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Department of Health Services

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Pamela J. Henderson, Deputy Director  
Division Material Safety, State, Tribal,  
and Rulemaking Programs  
Office of Nuclear Material Safety And Safeguards  
U.S. Nuclear Regulatory Commission  
T8-E18  
Washington, D.C. 20555-0001

August 5, 2016

Dear Ms. Henderson:

Enclosed is a copy of the revised legally binding requirements concerning changes to 10 CFR 40 which NRC adopted on August 26, 2013. Changes are highlight by strikethrough in response to comment in the letter date June 27, 2016 (ML16153A311). The legally binding requirements correspond to the following equivalent amendments to NRC's regulations.

RATS-ID	2013-2
Title	Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions, 10 CFR Parts 30, 40, 70, 170, and 171
State Section	License Condition

We believe that adoption of these legally binding requirements satisfies the compatibility and health and safety categories established in the Office of Nuclear Material Safety and Safeguards (NMSS) Procedure SA-200.

If you have any questions, please feel free to contact Mark Paulson of my staff at 608-264-6516 or mark.paulson@wi.gov.

Sincerely,

*Paul Schmidt*  
Paul Schmidt  
Chief, Radiation Protection Section  
State of Wisconsin

Enclosures:  
Proposed License Condition



DIVISION OF PUBLIC HEALTH

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Department of Health Services

[Date]

[Licensee Name]

[Attn: Contact Individual]

[Licensee Address]

[City] , WI [Zip Code]

Dear [Contact Individual]:

On May 29, 2013, the U.S. Nuclear Regulatory Commission published a final Rule (78 FR 32310) amending its regulations concerning the possession and distribution of source material. Agreement States (including Wisconsin) must implement equivalent requirements by August 26, 2016 as a matter of compatibility. The Wisconsin Department of Health Services has initiated rulemaking to incorporate these new requirements in Chapter DHS 157 "Radiation Protection;" however, the update to DHS 157 will not be completed prior to the required compatibility date.

Therefore, in accordance with Wisconsin State Statute ss. 254.31-45 and Chapter DHS 157, your license has been amended to require you to comply with and to expeditiously implement these additional requirements (Enclosure 2). Specifically, **your radioactive material license has been amended to lower the quantity of source material you may distribute to general licensees and to require submission of quarterly distribution reports to regulatory agencies of source material distributions within their jurisdictions.**

The Licensee shall complete implementation of the program established in accordance with Enclosure 2 by **August 26, 2016**. As provided by s. DHS 157.13 (16) (d), you may request a hearing to contest this action. If you wish such a hearing to be convened, we must receive your request to that effect, in writing, within 10 days of receipt of this letter.

The Department may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause. If you have any questions or wish to discuss implementation of the requirements, please contact Mark Paulson, Supervisor Radioactive Materials Program, at (608) 264-6516.

Sincerely,

Paul Schmidt, Chief  
Radiation Protection Section

*Wisconsin.gov*

Enclosures:

1. Legally Binding Requirements
2. Amended License

Enclosure 1

A. Repeal the following DHS referenced sections and replace with the referenced sections of Title 10 Code of Federal Regulations, Part 40:

ch. DHS 157 reference	10 CFR 40 reference
157.03(404)	40.4, definition of 'Unrefined and unprocessed ore'
157.09(1)(a), introductory text	"A person is exempt from this subchapter, Subchapter III, Subchapter X and Subchapter XI if the person receives, possesses, uses, <del>owns</del> or transfers any of the following types and forms of source material:"
157.09(1)(a)5.a.	40.13(c)(2)(i)
157.09(1)(a)5.c.	40.13(c)(2)(iii)
157.09(1)(a)10	40.13(c)(7)
157.11(1)(a)	40.22

B. Remove the following sections:

1. s. DHS 157.09(1)(a)8.a.
2. s. DHS 157.09(1)(a)11

C. The licensee shall comply with Title 10 Code of Federal Regulations, Part 40, subparagraph 40.13(c)(10), sub-subparagraph 40.13(c)(10)(ii), and §§ 40.54 and 40.55.

D. The following 10 CFR Part 40 references shall be amended as follows:

1. In subparagraph 40.22(a)(1), replace reference to "Commission" with "Wisconsin Department of Health Services".
2. In subparagraph 40.22(b)(1), replace reference to "NRC" with "Wisconsin Department of Health Services".
3. In subparagraph 40.22(b)(2), replace references to "this part" and "this chapter" with "DHS 157".
4. In subparagraphs 40.22(b)(2) and (d), replace reference to "20.2001" with "s. DHS 157.30(1)".
5. In subparagraph 40.22(b)(3), replace "§§ 40.1 through 40.10, 40.46, 40.51, 40.60 through 40.63, 40.71, 40.81, and paragraphs 40.41(a) through (e)" with "s. DHS 157.01-157.03, s. DHS 157.89(4)(b), s. DHS 157.05(2), s. DHS 157.13(9)-(10), s. DHS 157.13(15)-(16), s. DHS 157.06, s. DHS 157.31-157.32 and s. DHS 157.90-.91."
6. In subparagraph 40.22(b)(5), replace reference to "part 110" with "10 CFR part 110".
7. In paragraph 40.22(c), replace "shall notify the Director of the Office of Nuclear Material Safety and Safeguards by an appropriate method listed in paragraph 40.5(a)" with "shall notify DHS at: Department of Health Services, Radiation Protection Section, P.O. Box 2659, Madison WI 53701-2659."
8. Replace references to § 20.1402 with "s. DHS 157.33(2)".
9. In paragraph 40.22(d), replace final reference to "this chapter" with "s. DHS 157."
10. In paragraph 40.22(e), replace reference to "Commission" with "DHS".
11. In paragraph 40.54(a), replace reference to "40.32", with "s. DHS 157.13(2)".
12. In paragraph 40.54(b), replace reference to "Commission" to "DHS".
13. In subparagraph 40.55(c)(1), replace reference to "40.51" with "s. DHS 157.13(15)."
14. In subparagraph 40.55(d)(1), replace NRC contact information with DHS contact information listed in s. DHS 157.13(17).
15. In subparagraph 40.55(d)(2), replace "File a report with each responsible Agreement State agency that identifies all persons, operating under provisions equivalent to § 40.22, to whom greater than

50 grams (0.11 lb) of source material has been transferred within a single calendar quarter. The report shall include the following information specific to those transfers made to the Agreement State being reported to” with “File a report with the U. S. nuclear regulatory commission for transfers in states in which the U. S. nuclear regulatory commission has regulatory authority or file a report with the responsible agreement state agency that identifies all persons, operating under provisions equivalent to § 40.22, to whom greater than fifty grams (0.11 pounds) of source material has been transferred within a single calendar quarter. The report shall include the following information specific to those transfers made to the U. S. nuclear regulatory commission or agreement state being reported to:”.

16. In ssub-ubparagraph 40.55(d)(2)(iii), replace “The total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients within the Agreement State” with “The total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients.”
17. In subparagraph 40.55(d)(3), replace the reference to “Commission” with “Wisconsin Department of Health Services”.
18. In subparagraph 40.55(d)(3), replace “a report shall be submitted to the Commission indicating so. If no transfers have been made to general licensees in a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon request of the agency” with “a report shall be submitted to DHS indicating so. If no transfers have been made to general licensees of the NRC or in a particular agreement state during the reporting period, this information shall be reported to the NRC or responsible agreement state agency upon request of the agency.”
19. In paragraph 40.55(e), replace the reference to “Commission” with “DHS, NRC”.