



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 6, 2022

Ms. Alyssa Schroeder, Legislative Director
Indiana Department of Homeland Security
302 W. Washington St, Room E208
Indianapolis, IN 462204

Dear Ms. Schroeder:

We have reviewed the proposed revisions to the Indiana legislation in the Preliminary Draft No. 3901, received by our office on December 15, 2021. This legislation was reviewed by comparison to the Council of State Governments Suggested State Legislation (SSL), 1983, Volume 42, and NMSS procedure SA-700 Handbook, *Processing an Agreement*. We discussed our review of the legislation with you and members of your staff on January 5, 2022.

As a result of our review, we have 25 comments that have been identified in the enclosure. The comments are discussed in more detail in the enclosed comment table. If there are any subsequent changes to the proposed legislation as it makes its way through the committee process, please keep us informed.

If you have any questions regarding the comments, or the Suggested State Legislation used in the review, please contact Michelle Beardsley, State Regulation Review Coordinator, at 301-415-0275 (michelle.beardsley@nrc.gov) or Stephen Poy at 301-415-7135 (stephen.poy@nrc.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "B. C. Anderson", followed by a horizontal line.

Signed by Anderson, Brian
on 01/06/22

Brian C. Anderson, Chief
State Agreement and Liaison Programs Branch
Division of Materials Safety, Security, State
and Tribal Programs
Office of Nuclear Material Safety
and Safeguards

Enclosure: Comment table

SUBJECT: INDIANA PROPOSED ENABLING LEGISLATION DATE January 6, 2022

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COMMENTS ON INDIANA PROPOSED LEGISLATION

STATE SECTION		STATE SUGGESTED LEGISLATION SECTION	SUBJECT and COMMENTS
1	<p>Definitions will be adopted through regulation with authority provided through legislative proposal</p> <p>Section 4</p>	Section 4	<p>Definitions: Low-level and High-level Radioactive Waste</p> <p>Editorial comment: Please consider hyphenating the terms “low-level”, “high-level” and “long-term” throughout the document.</p>
2	<p>Definitions will be adopted through regulation with authority provided through legislative proposal</p> <p>Section 4</p>	Section 4	<p>Definitions Byproduct material</p> <p>Currently, the SSL definition of Byproduct Material does not include the definitions written in Atomic Energy Act (AEA) sections 11e. (3) and (4). Please add the following provisions to cover AEA 11e.(3) and (4) byproduct materials. This is from the Vermont legislation definition of byproduct material in VT 18-32-§1651(1):</p> <p>(C) Any discrete source of radium-226 that is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity.</p> <p>(D) Any material that has been made radioactive by use of a particle accelerator and is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity.</p> <p>(E) Any discrete source of naturally occurring radioactive material, other than source material, that is extracted or converted after extraction for use in a commercial, medical, or research activity, if the Governor, after determination by the NRC, declares by order that the source would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety.</p>
3	<p>Definitions will be adopted through regulation with authority provided</p>	Section 4	<p>Definitions Ionizing Radiation</p> <p>The IN definition of ionizing radiation states, “‘Ionizing Radiation’ means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles, but not sound or radio waves, or visible, infrared, or ultraviolet light.”</p>

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	through legislative proposal Section 4		To match the SSL Sec. 4(12) definition, please replace the comma after “nuclear particles” with a semicolon such that the IN definition reads, “Ionizing Radiation” means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.”
4	Definitions will be adopted through regulation with authority provided through legislative proposal Section 4	Section 4	<p>Definitions Sources of Radiation</p> <p>Currently, in the Indiana legislation Section 4(20), the definition of sources of radiation states that sources of radiation means “radioactive material radiation generating equipment.”</p> <p>Please insert the words “collectively,” and “and” into this sentence to be consistent with SSL Section 4(20) definition of “sources of radiation”, such that the definition will now read sources of radiation “means collectively, radioactive material and radiation generating equipment.”</p>
5	Definitions will be adopted through regulation with authority provided through legislative proposal Section 4	Section 4	<p>Definitions Special Nuclear Material</p> <p>Currently, in the Indiana legislation, the definition of Special nuclear material states that Special nuclear material “means plutonium, uranium 233, and uranium enriched in the isotope 233 or in the isotope 235, but does not include source material or any material artificially enriched by any of the foregoing, but does not include source material.”</p> <p>Please add a semicolon after the phrase “but does not include source material” so that the above statement reads, “Special nuclear material” means plutonium, uranium 233, and uranium enriched in the isotope 233 or in the isotope 235, but does not include source material; or any material artificially enriched by any of the foregoing, but does not include source material.</p>
6	Section 5	Section 5(a)	<p>State Radiation Control Agency</p> <p>The Indiana legislation does not explicitly provide the agency the authority to employ, compensate and prescribe the powers and duties of such individuals as may be necessary to carry out the provisions of the legislation.</p> <p>Indiana needs to either confirm that the IDHS has this authority in another provision (e.g., IC 10-19-3-4 and IC 10-19-3-5) or needs to add this provision in IC Sec. 5. Other Indiana departments</p>

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			carrying out Agreement State program responsibilities will need similar authorizations.
7	Section 5	Section 5	<p>State Radiation Control Agency</p> <p>Indiana’s legislation omits SSL Section 5(d)(3) which states, “[D]evelop programs with due regard for consistency with federal programs for regulation of radiation generating equipment.” Please explain if another IN department will have authority to cover this requirement and that the department has a similar legislative provision. If not, it needs to be added.</p> <p>IC Section 5(c)(3) would state,</p> <p>“Adopt rules and regulations, which may provide for licensing and registration, relating to control of sources of radiation with due regard for compatibility with the regulatory programs of the federal government.”</p> <p>Indiana also needs to ensure that the language in the current IC Section 5(c)(3) meets the intent of the SSL Section 5(d)(4) or revise the provision to state:</p> <p>“Formulate, adopt, promulgate and repeal [codes,] rules and regulations, which may provide for licensing and/or registration, relating to control of sources of radiation with due regard for compatibility with the regulatory programs of the federal government.”</p> <p>Additionally, in the recent revision to the legislation, Indiana removed the word “loans” from IC Section 5(c)(6).</p> <p>Indiana should explain the deletion of the word “loans” in IC Section 5(c)(6) or revise the IC Section 5(6) to read, . Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private.”</p>
8	Section 5	Section 5	<p>State Radiation Control Agency</p> <p>Please explain how IDHS or IHD has authority to regulate radiation generating equipment and issue regulations? How will IDHS coordinate with the IHD? For example, IC 16-41-35 provisions mention the “state department” has licensing registration authority. Does IN need to reconcile the IHD provisions in IC 16-41 with the IDHS provisions in IC 10-19-12? Are the authorities supposed to overlap?</p>

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9	Section 5	Section 5	<p>State Radiation Control Agency</p> <p>Indiana’s legislation Section 5(e)(2) uses the term “act” rather than “chapter.” Please clarify whether this is intentional or accidental and update as needed.</p> <p>Additionally, in IC Sec. 5(e)(2), please update the word “agency” to “agencies.”</p>
10	--	Section 6	<p>Advisory Committee on Radiation</p> <p>IDHS provisions do not include SSL Section 6 “Advisory Committee on Radiation.” However, the IHD legislation provision does have an advisory committee. Please explain the duties of the IHD advisory committee and how they will impact the Agreement radiation control program and any interactions with IDHS.</p> <p>Note: This can be addressed in Indiana’s application.</p>
11	Section 6	Section 6	<p>Licensing and Registration of Sources of Radiation</p> <p>Indiana Section 6(a) states the following:</p> <p>The department shall adopt rules under IC 4-22-2 for general and specific licensing of radioactive material, devices, or equipment utilizing such material. The rules must provide for the amendment, suspension, or revocation of licenses.</p> <p>Indiana needs to revise the above statement to add “or” before “devices” and remove the “,” after the word “devices” such that the above reads, “The department shall adopt rules under IC 4-22-2 for general and specific licensing of radioactive material, or devices or equipment utilizing such material. The rules must provide for the amendment, suspension, or revocation of licenses.” This change is needed to be consistent with SSL Sec. 7(a).</p>
12	Section 7(a) – (d)	Section 10	<p>[Radiation User Fees.]</p> <p>Indiana Sec. 7(a) states that fees collected under this section will be deposited in the fire and building services fund established under IC 22-12-6-1.</p> <p>Please clarify whether Indiana intended to leave out SSL Section 10(c) which states that “Notwithstanding the provisions of subsection (a), fees for registration of radiation generating</p>

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			<p>equipment and other sources of radiation and for licenses for radioactive materials shall not be required for an agency of the state or any political subdivision thereof.”</p> <p>(Note: this is an optional provision.)</p>
13	Section 8(a)	Section 11	<p>Surety Requirements</p> <p>Indiana’s Sec. 8(a) states “for licensed activities involving disposal of low level radioactive waste, the department shall ...”</p> <p>Please explain whether IDHS will also cover IN’s LLW waste disposal responsibilities? Will IDH or IDEM have any responsibilities for disposal, decontamination, closure, decommissioning, and reclamation of sites, structures, and equipment?</p>
14	Section 8(c)	Section 11	<p>Surety Requirements</p> <p>Indiana Sec. 8(c) states, “For licensed activities involving disposal of low level radioactive waste the department shall, and for other classes of licensed activity when radioactive material that will require surveillance or care is likely to remain at the site after the licensed activities cease, the department may establish by rule or regulation”</p> <p>Please add a comma after the phrase “the department may” such that the above reads, “For licensed activities involving disposal of low-level radioactive waste the department shall, and for other classes of licensed activity when radioactive material that will require surveillance or care is likely to remain at the site after the licensed activities cease, the department may, establish by rule or regulation” This revision is necessary to be grammatically consistent with SSL Sec. 11(c).</p>
15	Section 8(d)	Section 11	<p>Surety Requirements</p> <p>Consider adding the word “the” before the word “environment” such that IC section 8(d) would read, “... as necessary for protection of the public health and safety and the environment.” This revision is necessary to be grammatically consistent with SSL Sec. 11(c).</p> <p>Additionally, please clarify whether IDHS will control the long-term care fund and do work at the sites? Will IDEM or IDH have any</p>

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			involvement.
16	Section 8(f)	Section 11	<p>Surety Requirements</p> <p>Indiana Sec. 8(f) omitted the language “and which are not subject to [section 8 or 9] of this chapter.”</p> <p>Please explain whether IDHS will handle these activities and whether IDEM will have any responsibilities here? How will these sureties be handled?</p>
17	Section 16	Section 13	<p>Conflicting Laws</p> <p>Indiana’s legislation in IC Sec. 13 states that ordinances, resolutions, and regulations of state agencies, other than the department under section 5, shall be superseded by this chapter.</p> <p>If all other agency provisions are superseded by this chapter, please explain whether this impacts IHD’s regulations if there is an overlap of responsibilities. Does IHD have similar provisions?</p>
18	Section 14(a), (b) and (c)	Section 17	<p>Administrative Procedure and Judicial Review</p> <p>Indiana legislation Sec. 14(a) and (b) cites to IC 4-22-2 and IC 4-21.5 respectively for providing administration procedures for rules and orders. Please explain how these provisions cover IDHS and IHD activities and meet SSL Sec. 17 requirements.</p> <p>Indiana legislation Sec. 14(c) provides opportunity for public participation only with regard to proceedings related to the licensing of ores processed primarily for their source material content and disposal of byproduct material or for licensing disposal of low level radioactive waste.</p> <p>Please clarify whether Indiana wants to include this section (and sections 14(d) & (e)) even though Indiana is not seeking 11e.(2) or LLW disposal authority.</p>
19	Section 14(c)	Section 17	<p>Administrative Procedure and Judicial Review</p> <p>Indiana legislation Sec. 14(c) provides opportunity for hearing only with regard to proceedings related to the licensing of ores processed primarily for their source material content and disposal of byproduct material or for licensing disposal of low-level radioactive waste.</p>

STATE SECTION		STATE SUGGESTED LEGISLATION SECTION	SUBJECT and COMMENTS
			Please explain how this addresses SSL Section 17 requirements by addressing the prior comments on IC Sec. 14.
20	Section 14(f)	Section 17	<p>Administrative Procedure and Judicial Review</p> <p>Please explain if the procedures listed in Section IC 14(f) will address SSL Section 21(f) requirements and will cover both IDHS and IHD regulatory actions under the Agreement.</p>
21	Section 14	Section 17(g)	<p>Administrative Procedure and Judicial Review</p> <p>Indiana omits the phrase in SSL Sec. 17(g) that states, “Any final agency action or order entered in any proceeding under subsections (a), (b), (c) and (f) above shall be subject to judicial review by the [appropriate court] in the manner prescribed in [cite appropriate state act setting out procedure for appeal.]”</p> <p>Please explain why this phrase is omitted.</p>
22	Section 15	Section 18	<p>Injunction proceedings</p> <p>Please clarify why Indiana excludes the phrase from SSL Sec. 18 which states, “[F]or an order enjoining such acts or practices, or for an order directing compliance, and” in second sentence of IC Sec. 15. Please explain why this provision was excluded or revise the sentence to read, “[F]or an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.”</p>
23	Section 17	Section 20	<p>Impounding</p> <p>Please explain whether IDHS, IHD, or both departments have authority over machines given that the definition of radiation sources includes radioactive material and radiation generating equipment.</p>
24	--	Section 21(a)	<p>Penalties</p> <p>Indiana omits SSL Sec. 21(a) Criminal penalties.</p> <p>Please explain why this section is omitted.</p>

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25	Section 18	Section 21	<p>Penalties</p> <p>Indiana legislation Sec. 18(b) states, "Whenever the department proposes to subject a person to the imposition of a civil penalty under the provisions of this section, it shall issue an order in accordance with IC 4-21.5."</p> <p>Please confirm whether the information contained in Indiana notice provisions are comparable to SSL Sec. 21(b)(2).</p> <p>Additionally, in the latest revision of the legislation, Indiana removed the phrase "Civil penalties:" from IC Sec. 18. Please clarify whether that was intentional, and if not, please add the words back into the legislation.</p> <p>IC Sec. 18(d) states that all money collected from civil penalties shall be deposited in the fire and building services fund established by IC 22-12-6-1.</p> <p>Please explain why the legislation was revised from the department to the "fire and building services fund." Please clarify how is this fund used? Can the fund cover the department's general operating expenses?</p>