



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

September 10, 2024

Courtney Eckstein, Radiation
Program Director
Indiana Department of Homeland Security
302 W Washington Street, Room E-208
Indianapolis, IN 46204-2739

SUBJECT: INDIANA PROPOSED REGULATIONS TO 10 CFR PARTS 19, 20, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 61, 70, 71, AND 150

Dear Courtney Eckstein:

We have reviewed the proposed Indiana regulations 290 IAC 3-1, 3-2, 3-3, 3-4, 3-5, 3-6, 3-7, 3-8, and 3-9, received by our office on June 20, 2024. These regulations were reviewed by comparison to the equivalent U.S. Nuclear Regulatory Commission (NRC) rules in 10 CFR 19, 20, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 61, 70, 71, and 150 as identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with you on September 6, 2024.

As a result of our review, we have 40 compatibility comments and 7 editorial comments that have been identified in Enclosures 1 and 2, respectively. A redline incorporating these comments is provided in Enclosure 3 for your convenience. Please note the sections cited in the comments refer to the updated sections provided in Enclosure 3.

Please note that we have limited our review to regulations required for compatibility and/or health and safety. Under our current procedure, a finding that the Indiana regulations meet the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final Indiana regulations. However, we have determined that if your proposed regulations were adopted, incorporating our comments and without other significant change, they would meet the compatibility and health and safety categories established in the Office of Nuclear Material Safety and Safeguards (NMSS) Procedure SA-200, "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements."

We request that when the proposed regulations are adopted and published as final regulations, a copy of the "as published" regulations be provided to us for review. As requested in NMSS Procedure SA-201, "Review of State Regulatory Requirements," please highlight the final changes and provide a copy to Division of Materials Safety, Security, State and Tribal Programs, NMSS.

If you have any questions regarding the review, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact my staff at AgreementStateRegs.Resource@nrc.gov.

Sincerely,



Signed by Giantelli, Adelaide
on 09/10/24

Adelaide S. Giantelli, Chief
State Agreement and Liaison Programs Branch
Division of Materials Safety, Security, State,
and Tribal Programs
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. Compatibility Comments
2. Editorial Comments
3. Redline version of 290 IAC 3

COMPATIBILITY COMMENTS ON INDIANA PROPOSED REGULATIONS

NRC SECTION	CATEGORY	SUBJECT and COMMENTS
N/A	N/A	<p>Atomic Energy Act substitutions</p> <p>Indiana regulations do not clearly differentiate the instances when regulatory requirements should refer to the Atomic Energy Act or the relevant Indiana statute. For example, Indiana incorporates by reference the definition of “Act” in multiples part of title 10 of the Code of Federal Regulations (10 CFR), all of which define Act to mean the Atomic Energy Act. However, Indiana 290 IAC 3-1-2, Sec. 2. (a)(2) states that any reference to “Act” means the Indiana Code 10-19-12, entitled, “Nuclear Regulatory Agreement,” unless otherwise specified in this section.</p> <p>To avoid confusion, Indiana should delete Indiana 290 IAC 3-1-2, Sec. 2. (a)(2), as shown in the redline strikeout provided in Enclosure 3.</p> <p>This change will clarify that, subject to the exceptions listed in Sec. 2(a)(19), reference to Act in the parts of 10 CFR incorporated by Indiana remains a reference to the Atomic Energy Act.</p> <p>Indiana should also make corresponding edits proposed in Enclosure 3 to Sec. 2. (a)(19) because (1) there are additional exceptions in 10 CFR where reference to the Act should be substituted for the Indiana statute; (2) Sec. 2. (a)(19) incorrectly states the reference to “Act” refers to the State’s regulatory provisions, “Article 3 of Title 290 of the Indiana Administrative Code,” instead of Indiana’s statutory provisions; and (3) the Atomic Energy Act is referred to differently (e.g., “the Act”, “Section 81 of the Act”, etc.)</p>
N/A	N/A	<p>NRC to Indiana substitutions</p> <p>Indiana needs to add the terms “Regional Office”, “Director, Office of Nuclear Material Safety Safeguards or his/her designee”, “United States Nuclear Regulatory Commission”, “U.S. Nuclear Regulatory Commission”, “Administrator of the appropriate Regional Office”, and “Regional Administrator”, to 290 IAC 3-1-2, Sec. 2 (a)(2) to more adequately capture the needed substitutions from the NRC to Indiana.</p> <p>In 290 IAC 3-1-2, Sec. 2 (a)(2)(A), Indiana needs to include</p>

NRC SECTION	CATEGORY	SUBJECT and COMMENTS
		<p>exceptions for the definition of “Agreement State” found in 10 CFR 35.2; 37.5; 40.4; 70.4; and 150.3, as done for 10 CFR 30.4.</p> <p>Indiana needs to remove the reconciliation language found in 290 IAC 3-1-2, Sec. 2 (a)(3). Indiana 290 IAC 3-16-2 incorporates 10 CFR 71.17. In 290 IAC 3-1-2, Sec. 2. (a)(3), Indiana provides exclusions for 10 CFR 71.17(c)(3) and (e). However, Indiana already provides reconciliatory language in 290 IAC 3-1-2, Sec. 2. (a)(6)(B) for 71.17(c)(3). Therefore, Indiana needs to remove 10 CFR 71.17(c)(3) from 290 IAC 3-1-2, Sec. 2. (a)(3).</p> <p>Additionally, 290 IAC 3-1-2, Sec. 2.(a)(3) includes 10 CFR 71.17(e), among other 10 CFR Part 37, 39 40, and 71 regulations, when they should be under 290 IAC 3-1-2, Sec. 2.(a)(2). These regulations do not have the term “Agreement State”.</p> <p>Additionally, Indiana needs to update 290 IAC 3-1-2, Sec. 2 (a)(2) to include exclusions for:</p> <ul style="list-style-type: none"> • References to master material license or licensee found in 10 CFR 35 • References to the NRC's Medical Uses Licensee Toolkit web page in 10 CFR Part 35 • The definition of “Fingerprint orders” found in 37.5 • 10 CFR 37.29(a)(7) • 10 CFR 61.55(a)(2)(iv) • 10 CFR 70.19(a)(3) • 10 CFR 71.17(e) • 10 CFR 71.85(c) • 10 CFR 71.88(a)(4) • 10 CFR 71.93(c) <p>These regulations contain language for items that are under NRC jurisdiction. The corresponding regulations in 290 IAC 3-1-2, Sec. 2(a)(3) need to be removed.</p> <p>Indiana includes 10 CFR 71.10 under the exclusions in 290 IAC 3-1-2, Sec. 2 (a)(2). 10 CFR 71.10 does not need to be excluded and needs to be removed from the list.</p>
N/A	N/A	<p>Indiana, NRC, or Agreement State substitutions</p> <p>Indiana 290 IAC 3-1-2, Sec. 2. (a)(3) does not include the phrases “Atomic Energy Commission, the Commission, or an Agreement State” and “with the Commission or with an</p>

NRC SECTION	CATEGORY	SUBJECT and COMMENTS
		<p>Agreement State”. These phrases need to be included in this reconciliation section so that when these terms are used in the regulations they mean “Indiana Department of Homeland Security, the NRC, or Agreement State”. Indiana needs to add the phrases “Atomic Energy Commission, the Commission, or an Agreement State” and “with the Commission or with an Agreement State” to 290 IAC 3-1-2, Sec. 2. (a)(3) to ensure that the NRC is not automatically replaced by the other reconciliation language in 290 IAC 3-1-2, Sec. 2. (a)(2).</p>
N/A	N/A	<p>Substitutions for equivalent regulations of Agreement State</p> <p>In 290 IAC 3-1-2, Sec. 2. (a)(4), Indiana provides substitutions for references to equivalent regulations of an Agreement State. Indiana needs to update this section to include the additional phrase, “A reference to “equivalent regulations of an Agreement State” means “NRC regulations in Chapter 10 of the Code of Federal Regulations, or equivalent regulations of an Agreement State”.</p>
N/A	N/A	<p>Indiana includes reconciliation language to capture the various communications that go to the NRC prior to when the agreement takes effect to go to Indiana in 290 IAC 3-1-4 and 290 IAC 3-1-2, Sec. 2. (a)(6). Indiana should be inclusive of the various types of communication and needs to update 290 IAC 3-1-4 and 290 IAC 3-1-2, Sec. 2.(a)(6) to include the following communication types: notifications, reports, communications, reports, correspondence, or oath and affirmations.</p>
Various	N/A	<p>Agreement State to NRC or Agreement State</p> <p>In 290 IAC 3-1-2, Sec. 2(a)(8), Indiana provides substitutions for the term “Agreement State” to include “an Agreement State or the NRC”. Indiana needs to update this section to include 10 CFR 31.8(a)(1); 31.11(c)(4); 31.11(d)(1); 32.51a(b); 32.51a(b)(1) and (4); 32.51a(e); 32.52(b); 32.52(b)(7); 32.62(e); 39.41(f), 39.51; 40.55(d)(2); 170.31: 16; 170.31(1); and 171.17(b)(2) in the list of applicable substitutions.</p> <p>Indiana 290 IAC 3-5-2 incorporates by reference 10 CFR Part 31 with exceptions. 10 CFR 31.8(a)(1) contains reference to “non-agreement states”. Indiana needs to</p>

NRC SECTION	CATEGORY	SUBJECT and COMMENTS
		<p>update 290 IAC 3-1-2, Sec. 2. (a)(8), to include a substitution for “non-agreement state” to mean “an Agreement State or the NRC”.</p> <p>Additionally, Indiana includes 10 CFR 40.52(a) which is not incorporated by reference and should be deleted from 290 IAC 3-1-2, Sec. 2. (a)(10).</p>
10 CFR 37.77	B	<p>Advance notification of shipment of category 1 quantities of radioactive material</p> <p>In 290 IAC 3-1-2, Sec. 2. (a)(12), Indiana preserves the language for 10 CFR 37.77(a)(1). Indiana needs to update 290 IAC 3-1-2, Sec. 2. (a)(12) to also preserve the language for 10 CFR 37.77(d).</p>
71.97	B	<p>Advance notification of shipment of irradiated reactor fuel and nuclear waste</p> <p>In 290 IAC 3-16-2, Indiana incorporates 10 CFR 71.97 by reference, which is Compatibility Category B. Currently, the incorporated regulations would replace the references to the NRC or its offices in 71.97(c)(3)(ii) and (iii) and 71.97(f) with a reference to Indiana. However, references to the NRC or its offices should remain in 10 CFR 71.97(c)(3)(ii) the contact information for governors and governors’ designees referenced in the regulations remains on the NRC website, not Indiana.</p> <p>To address this issue, Indiana needs to update 290 IAC 3-1-2 to say, “In 10 CFR 71.97(c)(3)(ii) and (iii) and in 71.97(f) the language is preserved,” to meet the 10 CFR 71.97 Compatibility Category B designation.</p>
30.41(b)(2) 40.51(b)(2) 70.42(b)(2) 30.41(b)(4) 40.51(b)(4) 70.42(b)(4)	C	<p>Transfer Regulations</p> <p>Indiana incorporates 10 CFR Parts 30, 40, and 70 by reference with exceptions. Indiana is missing reconciliatory language in 30.41(b)(2), 40.51(b)(2), 70.42(b)(2), 30.41(b)(4), 40.51(b)(4), and 70.42(b)(4), to ensure the NRC is not inadvertently excluded from the transfer regulations. Indiana needs to include reconciliatory language in 10 CFR 30.41(b)(2), 40.51(b)(2), and 70.42(b)(2), so that, “agency in any Agreement State” means, “agency in any Agreement State or agency under NRC jurisdiction”. In 10 CFR 30.41(b)(4), 40.51(b)(4), and 70.42(b)(4), where a reference is made to, “any person in</p>

NRC SECTION	CATEGORY	SUBJECT and COMMENTS
		<p>an Agreement State, subject to the jurisdiction of that State, who has been exempted from the licensing requirements and regulations of that State,” it means, “any person in an Agreement State or in NRC jurisdiction, subject to the jurisdiction of that State or the NRC, who has been exempted from the licensing requirements and regulation of that State or the NRC”.</p>
<p>19.11(a)(4) 30.10 40.10 70.10 71.8</p>	<p>C</p>	<p>Deliberate Misconduct</p> <p>In 290 IAC 3-4-2, Sec. 2. (b)(5), 290 IAC 3-15-2, Sec. 2. (b)(6), and 290 IAC 3-16-2, Sec. 2. (b)(3), Indiana excludes 10 CFR 30.10, 70.10, and 71.8 from the Part 30, 70, and 71 regulations incorporated by reference. 10 CFR 30.10, 70.10, and 71.8 are compatibility category C regulations and Indiana needs to adopt these regulations to meet the essential objectives of the program. Indiana needs to update 290 IAC 3-4-2, 3-15-2, and 3-16-2 to remove this exclusion.</p> <p>Additionally, Indiana needs to provide reconciliation language, similar to that proposed in 290 IAC 3-1-2, Sec. 2. (a)(21), to replace references to 10 CFR Part 2, subpart b in 10 CFR 30.10, 70.10, and 71.8 with the appropriate Indiana statutory or regulatory provisions. This also applies to 10 CFR 19.11(a)(4) and 40.10(b).</p>
<p>Various</p>	<p>Various</p>	<p>Reference to Parts of 10 CFR that Indiana does not incorporate by reference</p> <p>Several regulations that Indiana has incorporated by reference refer to other Parts of 10 CFR that the state does not incorporate by reference. Specifically, 10 CFR 40.31(c) refers to 10 CFR Part 2 and Part 9. 10 CFR 30.32(f), 30.33, 40.31(f), and 40.32(e) contain references to 10 CFR Part 51. 10 CFR 70.21(d) refers to 10 CFR 2 with respect to public records.</p> <p>10 CFR Part 2 contains the NRC’s rules of practice and procedure, Part 9 is NRC’s implementing regulations for the Freedom of Information Act, and Part 51 is NRC’s primary environmental regulations.</p> <p>Indiana cannot incorporate by reference 10 CFR Parts 2, 9, and 51 as they apply only to the NRC. Indiana will need to identify its own similar regulations and provisions relating to the topics in 10 CFR 2, 9, and 51. As indicated in Enclosure</p>

NRC SECTION	CATEGORY	SUBJECT and COMMENTS
		3, Indiana should substitute their equivalent state regulations or statute for references to 10 CFR Parts 2, 9, and 51.
71.101(c)(1)	C	<p>Quality assurance requirements</p> <p>In 290 IAC 3-16-2, Indiana incorporates 10 CFR 71.101(c)(1) by reference. As written, the incorporated regulations would require licensees to submit quality assurance descriptions to the NRC for approval rather than to Indiana, which should not be the case. Indiana needs to provide a clarifying statement in 290 IAC 3-1-2, that states:</p> <p>In 10 CFR 71.101(c)(1), using an appropriate method listed in § 71.1(a), each licensee shall file a description of its quality assurance program, including a discussion of which requirements of this subpart are applicable and how they will be satisfied, by submitting the description to the address specified in 290 IAC 3-1-4(a).</p>
61.55(a)(2)(iv) 37.11(b)	B D	<p>Part 60, 63, and 73 Reconciliation</p> <p>290 IAC 3-1-2 contains reconciliation language for parts of 10 CFR that are IBR. Indiana should add a substitution for the reference to “part 60 or 63 of this chapter” in 10 CFR 61.55(a)(2)(iv) to replace it with “Title 10 CFR in Part 60 or 63”.</p> <p>Additionally, in 290 IAC 3-11-2, Indiana incorporates by reference 10 CFR 37.11(b) which contains a reference to “part 73 of this chapter”. Indiana needs to include reconciliation language that any reference to “part 73 of this chapter” is a reference to 10 CFR Part 73. Example reconciliation language is provided in 290 IAC 3-1-2, Sec. 2. (a)(25) and (29).</p>
39.11	D	<p>Application for specific license</p> <p>In 290 IAC 3-12-2, Indiana incorporates 10 CFR 39.11 by reference. In 10 CFR 39.11, there is a reference to the definition of “Person” specified in 10 CFR 30.4. Indiana Code 10-19-12 contains its own definition for “Person”. Indiana needs to update 290 IAC 3-1-2 to include reconciliatory language to update the reference to the definition of “Person” in 10 CFR 30.4 to the definition of “Person” in Indiana Code 10-19-12.</p>

NRC SECTION	CATEGORY	SUBJECT and COMMENTS
Various	Various	<p>References to 10 CFR Part 21</p> <p>Indiana 290 IAC 3-13-2 incorporates 10 CFR 31.2; 31.5(b)(10); 31.7(b); 31.8(c); 31.11(f); 31.12(b); 40.13(c); 40.22(d); and 70.19(c) by reference. In These regulations contain a a reference to 10 CFR 21 which is not applicable to Agreement States. Therefore, Indiana needs to provide reconciliatory language that the reference to “19, 20, and 21 of this chapter” is replaced by “10 CFR Part 19 and 20”.</p>
<p>10 CFR 34.45(a)(9)</p> <p>10 CFR 39.63(l)</p>	<p>D</p> <p>C</p>	<p>References to 10 CFR Part 21</p> <p>Indiana incorporates by reference 10 CFR Part 34 with exceptions. 10 CFR 34.45(a)(9) is a compatibility D and there is a reference to 10 CFR Part 21 which is not applicable to Agreement States. If Indiana decides to incorporate 10 CFR 34.45(a)(9) by reference, Indiana needs to add reconciliation language excluding the phrase “10 CFR part 21”. (See CRCPD SSR Subpart E. Sec. E.18.a.ix and references to other reporting requirements in Section E.38.)</p> <p>Indiana incorporates by reference 10 CFR 39 with exceptions. 10 CFR 39.63(l) is Compatibility C and references 10 CFR Part 21 which is not applicable to Agreement States. Indiana needs to add reconciliation language excluding the phrase “as required by part 21 of this chapter to meet the Compatibility C designation of the regulation. (See CRCPD SSR Subpart W, Sec.202.n)</p>
N/A	N/A	<p>In Indiana 290 IAC 3-1-2, Sec. 3. (a), Indiana has the phrase “In addition to the definitions contained in 10 CFR §20.1003...” Indiana has incorporated by reference these definitions and also the definitions of other parts of 10 CFR. Therefore, this phrase is not needed and is not inclusive of the other 10 CFR definitions incorporated. Indiana needs to delete the phrase “In addition to the definitions contained in 10 CFR §20.1003...” from 290 IAC 3-1-2, Sec. 3. (a).</p>
Various	Various	<p>Definitions</p> <p>Indiana incorporates by reference definitions for: “byproduct material”, “decommission” (decommissioning), “department”, “person”, “source material”, and “special nuclear material”. These definitions are duplicative of definitions that are found in Indiana’s 10-19-12 or in 290 IAC 3-1-3. To avoid duplication, Indiana needs to add these definitions to the list of excluded definitions across their</p>

NRC SECTION	CATEGORY	SUBJECT and COMMENTS
		<p>incorporation of NRC regulations by reference.</p> <p>Indiana incorporates by reference the definitions of “Commission”, “Production facility” its definitions for radiation/ionizing radiation/radioactive material to avoid duplication.</p> <p>290 IAC 3-2-2, Sec. 2. (a) also incorporates by reference the definition in 20.1003 for “generally applicable environmental radiation standards”. This definition contains references to”, and “Utilization facility”. These definitions are compatibility category D and so Indiana can choose to exclude them entirely. If Indiana chooses to IBR these definitions, Indiana needs to provide reconciliation language, as appropriate.</p> <p>Indiana incorporates by reference the definition of “Government agency”. This definition contains references to the executive branch and areas of federal jurisdiction. Indiana needs to exclude this definition across their incorporation of NRC regulations by reference. Additionally, as this definition is explicitly cited in 10 CFR 31.8(a)(2), Indiana needs to update 290 IAC 3-1-3 to include a definition for “Government agency” that does not include references to the executive branch and areas of federal jurisdiction and focuses on state agencies.</p> <p>In addition, Indiana defines “ionizing radiation” in 3-1-3 which is similar to NRC’s definition for “radiation” which is listed as “radiation (ionizing radiation).” Indiana should revise/consolidate standards issued by the Environmental Protection Agency (EPA) under the authority of the Atomic Energy Act of 1954. This definition is compatibility category D and so Indiana can choose to exclude this definition as proposed in Enclosure 3. If Indiana chooses to IBR this definition, Indiana needs to provide reconciliation language to the appropriate agency and legislation for which their environmental radiation standards apply.</p>
<p>35.2</p> <p>36.2</p> <p>39.2</p>	<p>B</p>	<p>Definition: Sealed Source</p> <p>In 290 IAC 3, Indiana excludes “Sealed source” from the definitions incorporated by reference in 10 CFR Parts 35, 36, and 39. This definition is compatibility category B and Indiana has not adopted a compatible definition of “Sealed source” in 290 IAC 3. Indiana can add a compatible definition of “Sealed source” to the general definitions in 290</p>

NRC SECTION	CATEGORY	SUBJECT and COMMENTS
		<p>IAC 3-1-3 "Definitions" Sec. 3(a) and continue to exclude the definition of "Sealed Source" from incorporation by reference in 290 IAC 3 to comply with the compatibility B designation of this regulation. Another option is for Indiana to delete the exclusion of the definition of "Sealed source", so it is incorporated by reference. Indiana needs to make conforming changes to 290 IAC 3 to comply with the compatibility B designation of this regulation. Currently, Enclosure 3 assumes "Sealed source" is incorporated by reference.</p>
37.101	C	<p>Records</p> <p>Indiana 290 IAC 3-1-8 does not contain requirements equivalent to the following requirements in 10 CFR 37.101 that:</p> <p>"[t]he licensee shall maintain adequate safeguards against tampering with and loss of records," and, "[r]ecords such as letters, drawings and specification, must include all pertinent information such as stamps, initials, and signatures."</p> <p>Proposed Agreement State compatibility category C elements must contain the essential objectives of the corresponding NRC regulation. Without these requirements, the regulation does not meet the compatibility category C requirements. Indiana can address this issue by adding the following language, mirroring 10 CFR 73.101 to 290 IAC 3-1-8, "The licensee shall maintain adequate safeguards against tampering with and loss of records," and, "Records such as letters, drawings and specification, must include all pertinent information such as stamps, initials, and signatures," to 290 IAC 3-1-8.</p> <p>Additionally, Indiana needs to include the sentence, "Unless, otherwise stated in this Article, requirements regarding records are as required by the material incorporated by reference. In addition,.. " as proposed in Enclosure 3 to ensure record requirements found in the incorporated sections of 10 CFR are included in the records requirements described in 290 IAC 3-1-8.</p>
Various	D	<p>Purpose and Scope</p> <p>Indiana has incorporated by reference the following "Purpose and Scope" sections in 10 CFR Parts:</p>

NRC SECTION	CATEGORY	SUBJECT and COMMENTS
		<p>19 – 19.1 and 19.2 20 – 20.1001 and 20.1002 30 – 30.1 31 – 31.1 32 – 32.1 33 – 33.1 34 – 34.1 35 – 35.1 36 – 36.1(a) 37 – 37.1 and 37.3 39 – 39.1 40 – 40.1 and 40.2 61 – 61.1 70 – 70.1 and 70.2 71 – 71.0(a), (b), (d), (e), (f), and (g) 150 – 150.1 and 150.2</p> <p>However, these listed sections are largely duplicative of Indiana’s “Applicability” sections throughout 290 IAC 3. To enhance clarity and avoid duplication, please exclude these sections from IBR and consider updating applicability language to also provide the purpose and scope. Additionally, Indiana can consider language provided in the CRCPD Suggested State Regulations as an example.</p> <p>In 290 IAC 3-6-2, Indiana incorporates 10 CFR 32.1(c)(1) by reference, which is compatibility category NRC and must be excluded. When Indiana updates 290 IAC 3-6-2 to exclude 10 CFR 32.1(c)(1) this issue will be resolved.</p>
20.1405(b)	C	<p>Public notification and public participation</p> <p>In 290 IAC 3-2-2, Sec. 2. (b)(7), Indiana excludes 10 CFR 20.1405(b) which is a compatibility category C regulation. Therefore, Indiana cannot exclude this regulation unless it has a compatible equivalent regulation in other areas of Indiana regulations. If not, Indiana needs to incorporate by reference 10 CFR 20.1405(b) and also provide reconciliation language for the reference to the Federal Register. This is needed to meet the compatibility category C designation of 10 CFR 20.1405(b).</p>
20.2106(d)	D	<p>Records of individual monitoring results</p> <p>In 290 IAC 3-2-2, Indiana incorporates 10 CFR 20 by reference with exceptions. In 10 CFR 20.2106(d), there is reference to 10 CFR Part 9 and the Privacy Act of 1974.</p>

NRC SECTION	CATEGORY	SUBJECT and COMMENTS
		<p>These apply to the NRC only. Indiana can choose to exclude this regulation or incorporate by reference but include reconciliation language to Indiana’s privacy laws. The redline strikeout attached as Enclosure 3 has this excluded at 290 IAC 3-2-2 Sec. 2. (b)(10).</p>
<p>30.3(b) 30.3(c) and (d)</p>	<p>NRC D</p>	<p>Activities Requiring License</p> <p>Indiana 290 IAC 3-4-2 incorporates by reference 10 CFR Part 30 with exceptions. 10 CFR 30.3(b)(1), (2), and (3) references government agencies and federally recognized tribes which are under NRC jurisdiction.</p> <p>Although it is a compatibility category D, 10 CFR 30.3(c) and (d) imposes requirements and authorizations that apply to Government agencies and Federally recognized Indian Tribes which are under NRC jurisdiction.</p> <p>Indiana needs to update 290 IAC 3-4-2 to exclude 10 CFR 30.3(b), (c), and (d).</p>
<p>30.11(b) and (c)</p>	<p>D</p>	<p>Specific Exemptions</p> <p>Indiana 290 IAC 3-4-2 incorporates by reference 10 CFR Part 30 with exceptions. 10 CFR 30.11(b) and (c) references licensing activities for the Department of Energy and 10 CFR 60, 63, and 72, which are not under Agreement State jurisdiction.</p> <p>Indiana needs to update 290 IAC 3-4-2 to exclude 10 CFR 11(b) and (c). This is proposed in the redline strikeout at 290 IAC 3-4-2, Sec. 2. (b)(7).</p>
<p>30.34(k)</p>	<p>NRC</p>	<p>Terms and Conditions of Licenses</p> <p>Indiana 290 IAC 3-4-2 incorporates by reference 10 CFR Part 30 with exceptions. 10 CFR 30.34(k) references Additional Protocol which is NRC compatibility.</p> <p>Indiana needs to update 290 IAC 3-4-2 to exclude 10 CFR 30.34(k). This is proposed in the redline strikeout at 290 IAC 3-4-2, Sec. 2. (b)(9).</p>
<p>31.5(a) 40.22(a)</p>	<p>Various</p>	<p>Excluding the term “Federal”</p> <p>Indiana 290 IAC 3-5-2 and 290 IAC 3-13-2 incorporate by reference 10 CFR Parts 31 and 40, respectively, with</p>

NRC SECTION	CATEGORY	SUBJECT and COMMENTS
		<p>exceptions. In 10 CFR 31.5(a) and 40.22(a), Indiana is not able to incorporate by reference the term “federal” as it is not under Agreement State jurisdiction. Indiana needs to update 290 IAC 3-5-2, Sec. 2. (b)(4) and 290 IAC 3-13-2, Sec. 2. (b)(11) to include exceptions for the word “federal” in 10 CFR 31.5(a) and 40.22(a).</p>
32.3	D	<p>Maintenance of records</p> <p>In 290 IAC 3-6-2, Indiana incorporates 10 CFR 32.3 which describes maintenance of records. However, Indiana has section 290 IAC 3-1-8, “Records,” which also describes record maintenance. To prevent duplicity, Indiana should either remove 290 IAC 3-1-8 or provide an exclusion in 290 IAC 3-6-2 to remove 32.3 from incorporation by reference. The redline strikeout has the exclusion at 290 IAC 3-6-2, Sec. 2. (b)(2).</p>
10 CFR Part 35, Subpart M	C	<p>Medical Event Reports</p> <p>Indiana incorporates by reference 10 CFR Part 35 with exceptions in 290 IAC 3-8-3. In 290 IAC 3-9-3, Indiana provides additional requirements to those outlined in 10 CFR 35, Subpart M, with respect to reporting. These include a 30-day written report (Subpart M specifies 15 days) and contains potentially duplicative language to Subpart M that may lead to confusion. The reporting requirements in 10 CFR Part 35, Subpart M, are compatibility category C and so any requirements in 290 IAC 3-8-3 must meet the essential objectives of the regulations and not create duplications, conflicts or gaps with 10 CFR Part 35, Subpart M. Indiana needs to clarify that 290 IAC 3-9-3 meets the compatibility category C requirements of 10 CFR Part 35, Subpart M.</p>
61.5 170.4 171.7	D	<p>Interpretations</p> <p>Indiana excludes 10 CFR 61.5, 170.4, and 171.7 from incorporation by reference in 290 IAC 3-14-2 and 290 IAC 3-18-2. These regulations refer to “interpretations” and are compatibility category D. Indiana does not exclude the “interpretations” section found in other parts of 10 CFR. Indiana can choose to exclude or include the “interpretations” section but should do so consistently.</p>

NRC SECTION	CATEGORY	SUBJECT and COMMENTS
40.20(b) and (c)	D	<p>Types of licenses</p> <p>Indiana 290 IAC 3-13-2 incorporates by reference 10 CFR Part 40 with exceptions. 10 CFR 40.20(b) and (c) refer to 10 CFR 40.27 and 10 CFR 40.28, respectively. These are compatibility category NRC regulations which Indiana has already excluded from incorporation by reference. Therefore, Indiana needs to update 290 IAC 3-13-2 to exclude 10 CFR 40.20(b) and (c) as well.</p>
40.26	D	<p>General license for possession and storage of byproduct material as defined in this part</p> <p>Indiana 290 IAC 3-13-2 incorporates by reference 10 CFR Part 40 with exceptions. 10 CFR 40.26 applies to Agreement State programs with authority to regulate uranium mill activities (11e.(2) byproduct material). Since Indiana has not requested this authority, Indiana needs to update 290 IAC 3-13-2, Sec. 2. (b)(13) to exclude 10 CFR 40.26 from incorporation by reference.</p>
40.31(g)	NRC	<p>Application for specific licenses</p> <p>In 290 IAC 3-13-2, Indiana incorporates by reference 10 CFR Part 40 with exceptions. 10 CFR 40.31(g) is an NRC compatibility regulation and so Indiana should not incorporate it by reference. Indiana needs to update 290 IAC 3-13-2, Sec. 2. (b)(16) to exclude 40.31(g) to meet the NRC compatibility category designation of this regulation.</p>
150.33	D	<p>Criminal penalties</p> <p>In 290 IAC 3-17-2, Indiana incorporates by reference 10 CFR 150.33. However, Indiana also has section 290 IAC 3-1-7 which references regulations for enforcement. Therefore, Indiana does not need to incorporate by reference 10 CFR 150.33. Indiana needs to update 290 IAC 3-17-2 to exclude 10 CFR 150.33 from incorporation by reference.</p>
10 CFR 170 and 171	N/A	<p>In 290 IAC 3-18-2, Indiana incorporates 10 CFR Parts 170 and 171 by reference with exceptions. Indiana incorporates by reference the NRC definitions found in 10 CFR 170 and 171. These definitions are overly complex to IBR and are not required for compatibility. Indiana needs to add 10 CFR 170.3 and 171.5 as exceptions to 290 IAC 3-18-2.</p>

NRC SECTION	CATEGORY	SUBJECT and COMMENTS
		Additionally, Indiana refers to “771.25” when it should refer to “171.25”. Indiana needs to correct this typographical error.
N/A	N/A	Department of Health Conflicting Regulations Indiana currently has regulations in 410 IAC 5 under the Department of Health. Indiana legislation 10-19-12-13 describes that this chapter supersedes ordinances, resolutions, or regulations other than those from the Indiana department of homeland security. Indiana needs to verify that this legislation will prevent conflicts, duplications, or gaps that would jeopardize the orderly pattern of regulation across the NMP.
N/A	N/A	Registrants In 290 IAC 3-8 and 290 IAC 3-10, Indiana provides reconciliation language for registrants for 10 CFR Parts 34 and 36. It is unclear whether registrants are applicable in other parts of 10 CFR. Indiana needs to clarify whether registrants are only applicable in 10 CFR Parts 34 and 36.

EDITORIAL COMMENTS ON INDIANA PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	CATEGORY	SUBJECT and COMMENTS
1.	290 IAC 3-18-2	10 CFR 170 and 171	N/A	In 290 IAC 3-18-2, Indiana incorporates 10 CFR 170 and 171 by reference with exceptions. Indiana can edit the exception of 10 CFR 170.11(a)(1) through (13) to 10 CFR 170.11(a).
2.	290 IAC 3-18-2	10 CFR 170 and 171	N/A	In 290 IAC 3-18-2, Indiana incorporates 10 CFR 170 and 171 by reference with exceptions. Indiana can edit the exceptions found in 290 IAC 3-18-2.(b)(26) to include "8" as an exception for 10 CFR 170.31 and 171.16. Additionally, Indiana can delete 2.A.(2)(a) through 2.A.(2)(e) as it is repetitive with 2.A.(1) to 2.A.(2).
3.	290 IAC 3-18-2 or 3	N/A	N/A	<p>Indiana can consider editing 290 IAC 3-18-2, "Radioactive Material Fees," to say, "Thereafter, <i>if the Department approves the license application</i>, [emphasis added] the Department shall issue an annual fee invoice in accordance with the appropriate fee schedule <i>in 10 CFR Part 171</i> [emphasis added] on a quarterly basis."</p> <p>This edit clarifies that 10 CFR 170 fees are paid for the initial license application and then annual fees (i.e. 171 fees) are paid after the license is granted.</p>
4.	N/A	N/A	N/A	The NRC staff provided general editorial changes for Indiana's consideration. The NRC staff added "10 CFR" in front of citations to NRC regulations for greater clarity. Additionally, the NRC staff provided strikeouts for certain regulations and sections that were consolidated as part of changes made to other areas as part of developing reconciliation language. The NRC staff renumbered several sections; however, Indiana is able to reorganize their regulations as appropriate.
5.	290 IAC 3	N/A	N/A	For ease of reading, Indiana can consider putting their definitions in 290 IAC 3-1-3 in alphabetical order.
6.	290 IAC 3-1-3 10-19-12-4	N/A	N/A	Indiana has definitions in 290 IAC 3-1-3 which are identical to definitions in 2023 Indiana Code 10-19-12-4. These definitions refer to "this chapter" which pertains to the 2023 Indiana Code 10-19-12-4. It would be beneficial for Indiana to not duplicate the

STATE SECTION		NRC SECTION	CATEGORY	SUBJECT and COMMENTS
				definitions found in 2023 Indiana Code 10-19-12-4 but to provide language referring to the 2023 Indiana Code 10-19-12-4. For example, "Department" could mean, "has the same meaning as provided in 2023 Indiana Code 10-19-12-4."
7.	290 IAC 3-18-2 or 3	N/A	N/A	Indiana contains two sections numbered 290 IAC 3-18-2. Indiana needs to renumber the section after IAC 3-18-2.

INDIANA PROPOSED REGULATIONS TO 10 CFR PARTS 19, 20, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 61, 70, 71, AND 150 DATE September 10, 2024

DISTRIBUTION: DIR RF 24-29 SP07

DSilberfeld, OCIO/DIME

DPiccirillo, R-III/DNMS

AGiantelli, NMSS/MSST/SMPB

SFlaherty, NMSS/MSST/SLPB

HKhavannik, NMSS/MSST/SLPB

SSahle, NMSS/REFS/RRPB

ADAMS Accession No.: ML24185A080

OFFICE	NMSS/MSST/SLPB	NMSS/MSST/SLPB	NMSS/REFS /RRPB	OGC/LHE/MFW
NAME	HKhavannik <i>HA</i>	SFlaherty <i>SF</i>	SSahle <i>SS</i>	EAnderson <i>EA</i>
DATE	Sep 6, 2024	Sep 9, 2024	Sep 9, 2024	Sep 9, 2024
OFFICE	NMSS/MSST/SMPB			
NAME	AGiantelli <i>AG</i>			
DATE	Sep 10, 2024			

OFFICIAL RECORD COPY