July 3, 2003). The final version of Chapter HFS 157 'Radiation Protection' was reviewed before this time by the NRC.

If you have any questions concerning the above comments, please contact Cheryl K. Rogers at (608) 266-8135 or email at [rogerck@dhfs.state.wi.us](mailto:rogerck@dhfs.state.wi.us) or contact myself at (608) 267-2792 or email at [schmips@dhfs.state.wi.us](mailto:schmips@dhfs.state.wi.us)

Sincerely,

Paul S. Schmidt, Chief  
Radiation Protection Section