



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 01-108

AN ORDER to create chapter HFS 157, relating to protecting public health by regulating the sources and use of ionizing radiation.

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

09-18-01 RECEIVED BY LEGISLATIVE COUNCIL.

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RNS:JES:AS:REL:tl;wu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



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Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. Under s. HFS 157.13 (1) (f), the department may withhold from public inspection any part or entire document submitted to it under ch. HFS 157 if "disclosure of its content is not required in the public interest and would adversely affect the interest of a person concerned." This is a different standard than the "balancing test" which the custodian of a public record may use to withhold access to that record under the state Open Records Law, ss. 19.32 to 19.39, Stats. Since subch. III of ch. 254, Stats., does not contain an exception to the Open Records Law, it appears that the Open Records Law governs the release of documents submitted to the department in its administration of ch. HFS 157. Thus, the authority for the department to establish the standard for withholding documents under s. HFS 157.13 (1) (f) is not apparent.

b. In ss. HFS 157.32 (3) (b) 6. and 157.83 (3) (b) 4. b., a licensee or registrant is required to include the Social Security number of each individual exposed to the specified types of radiation in a report to the department. Does the department have the authority to require an individual to provide his or her Social Security number?

2. Form, Style and Placement in Administrative Code

a. The department should review the entire rule to ensure that its treatment of mandatory and permissive actions are consistent with the preferred drafting style. See s. 1.01 (2), Manual. In particular, in specifying a permissive action, "may" should be used rather than "can." The rule also incorrectly expresses prohibitions with the phrase "shall not." The correct

way to express a prohibition is either "No person may . . ." or "A person may not" Examples where this style was followed includes ss. HFS 157.03 (81) and (107), 157.13 (5) (b) 1. (intro.) and 157.15 (6) (b) (intro.).

b. In general, lower-case letters should be used except for capitalization at the beginning of sentences and for proper names. See s. 1.01 (4), Manual. This style was not followed, for example, in the spelling of "state" in s. HFS 157.03 (253), (254) and (258).

c. The department should review the entire rule to ensure that it conforms with the preferred drafting style to avoid the use of parentheses. See s. 1.01 (6), Manual. In particular, acronyms in the definitions in the rules should consistently be placed in separate quotation marks following the term being defined. In addition, a number of provisions contain material in parentheses which should be set apart by commas or incorporated into notes. See, for examples, ss. HFS 157.03 (16) (a), (17), (24), (30), (36), (52), (98), (117), (141), (142), (159), (169), (198), (199), (205), (212), (213), (225), (235), (261), (279), (331), (367), (372), (383), (417) and (439), 157.09 (1) (a) 12. and (2) (c) 1. c., 157.10 (3), 157.12 (3) (b) and 157.13 (17) (c) 2. a.

d. Once the department defines a term, then it should use that defined term rather than essentially repeating the definition in other provisions in the rule. Examples where defined terms were not subsequently used include:

- (1) The use of "brachytherapy" in the definition of "brachytherapy source" in s. HFS 157.03 (48).
- (2) The use of "air kerma" in the definition of "gray" in s. HFS 157.03 (150).
- (3) The use of "healing arts" in the definition of "healing arts screening" in s. HFS 157.03 (156).
- (4) The use of "ionizing radiation" in the second sentence in s. HFS 157.03 (177).
- (5) The use of "remote afterloader" in the definitions of "high dose-rate remote afterloader," "low dose-rate remote afterloader," "medium dose-rate remote afterloader," "pulsed dose-rate remote afterloader" and "therapeutic remote afterloader" in s. 157.03 (159), (198), (212), (279) and (382).
- (6) The use of "violation" in the definition of "notice of violation" in s. HFS 157.03 (232).
- (7) The use of "panoramic irradiator" in the definitions of "panoramic dry-source-storage irradiator" and "panoramic wet-source-storage irradiator" in s. HFS 157.03 (242) and (244).
- (8) The use of "waste" in the definition of "waste handling licensees" in s. HFS 157.03 (418).

- (9) The use of "calendar year" rather than "year" in s. HFS 157.13 (4) (d) 1. c. and (L) 1. b.

e. The department should review all of the definitions in s. HFS 157.03 to ensure that they do not contain substantive provisions. See s. 1.01 (7) (b), Manual. Examples of definitions containing substantive materials or material that could be placed in notes include s. HFS 157.03 (2), (24), (98), (121), (153), (199), (348) and (369).

f. The preferred drafting style is to draft in the singular rather than the plural. For example, see s. HFS 157.03 (418).

g. The department should review the entire rule to ensure that the external references to other provisions in the Wisconsin Administrative Code or the Code of Federal Regulations conform to the style set forth in s. 1.07 (2), Manual. This style was not followed in a number of instances, including ss. HFS 157.03 (401) and (404) (a), 157.11 (2) (a) (intro.) and (e) 2. and 157.13 (4) (i) 1., (11) (d) 2. b. and (14). In s. HFS 157.03 (312), "to" should replace the hyphens.

h. The department should review the entire rule to ensure that all references to federal law are to the U.S. Code reference and that references to a public law or a named federal act are done in a note. [See s. 1.07 (3), Manual.] Examples of incorrect references to federal laws are in ss. HFS 157.03 (13), (57), (148), (233), (409) and (417) and 157.13 (15) (b) 6. and the note following s. HFS 157.11 (2) (f) 1. h.

i. A slashed alternative should not be used in a rule. [See s. 1.01 (9) (a), Manual.] This style was not followed in s. HFS 157.03 (282) and the table heading in s. HFS 157.10 (3). In s. HFS 157.25 (2) (a) 6., the slashed alternatives "moisture/density" should be separated by "and" or "or," whichever is appropriate.

j. The department should review all notes in the rule to ensure that no note contains any substantive provisions. Examples of notes that appear to contain substantive material include the following:

- (1) If the description of the reference man in the note following s. HFS 157.03 (310) is the legal description for purposes of the rule, then this description should be placed in the text of the rule and not in a note.
- (2) If the units of absorbed dose may be used to characterize very high doses received at high dose rates, as indicated in the note following s. HFS 157.03 (413), then this substantive provision should be placed in the text of the rule.
- (3) The identification of allowable "electron tubes" in the note following s. HFS 157.09 (2) (c) 9. f.
- (4) The exception in the notes following s. HFS 157.13 (4) (d) 2. a. and b.

k. The table of contents and text of ch. HFS 157 contains reserved sections, such as "HFS 157.18 Reserved." Given the system of numbering used in the Wisconsin Administrative Code, the reservation of sections in ch. HFS 157.08 serves no purpose, and the department should delete these reservations.

l. Explanatory material that is not part of the substance of a rule should be placed in a note. See s. 1.09 (1), Manual. This style was not followed in a number of provisions in the rule, including the second sentences in ss. HFS 157.03 (150), (230), (235), (252) and (261) and 157.06 (1) and the last sentence in s. HFS 157.03 (350).

m. The analysis accompanying the rule cites ss. 254.365 (6) and 254.38 (1), Stats., as authorizing rule-making. Neither of these provisions authorize rule-making and should not be cited in the analysis as authoring rule-making.

n. Once the department specifies an acronym, it should then use the acronym throughout the remainder of the rule. This style was not followed for a number of terms, including using "NRC" for nuclear regulatory commission and "FDA" for food and drug administration. See, for example, s. HFS 157.09 (1) (a) 8. a.

o. The rule should use references to subdivision paragraphs correctly and consistently. [See s. 1.07 (2), Manual.] For example, see s. HFS 157.11 (2) (b) 3. d.

p. In s. HFS 157.23 (1) (b), the more specific reference "under par. (a) 1." should be inserted after the word "limits." A similar problem occurs in s. HFS 157.22 (4) (g) 3.; the phrase "these percentages" should be changed to "the percentages under subds. 1. and 2."

q. In s. HFS 157.27 (3) (d), the parentheses should be deleted, and the material should be set apart by commas.

r. In s. HFS 157.29 (6) (c), the hyphen should be replaced by "to."

s. In s. HFS 157.67 (10) (a) 6., the abbreviation "i.e." should be deleted and replaced with "which is." Throughout the rule, the abbreviation "i.e." should be deleted, including ss. HFS 157.25 (3) (b), 157.42 (1) (intro.) and 157.22 (c) 2. b.

t. Either the word "percent" or the symbol "%" should be used consistently throughout the rule.

u. In s. HFS 157.73 (12) (a) (intro.), the phrase "is permitted to" should be replaced by the word "may." [See also sub. (12) (b) and (c).]

v. In s. HFS 157.76 (4), the introductory paragraph should be numbered par. (a) as it does not contain text introducing the subsequent paragraphs. The remaining paragraphs and internal cross-references should be renumbered accordingly. This comment also applies to ss. HFS 157.11 (1) (c), 157.78 (intro.), 157.84 (3) (a) (intro.), 157.85 (8) (intro.), 157.91 (4) (intro.), and 157.96 (2) (c) (intro.) and (3) (a) 1. (intro.) and 2. (intro.) and (b) 1. (intro.) and 3. (intro.).

w. It appears that s. HFS 157.76 (4) (b) 3. and 4. should be renumbered as pars. (c) and (d).

x. The entire rule should be reviewed for instances in which substantive material is contained in a title but not in the text of the provision. Titles to any unit of a rule are not part of the substance of the rule itself. [See s. 1.05 (3) (a), Manual.] For example, the title to s. HFS 157.77 indicates that fluoroscopic, dental intraoral or computed tomography x-ray systems are exempted from the requirements of the section, but this does not appear to be addressed in the section's text. This comment also applies to subs. (7) (a) and (b) and (8) (b) and to s. HFS 157.78 (5) (a) and (b).

y. In s. HFS 157.85 (13) (a), it appears that subs. 4. and 5. should be renumbered as pars. (b) and (c).

z. In s. HFS 157.86 (3) (c) 1., the phrase "and regulations" is unnecessary and should be deleted.

aa. In s. HFS 157.88 (3) (a) 5., the notation "pars." should be replaced by the notation "par."

ab. In s. HFS 157.89 (5), the notation "(a)" should be deleted because there are no subsequent paragraphs in the subsection.

ac. In s. HFS 157.90 (2) (d) 4., the notation "HFS" should be inserted after the notation "s."

ad. In s. HFS 157.92 (2) (b), the phrase "shall be exempt" should be replaced by the phrase "is exempt." The entire rule can be simplified by making use of this phrase or the similar phrase "are exempt." In sub. (2) (c), the phrase "this rule" should be replaced by the phrase "this chapter." Finally, in sub. (2) (d) (intro.), the phrase "any of" should precede the phrase "the following."

ae. On page 294, in Appendix A Note 2, the notation "s." should precede the notation "HFS."

af. It appears that Appendix G, Appendix H, sections II and III, Appendix M, Appendix Q and Appendix R contain numerous substantive provisions that should be contained in the text of the rule.

4. Adequacy of References to Related Statutes, Rules and Forms

a. The department should review the entire rule and replace vague references to related rules or federal regulations with specific citations. Examples of vague references include:

- (1) The "requirements . . . are in addition to . . . others" in this chapter, or similar language in s. HFS 157.02 (4), (6), (8) and (10).

- (2) The "unless specifically exempted" clause in s. HFS 157.02 (17).
 - (3) The reference to a material "classed as an explosive" in s. HFS 157.03 (281).
 - (4) The reference to "test requirements specified by the U.S. nuclear regulatory commission" in s. HFS 157.03 (348) (c).
 - (5) The reference to the "general licenses provided in s. HFS 157.14" in s. HFS 157.09 (2) (a). Should the reference be to general licenses under s. HFS 157.11?
 - (6) The reference to "all the provisions of the statutes, rules and orders of the department" in s. HFS 157.13 (10). Similarly, see the references to "statutes" in s. HFS 157.13 (16) (a) and (b).
- b. In s. HFS 157.11 (2) (e) (intro.), should the reference to subs. 4. and 5. be expanded to subs. 1. to 5.?
- c. The reference in s. HFS 157.11 (2) (f) 6. to sub. (5) (f) 1. e. is in error, as there is no sub. (5) in s. HFS 157.11.
- d. Should the reference to "this subsection" in s. HFS 157.13 (10) (b) and (c) be to "this section"?
- e. Should the reference to "criteria of this section" in s. HFS 157.15 (3) (b) 1. be to "criteria in sub. (4)"?
- f. In s. HFS 157.44 (3) (e) (intro.), "rules" should replace "regulations."
- g. In s. HFS 157.61 (10) (a), "subs. (7) to (9)" should replace the citation. In sub. (11), "this section" should replace "HFS 157.61" in two places.
- h. In s. HFS 157.65 (8) (b) 2. (intro.) and 3. (intro.), the reference "s. HFS 157.65 (8)" should be changed to "this subsection."
- i. In s. HFS 157.67 (4) (f), "s. HFS 157.71 (15) (d)" should replace the citation.
- j. In s. HFS 157.70 (1), the citation to "s. HFS 157.60 (2) (b) and (c)" is incorrect, and it appears that it should be changed to "s. HFS 157.59 (2) (b) and (c)."
- k. In s. HFS 157.73 (1) (a) 1., "the equivalent state regulation" should be replaced with a specific cross-reference.
- l. In s. HFS 157.73 (10) (d), the reference to sub. (7) (e) should be to sub. (7) (f).
- m. In s. HFS 157.73 (11) (c), the reference to sub. (7) (b) should be to sub. (7) (c).

- n. In s. HFS 157.73 (17) (a) 9., the reference to sub. (7) (c) should be to sub. (7) (d).
- o. In s. HFS 157.73 (17) (a) 10., the reference to sub. (7) (d) should be to sub. (7) (e).
- p. In s. HFS 157.82 (1), should “to (8)” be inserted after “ss. HFS 157.22 (1) and (5)”?
- q. In s. HFS 157.88 (3) (a) 4., it is not clear what condition of a license or registration may be shown in records maintained under s. HFS 157.31 (7).
- r. In s. HFS 157.89 (3) (a) and (b), although “the Act” is defined, it is used inconsistently and ineffectively. It would be more helpful to replace all instances of “the Act” with “ss. 254.31 to 254.45, Stats.”
- s. In s. HFS 157.93 (5) (a) 2., should the citation 49 CFR 73.403 be replaced with 49 CFR 173.403?
- t. In s. HFS 157.98 (2), it appears that the reference to subs. (2) to (4) should be to subs. (3) and (4).

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The department should review the entire rule to ensure that all provisions are drafted clearly in the present tense and the active voice. See s. 1.01 (1), Manual. Examples of provisions that are potentially ambiguous because they are not in the active voice include s. HFS 157.13 (4) (d) 1. (intro.), (e) and (L) 1. (intro.), (6) (intro.) and (8) (intro.).

b. The department should review the following undefined terms and determine whether a definition is necessary to ensure consistent application of the rule:

- (1) “Mobile services” in s. HFS 157.03 (65).
- (2) “Licensed practitioner” in s. HFS 157.03 (156).
- (3) “Single-phase machine” in s. HFS 157.03 (157).
- (4) “Final designation” in s. HFS 157.03 (192).
- (5) “No-load line potentials” and “load line potentials” in s. HFS 157.03 (194).
- (6) “User,” “nuclear medicine programs,” and “small industrial programs” in s. HFS 157.03 (202).
- (7) “Broad scope licensee” in ss. HFS 157.03 (210) (e) and 157.10 (3).
- (8) “Mobile service supplier” in s. HFS 157.03 (216).
- (9) “Other form radioactive material” in s. HFS 157.03 (231).

- (10) "Classical electron range" in s. HFS 157.03 (266).
- (11) "Hard copy" in s. HFS 157.03 (300).
- (12) "Very precisely" in s. HFS 157.03 (358).
- (13) "Regulatory limits" in s. HFS 157.13 (17) (a).

c. The rule contains a number of provisions that are not clear. The department should review the entire rule and revise it as necessary to ensure its clarity. Examples of these provisions include the following:

- (1) The department should review whether it needs the provisions in s. HFS 157.02 (2) to (16) to explain the purposes of the 15 subchapters in ch. HFS 157 to convey the plain meaning of the rule. If these subsections are intended to include provisions that will be used in interpreting the substantive requirements in the rule, should they be placed in their respective subchapters? If the subsections are intended to be a general guide to the content of ch. HFS 157, does this duplicate the table of contents?
- (2) To remove any ambiguity in how the quotient is calculated under the definition of "air kerma" in s. HFS 157.03 (17), "divided" should be inserted after "quotient of dE." Also, see s. HFS 157.03 (123).
- (3) The relation of the determination of "as low as is reasonably achievable" or "ALARA" with the utilization of nuclear energy under the definition of ALARA under s. HFS 157.03 (28) is not clear.
- (4) Should the definition of "authorized user" in s. HFS 157.03 (35) refer to a "state licensed physician, dentist or podiatrist" or a person engaged in the "healing arts" as defined in s. HFS 157.03 (155)?
- (5) Should the range of the integral in the text of the definition of "computed tomography dose index" in s. HFS 157.03 (74) (a) match the range in the formula given in this definition? The text provides the range of "-7T to +7T," whereas the formula has the range "-10T to +10T." Also, should the acronym be "CTDI" rather than "CDTI"?
- (6) The use of "typically" in the definition of "fit factor" in s. HFS 157.03 (138) is vague. Can the department be more specific?
- (7) In the definition of "inspection" in s. HFS 157.03 (173), what makes an examination "official"?
- (8) The reference to "under specified conditions" in the definition of "lead equivalent" in s. HFS 157.03 (187) is vague. Can the department be more specific?

- (9) A "medical institution" is defined in s. HFS 157.03 (209) to be an organization in which several medical disciplines are practiced. Does the department intend to exclude from this definition an organization in which only one medical discipline is practiced, such as a specialized clinic?
- (10) Is the definition of "multiple tomogram system" in s. HFS 157.03 (220) complete? Should it include a reference to multiple x-ray transmissions that lead to the identified simultaneous receipt of x-ray transmission data?
- (11) Does the department intend the definition of "person" in s. HFS 157.03 (249) to include an American Indian tribe or band? As defined in the rule, "person" does not include an American Indian tribe or band.
- (12) In the definition of "planned special exposure" in s. HFS 157.03 (256), the phrase "that requires calculation . . ." is not clear. Who or what regulation requires this calculation? In addition, if this phrase is intended to modify "an infrequent exposure to radiation," then a comma should follow "dose limits."
- (13) The difference between a "radiograph," as defined in s. HFS 157.03 (300), and a "recording," as defined in s. HFS 157.03 (308), is not readily apparent. The department should either clarify the difference or delete one of the terms.
- (14) The reference in the definition of "seismic area" in s. HFS 157.03 (330) to the specified area designated by the U.S. Geological Survey is vague. Can the department specify under which program the U.S. Geological Survey makes this designation or where the designations may be obtained?
- (15) The reference to "When appropriate" in the definition of "survey" in s. HFS 157.03 (370) is vague. Can the department specify when the listed activities would be appropriate? Also, in the second sentence in s. HFS 157.03 (370), should "survey" be substituted for "evaluation" to be consistent with the term being defined in this definition?
- (16) The period of time specified in the first sentence in the definition of "year" in s. HFS 157.03 (441) should be specified.
- (17) Though the jurisdiction of the department is inherently limited to the state, s. HFS 157.05 (1) (intro.) would be clearer if "in Wisconsin" were inserted after "used."
- (18) The two sentences in s. HFS 157.11 (1) (b) appear to be in conflict. The first sentence states that a general license authorizes the receipt of title to source material. The second sentence indicates that a general license does not authorize any person to receive source material. Similarly, under s. HFS 157.11 (2) (d), a general license is issued to own radioactive material,

whereas the second sentence in this paragraph states that this general license does not authorize the possession of radioactive material.

- (19) Should "of" following "location" in s. HFS 157.11 (2) (f) 3. a. be "for"?
- (20) Sections HFS 157.12 (3) (f) and 157.15 (1) (b) 2. refer to a "responsible person" either representing or authorized to represent a licensee. If a responsible person is different from the defined term "management," then the department should clarify this distinction. If these terms are synonymous, then the department should use "management" in these provisions rather than "responsible person."
- (21) Under s. HFS 157.13 (4) (a) 2., the specified report must cover the year ending June 30. This provision is in conflict with the definition of "year" in s. HFS 157.03 (441) which states that "year" is a period of time beginning in January.
- (22) The department should review s. HFS 157.13 (11) (a) to ensure that the provisions in this paragraph are clear under all applicable circumstances. For example, par. (a) provides guidance if an application for a license renewal has been filed at least 30 days prior to the expiration date stated in the existing license and the department denies the renewal application but does not state what happens if the application is filed less than 30 days prior to the expiration date. Also, the last sentence in par. (a) provides two alternatives but fails to give the criteria for determining which alternative will be applied in a particular fact situation.
- (23) What are the criteria that the department will use to exempt "other persons" under s. HFS 157.15 (2) (c)?

d. If an acronym is pronounced letter by letter, rather than as an entire word, whether it is preceded by "a" or "an" is determined by the pronunciation and phonetic spelling of the first letter of the acronym. Therefore, "an" rather than "a" should precede, for example, "x-ray" and "NRC." This is done inconsistently in the rule.

e. The department should review the following comments relating to the grammar and punctuation in the rule and, as appropriate, amend the rule:

- (1) The reference to "the" rather than "a" radioactive material in s. HFS 157.03 (66).
- (2) In the phrase "range of activity of radioactive drug" in s. HFS 157.03 (268) (intro.) should "a" precede "radioactive"?
- (3) Should "that" precede "surrounds" in s. HFS 157.03 (277)?
- (4) "Afterloader" at the end of s. HFS 157.03 (314) should be plural.

- (5) "Licensees" and "registrants" in s. HFS 157.03 (316) should be possessive, that is, "licensee's" and "registrant's."
- (6) The use of a colon rather than a comma in s. HFS 157.03 (373) (c).
- (7) The use of a dash in s. HFS 157.03 (431) and (432).
- (8) The use of "own" rather than "owns" in s. HFS 157.09 (2) (c) 14.
- (9) The use of "they" rather than "the applicant" or "he or she" in s. HFS 157.13 (4) i. 6. (intro.).
- (10) The use of "satisfied" rather than "satisfies" in s. HFS 157.13 (4) (j) 1. See, for example, s. HFS 157.13 (4) (k) 1.
- (11) The use of "their" rather than "the licensee's" or "his or her" in s. HFS 157.13 (12) (b).

f. The following words are spelled incorrectly:

- (1) subchapter (See "such." in s. HFS 157.02 (6).)
- (2) helmet (See "helment" in s. HFS 157.03 (20).)
- (3) of and optically (See "fo" and "oprically" in s. HFS 157.03 (235).)
- (4) wastewater (See "waste water" in s. HFS 157.03 (320).) See s. 281.01 (17), Stats.
- (5) absorbers (See "abasorbers" in s. HFS 157.03 (383).)
- (6) or (See "of" before "insurance" in s. HFS 157.15 (6) (b) 1.)
- (7) respiratory (See "resporatory" in s. HFS 157.27 (3) (d).)
- (8) ultimate (See "untimate" in s. HFS 157.30 (6) (b).)
- (9) microswitches (See "microswitchs" in s. HFS 157.67 (12) (c) 1.)

g. The department should review the following provisions to determine whether they could be redrafted in plainer language, per s. 1.01 (9), Manual:

- (1) The use of "hereinafter" in s. HFS 157.03 (51).
- (2) The use of "thereon," "therein," "thereunder," "therefrom," "thereafter" or "thereof" in ss. HFS 157.03 (304), 157.04 (2) (b), 157.11 (2) (b) 3. a. and (g) 1. b. and 157.13 (3) (b) 2. and (4) (g) 4. a.

(3) The use of "wherein" in s. HFS 157.06 (2) (a).

(4) The use of "hereby" in s. HFS 157.11 (1) (b) and elsewhere.

h. The department should review the following definitions to determine whether they should be deleted because they define a term whose meaning is clear under existing law, because the term is not used in the text of the rule, or because the contents of the definition could be moved to the text of the rule since the term is only used once in the text:

(1) "Annually" in s. HFS 157.03 (25).

(2) "CFR" in s. HFS 157.03 (60).

(3) "Field-flattening filter" in s. HFS 157.03 (133).

(4) "Focal spot (actual)" in s. HFS 157.03 (141).

(5) "Focal spot (effective)" in s. HFS 157.03 (142).

(6) "Forfeiture" in s. HFS 157.03 (143).

(7) "Hazardous waste" in s. HFS 157.03 (154). Also, if a definition of "hazardous" is included in the rule, should the definition cite relevant Department of Natural Resources regulations rather than U.S. Environmental Protection Agency regulations?

(8) "Interruption of irradiation" in s. HFS 157.03 (176).

(9) "Leakage technique factors" in s. HFS 157.03 (189).

(10) "Noise" in s. HFS 157.03 (227).

(11) "Practical range of electrons" in s. HFS 157.03 (266).

(12) "Seismic area" in s. HFS 157.03 (330).

(13) "Therapeutic dosage" in s. HFS 157.03 (379).

(14) "Tube rating chart" in s. HFS 157.03 (395).

(15) "Unity" in s. HFS 157.03 (405).

(16) "U.S. department of energy" in s. HFS 157.03 (409).

(17) "Violation" in s. HFS 157.03 (414).

- (18) "Year" in s. HFS 157.03 (441). The flexibility for a licensee or registrant to use a year other than a calendar year starting January 1 should be placed in the text of the rule.
- i. Several defined terms are out of alphabetical order. See s. HFS 157.03 (114), (115), (132), (133) and (235).
 - j. In s. HFS 157.12 (5), "additions to or deletions from" should replace "additions or deletions to."
 - k. The department should delete the following terms or phrases which are redundant:
 - (1) The use of "and not in substitution or" in ss. HFS 157.01 (6) and 157.02 (6).
 - (2) The use of "as used in this chapter" in s. HFS 157.03 (205) when s. HFS 157.03 (intro.) specifies that the definitions in s. HFS 157.03 apply in ch. HFS 157.
 - (3) The use of "but is not limited to" in ss. HFS 157.03 (370) and 157.06 (3) (intro.).
 - l. In the note to s. HFS 157.22 (3) (a), the phrase "submersion dose" is used, but it is not defined in either the definitions or the text of the rule. Is a definition necessary?
 - m. In s. HFS 157.22 (3) (b), use of the phrase "relatively uniform" is vague. Also, in sub. (4) (c), what does the department consider to be "specific information."
 - n. In s. HFS 157.22 (8) (c) (intro.), "all of" should be inserted before "the following."
 - o. In s. HFS 157.23 (1) (f) 2., how will a licensee or registrant be notified that the authorized user has decided it is "appropriate" that an individual who cannot be released may have a visitor? Are there factors the authorized user should use to make that determination?
 - p. In s. HFS 157.24 (1) (c), in the second sentence, is there a specific number of test samples that should be taken? If so, that number should be included in the rule. In sub. (6), the action a licensee or registrant should take to prevent the spread of contamination is not specified; is this explained elsewhere in the rule?
 - q. In s. HFS 157.26 (1) (a) 2., it appears that the word "activity" should be changed to "area."
 - r. In s. HFS 157.28 (2) (b), the "administrative procedures" a licensee or registrant is required to maintain are not specified. Is this information explained in a different part of the rule.
 - s. In s. HFS 157.29 (6) (e), a note should be inserted to direct a licensee or registrant how to contact the department, who to contact, and at what time of day.

t. In s. HFS 157.30 (2) (b), will people experienced in this field know what information is considered "pertinent"? In sub. (3) (a) 3. intro., should the word "radionuclide" be defined to ensure consistent application of the rule? In sub. (5) (a) (intro), "all of" should be inserted before "the following."

u. In s. HFS 157.32 (2) (c), it appears that "by initial contact" should be changed to "of initial contact." In sub. (3) (a) 2. d., it appears that "an individual member of the public" should be changed to the defined term "a member of the public."

v. The exact title of the publication referenced in the text of s. HFS 157.36 (1) (a) should be replicated in the note, to provide greater clarity to the reader. The same comment applies to the use of the publication title in sub. (2) and the accompanying note.

w. Section HFS 157.44 (2) (b) 1. refers to the "training and testing requirements of sub. (3) (a)"; however, sub. (3) (a) only lists the training requirements, while sub. (3) (b) includes the testing requirement. Therefore, the phrase "and (b)" should be added after "(3) (a)." In sub. (3) (b) 2. and (c) 2., it would help the reader to know who administers the "written or oral examination"; is this information included elsewhere in the rule? In sub. (3) (a), it is unclear how two months equates to 320 hours, one month to 160 hours and three months to 480 hours. It would be more helpful to the reader to specify the required amount of training only by hours. It also appears that the training requirements included in sub. (3) (g) would be more appropriately included under sub. (3) (a) instead. In sub. (6) (g) 3., it is unclear what the phrase "special means to change the preset alarm function" means.

x. In s. HFS 157.45 (9) (a) 2., it is suggested that the phrase "annual refresher" be changed to "continuing education," as the first phrase is not used in statute or rule.

y. Section HFS 157.47 (2) (a) 4. would be clearer if the phrase "against the individual" were inserted after "escalated enforcement action."

z. In s. HFS 157.53 (1) (a) 2. and 3. and (b), it is unclear how a well logging supervisor is to "demonstrate an understanding" of the subject matter or "demonstrate competence" if the individual is not required to take an examination. See s. HFS 157.53 (1) (b) 1. under which an understanding is demonstrated through successful completion of a test.

aa. In s. HFS 157.61 (3) (b) (intro.), the first "a" is unnecessary and should be deleted. In sub. (8) (b) 2., what is a "preceptor authorized medical physicist"? Is the "additional related continuing education experience" requirement in s. 157.61 (11) explained elsewhere in the rule?

ab. In s. HFS 157.62 (1) (b), to what does the phrase "nationally recognized standards" refer, and where can they be found? A similar problem also occurs in s. HFS 157.65 (7) (intro.).

ac. In s. HFS 157.66 (1) (intro.), is the "sealed source and device registry" available through the department? If so, it should be noted in the rule. This problem also occurs in s. HFS 157.67 (1) (a). This should be noted either in these provisions or in the definition of the registry.

ad. In s. HFS 157.67 (1) (b), is the “effective investigational device exemption application” available from the department or from the food and drug administration? If so, it should be noted in the rule. In sub. (6) (a) 1., what are the “published protocols accepted by nationally recognized bodies,” and which “nationally recognized bodies” is the rule specifically referring to? Subsections (7) (d), (9) (d) and (16) (intro.) also have this problem. In sub. (6) (b), can “spot check measurements” be defined in the definitions section? In sub. (10) (b), is there information in the rule that will establish what the “procedures established by the authorized medical physicist” must include? In sub. (13) (a) 1., it appears that “client’s” should be inserted before “address.” In sub. (15) (a), the phrase “fully inspected” is vague and provides little guidance to the reader.

ae. In s. HFS 157.71 (11) (b), it appears that the total effective dose equivalent number given does not match with the total effective dose equivalent number given in s. HFS 157.62 (8) (b); is there a reason for the difference?

af. In s. HFS 157.72 (1) (f), the phrase “the person” is vague; does this refer to the subject of the medical event? If so, “the person” should be replaced by the latter phrase. The information in sub. (2) (f) is vague; when is it appropriate to contact the responsible relative or guardian instead of the mother, and who is required to be the notifier? In sub. (2) (h) (intro.), it appears that “and” should be changed to “or.”

ag. The use of hyphens in the rule should be reviewed. Specifically, hyphens are used inconsistently for the phrases “beam-limiting,” “full-time” and “hand-held.”

ah. In s. HFS 157.73 (1) (a) 3., will it be clear to users of the rule what is meant by “as nondispersible and insoluble as practical”?

ai. In s. HFS 157.73 (1) (b) 1., should “immediately” be inserted before “subjected”?

aj. In s. HFS 157.73 (2) (a), “if” in the first sentence should be replaced with “when.” Also, in the third sentence, “must not be possible” should be replaced by “shall be impossible.” [See, also, sub. (2) (h) and ss. HFS 157.77 (2) (a) and 157.78 (3) (a).]

ak. In s. HFS 157.73 (2) (e), “would allow” should be replaced with “allows.”

al. In s. HFS 157.73 (2) (g), a comma should be inserted after “(or danger).”

am. In s. HFS 157.73 (2) (i), “shall” in the second sentence should be replaced with “may.”

an. In s. HFS 157.73 (6) (b), “and” should be replaced with “or.”

ao. In s. HFS 157.73 (7) (a) 2., “have” should be replaced with “with.”

ap. In s. HFS 157.73 (7) (c), both instances of “could” should be replaced with “may.”

aq. In s. HFS 157.73 (7) (f), "can be seen clearly" should be replaced with "are clearly visible."

ar. In s. HFS 157.73 (10) (e), in the first sentence, "radiation" should be inserted before "monitor." This comment also applies to sub. (11) (e).

as. In s. HFS 157.73 (10) (g), "shall meet" should be replaced with "meets."

at. In s. HFS 157.73 (11) (e), commas should be inserted on either side of "if used."

au. In s. HFS 157.73 (12) (a) 4., "that" should be inserted before "the person."

av. In s. HFS 157.73 (12) (d), "At the review," should be inserted at the beginning of the second sentence. Also, to what does the phrase "on the information" refer?

aw. In s. HFS 157.73 (14) (b), it appears that the phrase "Other persons" should be replaced by the phrase "A person other than an irradiator operator." Also, in the third sentence, the phrase "the paragraph" should be replaced by the phrase "this paragraph."

ax. In s. HFS 157.73 (16) (c), in the sentence beginning with "If contaminated equipment," "a department" should be replaced with "the department" and "the U.S." should be inserted before "nuclear regulatory commission."

ay. In s. HFS 157.73 (18) (a), "be run sufficiently to" should be deleted.

az. In s. HFS 157.73 (21) (a), "can demonstrate" should be replaced with "demonstrates." This comment also applies to par. (b).

ba. In s. HFS 157.73 (22) (d), "until" should be inserted before "the department terminates." Also, in the second sentence, "shall be" should be inserted before "retained."

bb. In s. HFS 157.73 (22) (e), are dosimeter results the checks of their response under sub. (14) (b)?

bc. In s. HFS 157.74 (2) (a) 3., "for use of" should be inserted before "bone density devices."

bd. In s. HFS 157.74 (2) (b), "operating" should be replaced with "authorized to operate." This comment also applies to s. HFS 157.82 (5) (b).

be. In s. HFS 157.74 (2) (i) 3., "shall" should be replaced with "may."

bf. In s. HFS 157.74 (2) (i) 5. (intro.), the semi-colon should be replaced with a comma.

bg. In s. HFS 157.74 (3) (c), should chiropractic facilities be listed to be consistent with par. (d)?

bh. In s. HFS 157.75 (3), is the phrase "at its leakage technique factors" a known term of art?

bi. In s. HFS 157.75 (5) (b), a comma should be inserted after "x-ray tube." Also, "(HVL)" should be deleted because it is not defined or used elsewhere in the section.

bj. In s. HFS 157.76 (1) (e), a comma should be inserted after "1979." This comment also applies to ss. HFS 157.77 (8) (a) 2., 157.80 (1) (f) and 157.97 (3).

bk. In the title to s. HFS 157.76 (3) (intro.), the slash should be replaced with "AND." Also in that paragraph, a period should be inserted after "min." This comment also applies to par. (b).

bl. In s. HFS 157.76 (3) (a), "a x-ray" should be replaced with "an x-ray."

bm. In s. HFS 157.76 (7) (intro.), "SSD" should be spelled out. This comment also applies to s. HFS 157.78 (1) (intro.)

bn. In s. HFS 157.76 (7) (c), ", except as provided in par. (d)" should be inserted at the end of the sentence.

bo. In s. HFS 157.76 (8) (b), "sub section" should be written as one word.

bp. The note to s. HFS 157.76 (9) (c) states that Appendix N provides a suggested list of procedures for which an exemption is automatically granted. Is application for the exemption required for these procedures? Also, why is the list characterized as a "suggested list"?

bq. In s. HFS 157.77 (1) (e) 3. (intro.), a comma should be inserted before "when alignment means."

br. In s. HFS 157.77 (2) (a), "shall not be initiated" should be replaced with "may not be initiated."

bs. In s. HFS 157.77 (2) (d), the word "A" should be replaced by the word "An."

bt. In s. HFS 157.77 (6), "for time" should be replaced with "of the time limit."

bu. In s. HFS 157.77 (8) (b) 4., "must cause" should be replaced with "causes."

bv. In s. HFS 157.78 (intro.), "covered" should be replaced with "contained."

bw. In s. HFS 157.78 (3) (b), "exposure" should be inserted before "indication."

bx. In s. HFS 157.78 (3) (d) 1., "chord" should be replaced with "cord."

by. In s. HFS 157.78 (3) (d) 2., ", i.e., room or suite," is unnecessary and should be deleted. Perhaps a definition of "location" should be included in this provision.

bz. In s. HFS 157.80 (1) (a), "backup" should be written as "back-up." The rule should be reviewed for other instances of this spelling error.

ca. In s. HFS 157.80 (1) (b) 2., is "can be" meant to be permissive or descriptive?

cb. In s. HFS 157.80 (1) (d), the second instance of "a scan or a scan sequence" should be replaced with "the scan or the scan sequence."

cc. In s. HFS 157.82 (1), what is meant by "All persons associated with the operation of"?

cd. In s. HFS 157.82 (3) (intro.), "qualified physician" should be replaced with "physician qualified under sub. (2)."

ce. In s. HFS 157.82 (8) (b), a comma should be inserted after "radiation machine."

cf. In s. HFS 157.83 (2) (a), it appears that the comma following "staff" should be deleted. Also, a comma should be inserted after "responsibilities."

cg. In s. HFS 157.83 (3) (a) 2. (intro.), "from any of the following" should be replaced with "under any of the following conditions."

ch. In s. HFS 157.83 (3) (b) 4. (intro.), does "persons" mean staff persons?

ci. In s. HFS 157.83 (3) (b) 5., a comma should be inserted before "or a brief description." Also, "effect" should be replaced with "affect" and "provided" should be replaced with "if." Finally, in the last line, "can" should be replaced with "may."

cj. In s. HFS 157.84 (1) (d) (intro.), "may" should be inserted before "not use." Also, "unless in one or more of the following situations" should be replaced with "except under one or more of the following conditions."

ck. In s. HFS 157.84 (1) (d) 1., "Except" should be deleted.

cl. In s. HFS 157.85 (3) (a) and (b), "shall" should be replaced with "may."

cm. Section HFS 157.85 (4) (a) should be rewritten as, "Accidental displacement of filters is not possible at any tube orientation."

cn. In the Note to s. HFS 157.85 (15) (b), "Helath" is misspelled.

co. In s. HFS 157.86 (2) (a), it is not clear what is meant by the sentence that the production, testing or factory servicing of equipment is not exempt from the requirements of the section.

cp. In s. HFS 157.86 (3) (b), "48 hour period" should be replaced with "48-hour notice period." Also, it would be helpful to include a note describing how a person may apply to the department for permission to proceed sooner.

cq. In s. HFS 157.86 (3) (c) 2., "may request" should be replaced with "requests."

cr. In s. HFS 157.87 (2) (a) (intro.), it would be helpful to insert "that" before "causes" in the first sentence.

cs. In s. HFS 157.87 (2) (g), the second instance of "shall" should be replaced with "is."

ct. In s. HFS 157.87 (3) (b) 6., "shall" should be replaced with "are."

cu. In s. HFS 157.88 (3) (b), "the employee's" should be inserted before "termination."

cv. In s. HFS 157.88 (3) (c), the comma following "par. (a)" should be deleted.

cw. In s. HFS 157.88 (3) (e), in the last sentence, a comma should be inserted after "estimate of the dose."

cx. In s. HFS 157.89 (2) (f), who may authorize an individual to accompany an inspector in areas containing classified information?

cy. In s. HFS 157.89 (4) (a), if an inspection is not granted, is the intent to provide a copy of the request to the licensee or registrant? If not, subsequent provisions should be checked for consistency. Also, the last occurrence of "worker's" should be replaced with "workers'." This comment also applies to par. (b).

cz. In s. HFS 157.89 (6) (b), "their" should be deleted.

da. In s. HFS 157.89 (6) (d), in the first sentence, "next" should be deleted.

db. In s. HFS 157.90 (3) (b), the deadline for paying a forfeiture should contemplate the situation in which the person petitions for judicial review. See s. 254.45 (4) (a), Stats.

dc. In s. HFS 157.91 (1) (a) 1., the word "or" before "rule" should be deleted.

dd. Section HFS 157.91 (1) (e) provides that the department may extend the period for submission of a plan of correction by a person in control. For what reason may the period be extended and for how long?

de. In s. HFS 157.93, the final clauses of subs. (1) and (2) are not consistent. Is there a reason for the inconsistency?

df. Section HFS 157.93 (3) is not clear. Could "to the extent that they" be replaced with "only for purposes of the"?

- dg. In s. HFS 157.93 (4) (c), the period following "(c)" should be deleted.
- dh. In s. HFS 157.93 (7) (c) 3., "The licensee" should be deleted.
- di. In s. HFS 157.94 (3) (h), what is meant by "by the conditions"?
- dj. In s. HFS 157.94 (5) (a), is the intent to require a person who transports nuclear waste through Wisconsin to notify Wisconsin's Governor? In addition, if the paragraph relates to contacting the Wisconsin Governor, that contact information should be provided in the note instead of information on contacting any Governor. Finally, every reference to the phrase "or Governor's designee" in this section should be set off with commas.
- dk. Section HFS 157.94 (5) (b) 2. is unclear. Does the requirement apply to nuclear waste being transported through Wisconsin en route to a disposal facility?
- dl. In s. HFS 157.96 (2) (a) 3., a period should be inserted at the end of the sentence.
- dm. In s. HFS 157.96 (3) (b) 1. (intro.), "do" in the last sentence should be replaced with "does." Also in that sentence, a comma should be inserted after "both radionuclides are present."
- dn. In s. HFS 157.96 (3) (d) 4., the final sentence concludes with "variance, exemption or enforcement action becomes effective." However, similar language in sub. (3) (a) 3. reads "variance, exemption or enforcement action is no longer effective." Is the difference intentional?
- do. In s. HFS 157.96 (7) (b), "drinking water rule set forth in" should be replaced with "provision of."
- dp. In s. HFS 157.98 (2), it appears that the provision should begin with the phrase "Except as provided in sub. (4), no."
- dq. In Appendix D, note a., "U.S." should be inserted before "Department of Labor."
- dr. In Appendix D, note d., the first sentence should be rewritten as: "A licensee may permit individuals who have not been medically screened or fit tested on the device to use this type of respirator, provided that no credit is taken for their use in estimating intake or dose."
- ds. In Appendix D, note g., "NIOSH" should be spelled out.
- dt. In Appendix H, Section I, (e) (1) and (2), what is the result if the concentration of a radionuclide listed in Table IV equals 0.1 times the value listed in the table?
- du. In Appendix Q, section o., "it's" should be spelled "its" and the word "applicants" should be replaced by the word "applicant's."
- dv. In Appendix R, C., 11., d., "improper" should be capitalized.

dw. In Appendix R, D., 9., the word "a" should be inserted before the word "dose."

6. Potential Conflicts With, and Comparability to, Related Federal Regulations

The analysis accompanying the rule states that the rule establishes radiation safety and regulatory requirements for all regulated uses of radioactive materials that are consistent with referenced federal regulations. Section 254.34 (1) (a), Stats., requires that rules for by-product material, source material and special nuclear material may be no less stringent than the referenced federal requirements. If the requirements in the rule relating to the regulation of by-product, source or special nuclear material are both "consistent" with and "less stringent" than related federal regulations, then the analysis accompanying the rule should identify those differences where the rule is less stringent than federal requirements.