

2001 DRAFTING REQUEST

Bill

Received: 09/08/2000

Received By: kenneda

Wantcd: As time permits

Identical to LRB:

For: Administration-Budget 267-9546

By/Representing: Jablonsky

This file may be shown to any legislator: NO

Drafter: kenneda

May Contact: DHFS

Alt. Drafters:

Subject: Health - public health

Extra Copies: ISR

Pre Topic:

DOA:.....Jablonsky -

Topic:

Regulation of radioactive material--agreement state

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	kenneda 09/15/2000	hhagen 09/15/2000	martykr 09/18/2000	_____	lrb_docadmin 09/18/2000		State

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1?	kenneda	1, 9/15/00 hmk 1 9/15 jld	1 9/15	2 10/9 1 10/18			

FE Sent For:

<END>

Regulation of Radioactive Material - Agreement State

Current Language

WI Stats. 254.31 - 254.45 Radiation Protection authorizes the Department of Health and Family Services to establish licensing and registration programs to regulate sources of ionizing radiation, assess NRC licensees in Wisconsin an annual 36% surcharge fee to fund development of a radioactive materials licensing and inspection program needed for Wisconsin to become an agreement state with the Nuclear Regulatory Commission, impound radioactive materials, monitor the environment for radiation emissions around nuclear power plants, and develop necessary programs and rules. It also authorizes license, registration and environmental monitoring fees to support radiation control programs, and establishes penalties for non-compliance.

Proposed Change

The proposed changes to WI Stats. 254.31 - 254.45 reflect minor revisions suggested by the Nuclear Regulatory Commission and DHFS legal counsel. These changes in the statutory language are needed to become an agreement state with the Nuclear Regulatory Commission (NRC). An agreement state is a state that enters into an agreement with the NRC to assume regulatory authority over specific radioactive materials currently under federal jurisdiction. The proposed statutory changes will allow the Department to assume licensing and inspection authority from the NRC over approximately 300 licensed users of radioactive materials. Specific changes are as follows:

1. Revise an existing definition to be consistent with NRC regulations.
2. Revise existing language to state that radiation related rules shall be compatible with those of the NRC.
3. Establish clear authority to develop qualification, certification, training and experience requirements for persons who operate radiation generating equipment; utilize, store, transfer, transport or possess radioactive materials; or who act as a radiation safety consultant to any person possessing a license or registration issued by the department.

Effect of the Change

In a letter dated September 25, 1998, Governor Thompson requested the assistance of the Nuclear Regulatory Commission in pursuing an agreement to transfer regulatory authority over radioactive materials currently under federal jurisdiction from the NRC to the State of Wisconsin. This letter tasked the Department with developing an agreement state radioactive

material regulatory program. This program must be evaluated by the NRC and found to be adequate to protect public health and compatible with the NRC's existing regulatory programs before an agreement transferring regulatory authority to the state can begin. The effect of achieving agreement state status will:

1. Reduce licensing fees for radioactive material users.
2. Replace an inefficient system of radioactive material regulation split between the federal and state government with more efficient, uniform state regulation of the large variety and quantity of radioactive materials used in medicine, industry, research and education in Wisconsin.
3. Bring the regulator closer to customers.
4. Minimize future fee increases.

In the 1999-01 Biennial Budget, authority was given to the Department to begin initial program activities for the establishment of agreement state status. In addition, necessary statutory language for the program was also enacted. The proposed changes will permit the Department to continue progress in the program.

Desired Effective Date: Upon Passage
Agency: DHFS
Agency Contact: Richard T. Chao
Phone: 267-03564

254.31(4p)

(4p) "Radiation" means both ionizing and nonionizing radiation.

254.31(5)

(5) "Radiation generating equipment" means a system, manufactured product or device or component part of such a product or device that, during operation, is capable of generating or emitting ionizing radiation without the use of radioactive material. "Radiation generating equipment" does not include a device that emits nonionizing radiation.

254.31(6)

(6) "Radiation installation" is any location or facility where radiation generating equipment is used or where radioactive material is produced, transported, stored, disposed of or used for any purpose.

254.31(9)

(9) "Radiation source" means radiation generating equipment or radioactive material.

254.31(9m)

(9m) "Radioactive material" includes any solid, liquid or gaseous substance which emits ionizing radiation spontaneously, including accelerator-produced material, by-product material, naturally occurring material, source material and special nuclear material.

254.31(10)

(10) ~~"Source material" means any material except special nuclear material, which contains by weight 0.05 per cent or more of uranium, thorium, or any combination thereof.~~ means uranium or thorium, or any combination thereof, in any physical or chemical form or ores which contain by weight one-twentieth of one percent (0.05%) or more of uranium, thorium or any combination thereof. Source material does not include special nuclear material.

254.31(11)

(11) "Special nuclear material" means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the nuclear regulatory commission determines to be special nuclear material; or any material artificially enriched by any of the foregoing. Special nuclear material does not include source material.

254.31(11g)

(11g) "Specific license" means a license, under requirements prescribed by the department by rule, to possess, use, manufacture, produce, transfer or acquire radioactive material or devices or equipment utilizing radioactive material.

254.31(11m)

(11m) "Transuranic" means a radioactive material having an atomic number that is greater than 92.

254.31(12)

(12) "X-ray tube" means any electron tube that is contained in a device and that is specifically designed for the conversion of electrical energy into X-ray energy.

254.31 - ANNOT.

History: 1977 c. 29; 1985 a. 29; 1993 a. 27 ss. 227, 477; Stats. 1993 s. 254.31; 1993 a. 491; 1999 a. 9.

254.33

254.33 Public policy. Since radiations and their sources can be instrumental in the improvement of the health and welfare of the public if properly utilized, and may be destructive or detrimental to life or health if carelessly or excessively employed or may detrimentally affect the environment of the state if improperly utilized, it is hereby declared to be the public policy of this state to encourage the constructive uses of radiation and to prohibit and prevent exposure to radiation in amounts which are or may be detrimental to health. It is further the policy for the department to advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies and with affected groups, political subdivisions and industries; and, in general, to conform as nearly as possible to nationally accepted standards in the promulgation and enforcement of rules.

254.33 - ANNOT.

History: 1985 a. 29; 1993 a. 27 s. 225; Stats. 1993 s. 254.33; 1995 a. 27 ss. 6332, 9116 (5); 1999 a. 9.

254.335

254.335 Agreements with the U.S. nuclear regulatory commission transition.

254.335(1)

(1) The governor may, on behalf of the state, enter into agreements with the U.S. nuclear regulatory commission, as provided in 42 USC 2021 (b), to discontinue certain federal licensing and related regulatory authority with respect to by-product material, source material and special nuclear material and to assume state regulatory authority.

254.335(2)

(2) Any person who, on the effective date of an agreement specified under sub. (1), possesses a license issued by the U.S. nuclear regulatory commission that is subject to the agreement is considered to possess a specific license issued under s. 254.365 (1) (a) or to fulfill requirements specified for a general license under s. 254.365 (1) (b). The specific license expires 90 days after the date of receipt by the person from the department of a notice of expiration of the license or on the date of expiration that was specified in the license issued by the U.S. nuclear regulatory commission, whichever is earlier.

254.335 - ANNOT.

History: 1999 a. 9.

254.34

254.34 Powers and duties.

254.34(1)

(1) The department is the state radiation control agency and shall do all of the following:

254.34(1)(a)

(a) Promulgate and enforce rules, including registration and licensing of sources of ionizing radiation, as may be necessary to prohibit and prevent unnecessary radiation exposure. The rules may incorporate by reference the recommended standards of nationally recognized bodies in the field of radiation protection and other fields of atomic energy, under the procedure established by s. 227.21 (2). The rules for by-product material, source material and special nuclear material ~~may be no less stringent than~~ shall be compatible with the requirements under 42 USC 2011 to 2114 and regulations adopted under 42 USC 2011 to 2114.

254.34(1)(h)2.

2. Coordinate a program of measuring radon gas accumulation, including use of the radon canister counting system, in educational institutions, nursing homes, low-income housing, public buildings, homes, private industries and public service organizations.

254.34(1)(h)3.

3. Work with staff of local health departments to perform home surveys and diagnostic measurements and develop mitigation strategies for homes with elevated radon gas levels.

254.34(1)(h)4.

4. Develop training materials and conduct training of staff of local health departments, building contractors and others in radon diagnosis and mitigation methods.

254.34(1)(h)5.

5. Develop standards of performance for the regional radon centers and, from the appropriation under s. 20.435 (5) (ed), allocate funds based on compliance with the standards to provide radon protection information dissemination from the regional radon centers.

254.34(2)

(2) The department may:

254.34(2)(a)

(a) Enter, at all reasonable times, any private or public property for the purpose of investigating conditions relating to radiation control:

254.34(2)(b)

(b) Accept and utilize grants or other funds or gifts from the federal government and from other sources, public or private, for carrying out its functions under this subchapter. The studies, investigations, training and demonstration may be conducted independently, by contract, or in cooperation with any person or any public or private agency, including any political subdivision of the state.

254.34(2)(c)

(c) Develop qualification, certification, training and experience requirements for persons who operate radiation generating equipment or utilize, store, transfer, transport or possess radioactive materials, or who act as a radiation safety consultant to any person possessing a license or registration issued by the department. The department may recognize certification by a nationally recognized certifying organization or another state.

254.34 - ANNOT.

History: 1985 a. 29; 1985 a. 182 s. 57; 1987 a. 399; 1989 a. 31; 1993 a. 27 s. 228; Stats. 1993 s. 254.34; 1995 a. 27 ss. 6333, 6334, 9116 (5); 1997 a. 27; 1999 a. 9 ss. 2456 to 2462, 2475.

254.345

254.345 Assessment of Fee.

254.345(1)

(1) The department may annually assess a fee of 36% of the U.S. nuclear regulatory commission license application fee and materials license annual fee, for any licensee of the U.S. nuclear regulatory commission in this state. The



D-NOTE

DOA:.....Jablonsky - Regulation of radioactive material—agreement state

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

Do Not Gen.

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES ✓

HEALTH ✓

Under current law, the governor is authorized to enter into an agreement with the federal Nuclear Regulatory Commission to discontinue certain federal licensing and related regulatory authority with respect to by-product material (certain radioactive material and the tailings or waste from ores processed for uranium or thorium), source material (any material except special nuclear material that contains a specified percentage of uranium or thorium), and special nuclear material (uranium enriched in specified isotopes and plutonium). Rules that DHFS, as the state radiation control agency, must promulgate for by-product, source, and special nuclear material may be no less stringent than are federal requirements.

9%

This bill modifies the definition of "source material" to be uranium, thorium, or any combination of the two in any physical or chemical form or ores that contain, by weight, 0.05 percent of uranium, thorium, or a combination of the two. The bill modifies the standard under which DHFS must promulgate rules regulating by-product, source, and special nuclear material; under the bill, the DHFS rules must be compatible with federal requirements, except that the rules must be in accordance with specific federal requirements relating to by-product material. The bill also authorizes DHFS to develop qualification, certification, training, and experience requirements and to recognize certification by another state or a

nationally recognized organization that is substantially equivalent to the DHFS certification, for persons who operate radiation generating equipment; who utilize, store, transfer, transport, or possess radioactive materials; or who act as radiation safety consultants.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Source

1 SECTION 1. 254.31 (10) of the statutes is amended to read:

2 254.31 (10) "Source material" means any material except special nuclear
3 material, which contains by weight 0.05 per cent or more of uranium, thorium, or any
4 combination thereof in any physical or chemical form, or ores that contain by weight
5 0.05 ⁹⁰ percent or more of uranium, thorium ² or any combination thereof. "~~Special~~
6 ~~nuclear~~ material" does not include ~~source~~ material. special nuclear

History: 1977 c. 29; 1985 a. 29; 1993 a. 27 ss. 27, 477; Stats. 1993 s. 254.31; 1993 a. 491; 1999 a. 9.

7 SECTION 2. 254.34 (1) (a) of the statutes is amended to read:

8 254.34 (1) (a) Promulgate and enforce rules, including registration and
9 licensing of sources of ionizing radiation, as may be necessary to prohibit and prevent
10 unnecessary radiation exposure. The rules may incorporate by reference the
11 recommended standards of nationally recognized bodies in the field of radiation
12 protection and other fields of atomic energy, under the procedure established by s.
13 227.21 (2). The rules for by-product material, source material and special nuclear
14 material may be no less stringent than shall be in accordance with the requirements
15 of 42 USC 2021 (c) and shall otherwise be compatible with the requirements under
16 42 USC 2011 to 2114 and regulations adopted under 42 USC 2011 to 2114.

History: 1985 a. 29; 1985 a. 182 s. 57; 1987 a. 399; 1989 a. 31; 1993 a. 27 s. 228; Stats. 1993 s. 254.34; 1995 a. 27 ss. 6333, 6334, 9116 (5); 1997 a. 27; 1999 a. 9 ss. 2456 to 2462, 2475.

17 SECTION 3. 254.34 (2) (c) of the statutes is created to read:

1 254.34 (2) (c) Develop requirements for qualification, certification, training
2 and experience of an individual who does any of the following:

- 3 1. Operates radiation generating equipment.
- 4 2. Utilizes, stores, transfers, transports, or possesses radioactive materials.
- 5 3. Acts as a radiation safety consultant to any person who possesses a license
- 6 or registration issued by the department under this subchapter.

7 SECTION 4. 254.34 (2) (d) of the statutes is created to read:

8 254.34 (2) (d) Recognize certification by another state or by a nationally
9 recognized certifying organization of an individual to perform acts under par. (c) 1.
10 to 3. if the standards for the other state's certification or the organization's
11 certification are substantially equivalent to the standards of the department for
12 certification of individuals under par. (c).

13 (END)

D-NOTE

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0191/1dn

DAK:lw,...

hnh
ds
JL

DATE

To Sue Jablonsky and Richard Chao:

1. Please note that the language amending s. 254.34 (1) (a), stats., differs from the DHFS proposed language in that it requires the DHFS rules to be in accordance with the requirements of 42 USC 2021 (o). I have drafted the language in this manner because that is exactly what federal law requires; please see 42 USC 2021 (d), as follows:

“42 USC 2021 (d) Conditions. The Commission shall enter into an agreement under subsection (b) of this section with any State if—

(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

✓ (2) the Commission finds that the State program *is in accordance with the requirements of subsection (b) and in all other respects compatible with the Commission's program* for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.” (Emphasis mine.)

2. Under s. 254.34 (2) (c) 3., I added “under this subchapter”, since I have assumed that that was your intent; if I am in error, please let me know and I will redraft, although I am not sure why a person would be serving as a radiation safety consultant to, for instance, a nursing home licensee.

3. Under s. 254.34 (2) (d), I added language requiring that another state's standards for certification be substantially equivalent to those of the department for recognition of a person who is certified by another state; does this meet with your intent?

Debora A. Kennedy
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0191/1dn
DAK:hmh&jld:km

September 18, 2000

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Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0191/1
DAK:hmh&jld:km

DOA:.....Jablonsky – Regulation of radioactive material—agreement state
FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

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