

**Indiana Department of Homeland Security
Radioactive Materials Control Program**



**Draft Request for
US Nuclear Regulatory Commission
Agreement State Status**
Date Submitted: XX/XX/XXXX

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1.0 Preface
Formal Request for an Agreement
State of Indiana

This document is prepared as the submittal for the State of Indiana's request to become an Agreement State as authorized by the Atomic Energy Act (AEA) of 1954, as amended. This Agreement will provide for the State of Indiana's assumption of regulatory authority over radioactive materials not involved in energy production used in the State of Indiana from the United States Nuclear Regulatory Commission (NRC).

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2.0 Introduction

On June 11, 2021, Governor Eric J. Holcomb sent NRC Chairman Honorable Christopher T. Hanson a letter of intent for Indiana to enter into an Agreement with the NRC. Since that time, the Indiana Department of Homeland Security Radioactive Materials Control Program has been granted authority by the Indiana General Assembly for entering into an Agreement and establishing a regulatory program for Radioactive Materials, promulgated regulations for purposes of entering into an Agreement, trained and qualified staff for licensing and inspection responsibilities to be assumed under the Agreement, and developed this Request with the procedures, forms, and other content to meet the criteria and information needs in the NRC's Handbook for Processing an Agreement. References to the content are provided throughout this request. Key documents are available here in their entirety:

Appendix	Document Title
4.1-1	Indiana Code Title 10, Article 19, Chapter 12 (2022)
4.1-2	The Radioactive Materials Rule
4.1-3	Indiana Code Title 4, Article 22, Chapter 2 Adoption of Administrative Rules
4.1-4	Indiana Code Title 22, Article 14, Chapter 2, Section 4 Power of the Department and the State Fire Marshal
4.1-5	42 IAC 1-5 Indiana State Code of Ethics
4.1-6	Indiana Code Title 4, Article 6, Chapter 3, Section 2 Direction of Prosecutions Brought in the Name of the State
4.1-7	Indiana Code Title 4, Article 6, Chapter 2, Section 1 Prosecuting and Defending Suits by or Against State and State Officers
4.1-8	Title 13, Article 29, Chapter 1 Midwest Interstate Compact on Low-Level Radioactive Waste

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3.0 Overview

This document is prepared using the guidance in the NRC Office of Nuclear Material Safety and Safeguards *Handbook for Processing an Agreement* dated June 2022. The Information Needed and Evaluation Criteria specified in Section 4.0 of the Handbook are addressed herein to ensure that the State of Indiana has a compliant and compatible program for the control of licensees who possess, use, store, transfer, and dispose of radioactive materials in the State of Indiana.

The State of Indiana seeks to enter into an Agreement with the NRC assuming regulatory authority over materials, source materials, special nuclear materials in quantities not sufficient to form a critical mass. In addition, the State seeks to regain regulatory authority over those materials transferred to the NRC by the Energy Policy Act of 2005. The following information is provided in support of this application to become an Agreement State.

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4.0 Information Needed and Evaluation Criteria

This section addresses the information that the NRC requires to review an Agreement request and the evaluation criteria that the NRC staff will use as a baseline. This is based on *Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement*, known as the Criteria Policy Statement, and described in Section 4.0 of the *Handbook for Processing an Agreement*.

4.1 Legal Elements

In this section the information needed to meet the evaluation criteria in the Handbook for Processing an Agreement Subsections is found:

- 4.1.1 Authority to Establish a Program and Enter into an Agreement
- 4.1.2 Organization of the Proposed Program; and
- 4.1.3 Content of the Proposed Agreement

The handbook criteria are bold, and the content to meet the criteria follows.

4.1.1 Authority to Establish a Program and Enter into an Agreement

SA-700 Section 4.1.1.1:

For all categories of materials for which the State is requesting authority, the following State law is submitted.

a. Establishes the Agreement materials program, defines its structure, and authorizes the Governor to enter into an Agreement with the Commission.

The Indiana Department of Homeland Security (the Department) statutory authority to establish the Agreement State program and define its structure is provided in the Indiana Code (IC):

IC Title 10, Article 19, Chapter 12, Section 2, Public Policy. Sec. 2. It is the policy of the state in furtherance of its responsibility to protect the occupational health and safety, public health and safety, and environment to: (1) institute and maintain a regulatory program for sources of ionizing radiation and nonionizing radiation so as to provide for compatibility and equivalency with the standards and regulatory programs of the federal government, an integrated effective system of regulation within the state, and a system consonant insofar as possible with those of other states;

IC Title 10, Article 19, Chapter 12, Section 5, Duties: Registration, Regulation, and Use of Radiation Generating Equipment. Section 5(a). The Indiana Department of Homeland Security is designated as the state agency responsible for carrying out the duties of this chapter. Section 5(b). The executive director of the department may use the authority granted under IC 10-19-3-4 and IC 10-19-3-5 to carry out the duties of this chapter. Section 5(c). The department shall, for the protection of the occupational health and safety, public health and safety, and environment, do the following: (1) Develop programs for evaluation and control of hazards associated with use of sources of radiation. (2) Develop programs with due regard for compatibility with federal programs for regulation of byproduct, source, and special nuclear material. (3) Adopt rules and regulation, 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.

The structure of the Agreement Materials Program is provided below in Section 4.1.2.

IC 10-19-12-11(a) provides statutory authority for the Governor to enter into an Agreement.

Section 11(a) The governor, on behalf of the state, is authorized to enter into agreements with the U.S. Nuclear Regulatory Commission under Section 274b of the Atomic Energy Act of 1954, as amended, providing for discontinuance of certain of the commission's licensing

and related regulatory authority with respect to byproduct, source, and special nuclear materials and the assumption of regulatory authority therefore by this state.

b. Authorizes the program to issue licenses, including the following:

IC 10-19-12-5(c)(3) authorizes the department to adopt rules and regulations to provide for licensing and registration of sources of radiation.

Section 5(c)(3) 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.

IC 10-19-12-6 authorizes the department to adopt rules for general and specific licensing of radioactive material, devices or equipment utilizing such material.

Section 6(a) The department shall adopt rules under IC 4-22-2 for general and specific licensing of radioactive materials, or devices or equipment utilizing such material. The rules must provide for the amendment, suspension, or revocation of licenses.

b.1. Authorizes the program to impose additional license requirements:

IC 10-19-12-6(a)(2) and (4) provides the department with authority to impose additional license requirements.

Section 6(a)(2) Each license shall be in such form and contain such terms and conditions as the department may by rule or regulation prescribe.

Section 6(a)(4) The terms and conditions of all licenses shall be subject to amendment, revision or modification by rules, regulations or orders issued in accordance with the provisions of this chapter.

b.2. Authorizes the program to give exemptions from licensing requirements:

IC 10-19-12-6(c) authorizes the department to give exemptions from licensing requirements.

Section 6(c) The department is authorized to exempt certain sources of radiation or kinds of uses of users from the licensing or registration requirements set forth in this section when the department makes a finding that the exemption of such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

b.3. Authorizes the program to recognize the licenses of the NRC and other agreement states (that is reciprocity):

IC 10-19-12-6(d) authorizes the department to recognize NRC and other Agreement State licenses when it states, “provide for recognition of other state or federal licenses”.

Section 6(d) Rules and regulations promulgated under this chapter may provide for recognition of other state or federal licenses as the department shall deem desirable, subject to such registration requirement as the department may prescribe.

290 IAC 3 -17-2(a) Standards for Protection Against Radiation incorporates the requirement to recognize licenses of other jurisdictions, including the NRC and other Agreement states. Indiana is incorporating NRC regulations by reference, and 290 IAC 3-1-2 provides reconciliation

with the incorporated sections of federal regulations to ensure references to other jurisdictions includes both NRC and other Agreement States where appropriate.

b.4. Makes it unlawful to acquire, possess, store, use, transfer or dispose of materials without a valid license, or to violate the conditions of a license:

IC 10-19-12-6(a)(3) defines conditions in which it is acceptable to dispose of radioactive material by limiting possession and disposal to licensed entities:

Section 6(a)(3) No license issued under the authority of this chapter and no right to possess or use sources of radiation granted by any license shall be assigned or in any manner disposed of unless the department shall, after securing full information, find that the transfer is in accordance with the provision of this chapter, and shall give its consent in writing.

IC 10-19-12-16 defines prohibited acts related to radiation and radioactive materials:

Section 16 It shall be unlawful for any person to use, manufacture, produce, distribute, sell, transport, transfer, install, repair, receive, acquire, own, or possess any source of radiation unless licensed by or registered with the department in conformance with rules and regulations, if any, promulgated in accordance with the provision of this chapter.

b.5. Authorizes the program to recognize licenses transferred from the NRC under the Agreement as State licenses.

IC 10-19-12-11(b) authorizes the department to recognize licenses transferred from the NRC as Indiana State licenses.

Section 11(b) Any person who, on the effective date of an agreement under subsection (a), possesses a license issued by the U.S. Nuclear Regulatory Commission for radioactive materials subject to the agreement shall be deemed to possess a like license issued under this chapter, which shall expire either ninety (90) days after receipt from the department of a notice of expiration of such license, or on the date of expiration specified in the U.S. Nuclear Regulatory Commission license, whichever is earlier.

This section does not affect NRC or Agreement State licensees based outside of Indiana or NRC licensees that remain under NRC jurisdiction. Indiana understands that if and when an Agreement between the NRC and Indiana goes into effect, the state will assume regulatory authority for those NRC licensees based in Indiana. Any licensees from other agreement States or NRC licensees not based in Indiana that are operating in Indiana on the effective date of an Agreement would be subject to reciprocity under Indiana's statutes and regulations. NRC jurisdiction will remain with NRC for activities on federal land.

c. Authorizes the program to adopt regulations.

IC 10-19-12-6 authorizes the department to adopt rules for the licensing of radioactive materials:

Section 6(a) The department shall adopt rules under IC 4-22-2 for general and specific licensing of radioactive materials, or devices or equipment utilizing such materials. The rules must provide for the amendment, suspension, or revocation of licenses.

IC 10-19-12-5(c) authorizes the program to adopt rules that are compatible with those of the federal government:

Section 5(c)(3) 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.

c.1. Specifies the procedures and requirements for adoption of regulations, including public participation.

IC 10-19-12-5(c) provides the program the authority to adopt regulations.

Section 5(c) The department shall, for the protection of the occupational health and safety, public health and safety, and environment, do the following:

Section 5(c)(3) 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.

IC 10-19-12-5(e)(1) and (2) provide requirements for efficient regulation and public comments.

Section 5(e)(1) Consult with and review regulations and procedures of a state agency or department that regulates, in part, radiation or radiation generating equipment to prevent unnecessary duplication, inconsistencies, or gaps in regulatory requirements.

Section 5(e)(2) Review, before and after, the holding of any public hearing required under the provision of this chapter prior to promulgations, the proposed rules and regulations of any state agencies that relate to the use and control of radiation, to assure that the rules and regulations are consistent with other agencies. Proposed rules and regulations are not effective until thirty (30) days after submission to the department, unless either the governor or the department waives all or part of the thirty (30) day period. The waiting period runs concurrently with any other waiting period required by state law.

IC 10-19-12-6(a) provides the program with the ability to adopt rules:

Section 6(a) 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.

Administrative rulemaking is the process by which agencies are authorized to establish binding standards of conduct for regulated entities. The Administrative Rules and Procedures Act (ARPA) governs agency rulemaking, Ind. Code Art. 4-22, and applies “to the addition, amendment, or repeal of a rule in every rulemaking action.” Ind. Code 4-22-2-13(a).

Although some agencies have unique rulemaking requirements provided in statute, the general steps in the administrative rulemakings process are found at <https://www.in.gov/omb/management-circulars/rule-approval-process/administrative-rulemaking-rulemaking-process-overview/> and included below:

1. Rule Development: The agency works with interested stakeholders to discuss issues and develop a draft proposed rule prior to commencing the formal rulemaking process.
2. SBA and OMB Approval of Rulemaking: The agency submits the proposed rule language and a regulatory analysis to the Indiana Office of Management and Budget (OMB) and Indiana

State Budget Agency (SBA) for review and approval. The requesting agency should review [Financial Management Circular 5.1 OMB and SBA Review of Agency Rulemaking](#), [Financial Management Circular 5.2 Requirements for Regulatory Analysis](#), and [OMB's rulemaking presentation](#) for guidance regarding the information required for review. The template for the regulatory analysis is provided [here](#).

3. [If necessary] Budget Committee Review: If the proposed rule adds or amends language to increase or expand application of a fee, fine, or civil penalty, or the rule will have a combined implementation and compliance costs of at least one million dollars (\$1,000,000) for businesses, local units, and individuals over any two (2) year period, the agency must obtain budget committee review of the proposed rule before it can be approved by OMB and SBA. SBA will assist an agency covered by this requirement to seek budget committee review. The template for [new](#) fees, fines, and civil penalties is provided [here](#). The template for [increased](#) fees, fines, and civil penalties is provided [here](#). The template for [safe harbor](#) fees, fines, and civil penalties is provided [here](#).
4. Notice of First Public Comment Period: The agency files the Notice of First Public Comment Period, proposed rule language, regulatory analysis, SBA and OMB approval, budget committee agenda (if necessary), and other documents required under IC 4-22-2-23 with Legislative Services Agency (LSA) by sending them to register@iga.in.gov, and the documents are published in the Indiana Register. The LSA template for the notice is provided [here](#). The agency should review the [Administrative Rules Drafting Manual](#) for guidance regarding the information and format required by LSA. All required documents must be published at least thirty (30) days before the public hearing.
5. Public Hearing and Public Comment: The agency will hold a public hearing, during which time anyone can provide oral comments on the rule. The agency will also have a written comment period, with oral and written comments having equal weight. The LSA template for the notice is provided [here](#). The public comment period usually corresponds with the period from the notice of public hearing until the hearing itself. The agency must provide an option for the public to attend and comment on the hearing remotely. Webcasts must be archived as public records on the agency's rulemaking docket website.
6. [If necessary] Notice of Second Public Comment Period: If an agency receives substantive comments during the first public comment period or the proposed rule establishes a requirement or limitation that is more stringent than an applicable federal requirement or limitation, the agency must have a second public comment period and hearing. The agency files the Notice of Second Public Comment Period, proposed rule language, regulatory analysis, SBA and OMB approval, budget committee agenda (if necessary), summary of comments received and agency response, explanation of any differences between the text of the proposed rule for the first public comment period and the second, and other documents required under IC 4-22-2-24 with LSA by sending them to register@iga.in.gov, and the documents are published in the Indiana Register. The LSA template for the notice is provided [here](#). All required documents must be published at least thirty (30) days before the public hearing.
7. [If necessary] Second Public Hearing and Public Comment: The agency will hold a second public hearing and comment period with the same requirements as the first public hearing and comment period. The LSA template for the notice is provided [here](#).
8. Final Rule: The agency considers the public comments and may make changes based on those comments to form the Final Rule. The Final Rule, as published, must include the name, address, telephone number, and electronic mail address of a person designated by

the agency as the small business regulatory coordinator for the rule who will answer questions and assist small businesses with compliance.

9. Attorney General Review: The agency submits the Final Rule and supporting documents to the Office of the Attorney General for review and approval. The Attorney General has forty-five (45) days from the date that the agency submits a rule or resubmits a rule to approve or disapprove the rule.
10. Governor Review: After the Attorney General has approved a rule, the agency submits the Final Rule and supporting documents the Governor's Office for review and approval. The Governor has fifteen (15) days to review and approve a rule. The Governor may have up to thirty (30) days for review if the Governor files a statement with the Indiana Register indicating the Governor intends to take an additional fifteen (15) days.
11. Effective Rule: After the rule has been approved by all state signatories, it will be filed with LSA and becomes effective 30 days later. It is now an enforceable administrative rule and published in the Indiana Administrative Code. The LSA template for the final rule is provided [here](#).

c.2. Allows the program to impose requirements in the form of other generic legally binding requirements, such as license conditions or orders:

IC 10-19-12-6(a) allows the department to impose license conditions or orders:

Section 6(a) The department shall adopt rules under IC 4-22-2 for general and specific licensing of radioactive materials, or devices or equipment utilizing such materials. The rules must provide for the amendment, suspension, or revocation of licenses. The rules must also provide the following:

Section 6(a)(2) Each license shall be in such form and contain such terms and conditions as the department may by rule or regulation prescribe.

Section 6(a)(4) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations, or orders issued in accordance with the provision of this chapter.

The authority to issue orders, including orders related to fees, records, injunctions, impoundment, civil penalties, and emergency situations are provided in the following sections of IC 10-19-12. 10-19-12-5 grants the department and the Executive Director, with the powers granted by IC 10-19-3-4 and IC 10-19-3-5, the authority to issue such orders.

Section 5(a) The Indiana department of homeland security is designated as the state agency responsible for carrying out the duties of this chapter.

Section 5(b) The executive director of the department may use the authority granted under IC 10-19-3-4 and IC 10-19-3-5 to carry out the duties of this chapter.

Section 5(c)(4) Issue such orders or modifications thereof as may be necessary in connection with proceedings under this chapter.

Section 7(d) When a registrant or licensee fails to pay the applicable fee, the department may suspend or revoke the registration or license or may issue an appropriate order.

Section 10 The department is authorized to require by rule, regulation, or order the keeping of such records with respect to activities under licenses and registration certificates issued

under this chapter as may be necessary to effectuate the purposes of this chapter. These records shall be made available for inspection by, or copies thereof shall be submitted to, the department on request.

Section 14(b) Orders shall be issued under this chapter in accordance with IC 4-21.5.

Section 14(f) Whenever the department finds that an emergency exists requiring immediate action to protect the public health and safety, the department may adopt rules under IC 4-22-2 or issue emergency orders under IC 4-21.5-4 to address the emergency.

Section 15 Whenever, in the judgement of the department, any person has engaged in or is about to engage in any acts or practices that constitute or will constitute a violation of any provision of this chapter, or any rule, regulation, or order issued thereunder, the department may, in lieu of issuing an administrative order, apply for an order from a circuit or superior court in the county in which the person takes a substantial step toward violating a law, or a violation occurs. 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, a restraining order, or other order may be granted.

Section 17 The department shall have the authority in the event of an emergency to impound or order the impounding of sources of radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules or regulations issued thereunder.

Section 18(b) 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

d. Authorizes representatives of the program to enter premises and conduct inspections.

IC 10-19-12-9 provides such authority to the program to enter premises and conduct inspection:

Section 9 The department or its duly authorized representatives shall have the power to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of this chapter and rules and regulations issued thereunder, except that entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

e. Authorizes the program to require compliance with regulatory requirements by both licensees and unlicensed individuals.

IC 10-19-12-4 provides the definition which can refer to both licensees and unlicensed individuals.

Section 12 "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, state agency other than the department, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, but not including federal government agencies.

Using this definition of “person”, IC 10-19-12-16 describes prohibited acts for both licensed and unlicensed individuals to ensure compliance with regulatory requirements:

Section 16 It shall be unlawful for any person to use, manufacture, produce, distribute, sell, transport, transport, transfer, install, repair, receive, acquire, own, or possess any source of radiation unless licensed by or registered with the department in conformance with rules and regulations, if any, promulgated in accordance with the provisions of this chapter.

f. Authorizes the program to impose sanctions for violations of the regulations, orders, or license conditions.

The Department has broad authority to impose sanctions for violations of regulations, orders, or license conditions. Enforcement and sanctions are risk informed based upon the potential or actual severity and frequency of violations. Such actions can also be adjusted based upon the economic and financial conditions of a licensee, any economic benefit derived as a result of the violation, and any other factors the Radioactive Materials Program Enforcement Committee deems appropriate, including voluntary measures taken by the violators.

IC 10-19-12-6 authorizes the department to amend, suspend, and revoke licenses:

Section 6 ... 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.

Section 6(a)(1) ... The department may at any time after the filing of the application, and before the expiration of the license, require further written statements and may make such inspections as the department may deem necessary in order to determine whether the license should be modified, suspended, or revoked...

IC 10-19-12-15 defines injunctions proceedings.

Section 15 Whenever, in the judgement of the department, any person has engaged in or is about to engage in any acts or practices that constitute or will constitute a violation of any provision of this chapter, or any rule regulation, or order issued thereunder, the department may, in lieu of issuing an administrative order, apply for an order from a circuit or superior court in the county in which the person takes a substantial step toward violating a law, or a violation occurs. 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, a restraining order, or other order may be granted.

IC 10-19-12-17 authorizes the program to impound sources in an emergency:

Section 17 The department shall have the authority in the event of an emergency to impound or order the impounding of sources of radiation in the possession of any person who is not equipped to observe or fails to observe the provision of this chapter or any rules or regulations issued thereunder.

IC 10-19-12-18(a) gives the program authority to impose civil penalties:

Section 18(a) Any person who violates any licensing or registration provision of this chapter or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license or registration certificate issued thereunder, or commits any violation for which a license or registration certificate may be revoked under rules or regulations issued under

this chapter may be subject to a civil penalty, to be imposed by the department, not to exceed ten thousand dollars (\$10,000).

In Indiana, the Attorney General has authority over civil matters and actions. Actions which the Radioactive Materials Program Enforcement Committee, in consultation with The Office of General Counsel (OGC), determines to be “criminally negligent” would be referred to the Attorney General who is the lead for criminal violations in Indiana. This authority is provided in IC 4-6-2-1 and IC 4-6-3-2.

IC 4-6-2-1 provides the Attorney General’s Powers and Duties

Section 1(a) The attorney general shall prosecute and defend all suits instituted by or against the state of Indiana, the prosecution and defense of which is not otherwise provided for by law, whenever the attorney general has been given ten (10) days' notice of the pendency of the suit by the clerk of the court in which the suit is pending, or whenever the governor or a majority of the officers of state require the attorney general in writing, with reasonable notice, to prosecute or defend a suit. The attorney general shall represent the state in all criminal cases in the Supreme Court, and shall defend all suits brought against the state officers in their official relations, except suits brought against them by the state; and the attorney general shall be required to attend to the interests of the state in all suits, actions, or claims in which the state is or may become interested in the Supreme Court of this state.

Section 1(b) The attorney general may not defend a member (as defined in IC 2-2.1-4-5) in an action for legislative bolting brought under IC 2-2.1-4

While IC 4-6-3-2 provides Direction of Prosecutions Brought in the Name of the State

Section 2(a) The attorney general shall have charge of and direct the prosecution of all civil actions that are brought in the name of the state of Indiana or any state agency.

Section 2(b) In no instance under this section shall the state or a state agency be required to file a bond.

Section 2(c) This section does not affect the authority of prosecuting attorneys to prosecute civil actions.

Section 2(d) This section does not affect the authority of the inspector general to prosecute a civil action under IC 4-2-7-6 for the recovery of any of the following:

(1) Funds misappropriated, diverted, missing, or unlawfully gained.

(2) A civil penalty imposed by the state ethics commission under IC 4-2-6-12.

When the Department identifies an entity or individual that requires criminal penalties, the Department will compile their investigation records into a report along with all other relevant files and work with the Attorney General and the local prosecutor of the county that the criminal activity took place in to pursue a conviction. The Department will first

coordinate with the Attorney General's office to verify that the Attorney General's office would like to forward the violations to the local prosecutor.

g. Establishes conflict of interest and ethics regulations or procedures applicable to those portions of the State Radioactive Materials Control Program covered by the Agreement.

IC 4-2-6 establishes ethics and conflicts of interest for state employees, officers and special state appointees. State employees, state officers and special state appointees are defined in IC 4-2-6-1. IC 4-2-6-6 mentions disclosure of confidential information by addressing that, "No state officer or employee, former state officer or employee, special state appointee, or former special state appointee shall accept any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of confidential nature."

IC 4-2-6-5.5(a) establishes ethics and conflicts of interest guidelines for state employees.

Section 5.5(a) A current state officer, employee, or special state appointee may not knowingly do any of the following:

(1) Accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired.

(2) Accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment.

(3) Use of attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:

(A) Of substantial value; and

(B) Not properly available to similarly situated individuals outside state government.

Rules promulgated under IC 4-2-6 are outlined in 42 IAC 1-5.

SA-700 Section 4.1.1.2:

a. State law must authorize the Governor to enter into an Agreement. It must also designate a radiation control agency and provide it the necessary legal authority to be effective.

IC 10-19-12-11(a) authorizes the Governor of Indiana to enter into an Agreement with the Nuclear Regulatory Commission.

Section 11(a) The governor, on behalf of the state, is authorized to enter into agreements with the U.S. Nuclear Regulatory Commission under Section 274b of the Atomic Energy Act of 1954, as amended, providing for discontinuance of certain of the commission's licensing

and related regulatory authority with respect to byproduct, source, and special nuclear materials and the assumption of regulatory authority therefore by this state.

IC 10-19-12-5(a) identified the Indiana Department of Homeland Security as the designated agency responsible to carry out the radioactive materials control program and IC 10-19-12-5(b) authorizes the executive director of the department to utilize their authority to carry out the duties of the radioactive materials control program.

Section 5(a) The Indiana Department of Homeland Security is designated as the state agency responsible for carrying out the duties of this chapter.

Section 5(b) The executive director of the department may use the authority granted under IC 10-19-3-4 and IC 10-19-3-5 to carry out the duties of this chapter.

IC 10-19-3-4 allows the executive director to appoint employees.

Section 4 The executive director may appoint employees in the manner provided by IC 4-15-2.2 and fix their compensation, subject to the approval of the budget agency under IC 4-12-1-13.

IC 10-19-3-5 allows the executive director to delegate their authority to appropriate staff.

Section 5 The executive director may delegate the executive director's authority to the appropriate department staff.

IC 10-19-12-2 provides the necessary legal authority to be effective.

Section 2 It is the policy of the state in furtherance of its responsibility to protect the occupational health and safety, public health and safety, and environment to: (1) institute and maintain a regulatory program for sources of ionizing radiation and non-ionizing radiation so as to provide for compatibility and equivalency with the standards and regulatory programs of the federal government, and integrated effective system of regulation within the state, and a system consonant insofar as possible with those of other states;

- b. State law must not create duplication, gaps, or conflicts in regulation. This includes duplications, gaps, or conflicts between the State and the NRC, State agencies, or State and local agencies. The law must not seek to regulate materials or activities reserved to the NRC.**

IC 10-19-12-3 states that Indiana's program will avoid being duplicative.

Section 3(1) a program of effective regulation of sources of radiation for the protection of the occupational health and safety and public health and safety.

Section 3(2) a program to promote an orderly regulatory pattern within Indiana, among the states, and between the federal government and Indiana, and facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation to the end that duplication of regulation may be minimized;

IC 10-19-12-5 prescribes procedures to identify duplication, gaps, and conflicts with the federal government, other Agreement States, Indiana state agencies and local governmental entities within Indiana.

Section 5(c) The department shall, for the protection of the occupational health and safety, public health and safety, and environment, do the following:

Section 5(c)(2) Develop programs with due regard for compatibility with federal programs for regulation of byproduct, source, and special nuclear materials.

Section 5(c)(3) Adopt rules and regulation, 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.

Section 5(c)(5) Advise, consult, and cooperate with other state agencies, the federal government, other states and interstate agencies, political subdivisions, and other organization concerned with control of source of radiation.

Section 5(c)(7) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of radiation.

Section 5(d) "Registration of radiation generating equipment and regulations regarding the use of radiation generating equipment shall be in accordance with IC 16-41-35.

Section 5(e) The department shall coordinate, the registration, regulation, and use of radiation generating equipment under subsection (d). The department shall do the following in carrying out the duties of this subsection:

Section 5(e)(1) Consult with and review regulations and procedures of a state agency or department that regulates, in part, radiation or radiation generating equipment to prevent unnecessary duplication, inconsistencies, or gaps in regulatory requirements.

Section 5(e)(2) Review, before and after, the holdings of any public hearing required under the provisions of this chapter prior to promulgation, the proposed rules and regulation of any state agencies that related to the use and control of radiation, to assure that the rules and regulations are not effective until thirty (30) days after submission to the department, unless, either the governor or the department waives all or part of the thirty (30) day period. The waiting period runs concurrently with any other waiting period required by state law.

Section 5(e)(3) Consult with state agencies in an effort to resolve inconsistencies if the department determines that a proposed rule or regulation is inconsistent with an existing rule or regulation.

Section 5(e)(4) Notify the governor if an inconsistency under subdivision (3) has not been resolved. Upon notification, the governor may find that the proposed rules and regulations or parts thereof are inconsistent with the rules and regulations of other agencies of the state and may issue an order to that effect in which event the proposed rules or regulations or parts thereof shall not become effective. The governor may, in the alternative, upon a similar determination, direct the appropriate agency or agencies to amend or repeal existing rules or regulations to achieve consistency with the proposed rules or regulations.

Currently, the Indiana Department of Health (IDOH)'s Radiology program has the authority to maintain a registry that tracks all sources of ionizing radiation that includes Atomic Energy Act (AEA) radioactive materials. After the Agreement becomes effective, the tracking and regulation of AEA radioactive materials will be transferred to IDHS and that agency will issue new Indiana

Agreement State licenses. The IDOH will continue tracking machine produced ionizing radiation sources that do not contain AEA radioactive materials.

IC 10-19-12-11(a) authorizes the governor to “...enter into agreements with the U.S. Nuclear Regulatory Commission under Section 274b of the Atomic Energy Act of 1954, as amended...”. The proposed agreement in section 4.1.3 of this application outlines the authority that will be retained by the U.S. Nuclear Regulatory Commission.

The State of Indiana is incorporating the required parts of 10 CFR, Chapter I by reference to eliminate the possibility of duplication, gaps, or other conflicts in regulation, including duplications, gaps, or conflicts between the State and NRC, State agencies, or State and local agencies.

Relative to activities reserved to NRC regulation, 290 IAC 3-1-1 states

Section 1(a) This article, except as otherwise specifically provided, applies to all persons that use, store, produce, transport, possess, or dispose of radioactive materials within the state of Indiana.

Section 1(b) This article does not apply to any person to the extent a person is subject to regulation by the NRC.

- c. State law must authorize issuing licenses as the means of giving the authority to possess and use Agreement materials. It should also authorize the reciprocal recognition of specific licenses issued by the NRC or other Agreement States.**

IC 10-19-12-6(a) authorizes the program to issue licenses for the use of radioactive materials.

Section 6(a) The department shall adopt rules under IC 4-22-2 for general and specific licensing of radiation material, or devices or equipment utilizing such material. The rules must provide for the amendment, suspension, or revocation of licenses.

The department will utilize both general licenses and specific licenses to regulate sources of radiation. IC 10-19-12-4 provides the definitions for general licenses and specific licenses.

Section 4(7) “General license” means a license effective under regulations promulgated by the department without the filing of an application with the department of the issuance of licensing documents to particular persons to transfer, acquire, own, possess or use quantities of, or devices or equipment utilizing, radioactive material.

Section 4(22) “Specific license” means a license, issued to a named person upon application filed under the regulation promulgated under this chapter, to use, manufacture, produce, transfer, receive, acquire, or possess quantities, or devices or equipment utilizing, radioactive material.

IC 10-19-12-5(c)(3) authorizes the program to adopt rules for the licensing and registration of radioactive materials.

Section 5(c) The department shall, for the protection of the occupational health and safety, public health and safety, and environment, do the following:

Section 5(c)(3) Adopt rules and regulation, 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.

IC 10-19-12-6(d) allows for reciprocal recognition of licenses from other jurisdictions.

Section 6(d) Rules and regulations promulgated under this chapter may provide for recognition of other state or federal licenses as the department shall deem desirable, subject to such registration requirements as the department may prescribe.

290 IAC 3-17-2(a) Standards for Protection Against Radiation incorporates the requirement to recognize licenses of other jurisdictions, including the NRC and other Agreement states. Indiana is incorporating NRC regulations by reference, and 290 IAC 3-1-2 provides reconciliation with the incorporated sections of federal regulations to ensure references to other jurisdictions includes both NRC and other Agreement States where appropriate. 10 CFR § 150.20 is further addressed in section 4.4 Program inspection elements for “special inspections”.

The department will utilize both general licenses and specific licenses to regulate sources of radiation. IC 10-19-12-4 provides the definitions for general licenses and specific licenses.

Section 4(7) “General license” means a license effective under regulations promulgated by the department without the filing of an application with the department of the issuance of licensing documents to particular persons to transfer, acquire, own, possess or use quantities of, or devices or equipment utilizing, radioactive material.

Section 4(22) “Specific license” means a license, issued to a named person upon application filed under the regulation promulgated under this chapter, to use, manufacture, produce, transfer, receive, acquire, or possess quantities, or devices or equipment utilizing, radioactive material.

- d. State law should authorize the use of license conditions to address matters unique to the licensee. The law should allow license conditions to impose additional requirements when required to protect public health and safety. State law does not prohibit the use of license conditions. If the law restricts the use of license conditions, the State should show that they can provide adequate protection under the restrictions. The protection should be at least equivalent to using license conditions and orders.**

Indiana law does not restrict the use of license conditions.

IC 10-19-12-6(a)(2) and (4) allows the use of license conditions to address unique matters and impose additional requirements.

Section 6(a)(2) Each license shall be in such form and contain such terms and conditions as the department may by rule or regulation prescribe.

Section 6(a)(4) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations, or orders issued in accordance with the provisions of this chapter.

Additionally, Indiana can also use the following authorities to provide adequate protection for public health and safety.

IC 10-19-12-15 authorizes the department to issue injunctions.

Section 15 Whenever, in the judgment of the department, any person has engaged in or is about to engage in any acts or practices that constitute or will constitute a violation of any provision of this chapter, or any rule, regulation, or order issued thereunder, the department may in lieu of issuing an administrative order, apply for an order from a circuit or superior court in the county in which the person takes a substantial step toward violating a law, or a violation occurs. 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, a restraining order, or other order may be granted.

IC 10-19-12-17 provides authorization to the department to impound sources of radiation.

Section 17 The department shall have the authority in the event of an emergency to impound or order the impounding of sources of radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules or regulations issued thereunder.

IC 10-19-12-18 authorizes the department to impose civil penalties.

Section 18(a) Any person who violates any licensing or registration provisions of this chapter or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license or registration certificate issued thereunder, or commits any violation for which a license or registration certificate may be revoked under rules or regulations issued under this chapter may be subject to a civil penalty, to be imposed by the department,

Section 18(c) The department is authorized to institute a civil action to collect a penalty imposed pursuant to this section. The department shall have the executive power to compromise, mitigate, or remit such civil penalties as are referred to the department for collection.

- e. The law should permit exemptions from licensing requirements if the exemptions do not adversely affect public health and safety. This should include exemption(s) from licensing substantially equivalent to the following (or such exemptions must be included in the State's regulations).**

IC 10-19-12-6(c) allows the department to make exemptions for the use for certain sources of radiation.

Section 6(c) The department is authorized to exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this section when the department makes a finding that the exemption of such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

IC 10-19-12-7(c) gives the department the authority to provide exemptions for licensing fees.

Section 7(c) The department may, upon application by an interested person, or on its own initiative, grant such exemptions from the requirements of this section as it determines are in the public interest. Applications for exemption under this subsection may include activities such as, but not limited to, the use of licensed materials for educational or noncommercial displays or scientific collections.

Because Indiana is incorporating relevant parts of 10 CFR by reference, as is the case for the NRC, Indiana will authorize exemptions from licensing substantially equivalent to the requirement of Handbook for Processing an Agreement Section 4.1.1.2(e), below:

Section 2(e)(4) Any other prime contractor (or subcontractor of DOE or NRC when the State and NRC jointly determine (i) that the terms of the contract provide adequate assurance that the contractor can accomplish the work without undue risk to public health and safety, and (ii) that the law authorizes exemptions.

The particular sections of 10 CFR that the State of Indiana are incorporating by reference relevant to exempting the above contractors, among others, are 10 CFR 30.12, 40.11, and 70.11.

- f. The law must authorize the Agreement materials program to enforce regulations or generic legally binding requirements other than regulations. The law may authorize another agency (such as a board of health) to adopt the regulations. When appropriate, the law should provide for public participation.**

IC 10-19-12-6 authorizes the program to issue licenses for the use of radioactive materials.

Section 6(a) The department shall adopt rules under IC 4-22-2 for general and specific licensing of radiation material, or devices or equipment utilizing such material. The rules must provide for the amendment, suspension, or revocation of licenses.

Section 6(a)(1) ... The department may at any time after the filing of the application, and before the expiration of the license, require further written statements and may make such inspections as the department may deem necessary in order to determine whether the license should be modified, suspended, or revoked...

IC 10-19-12-18(a) authorizes the department to impose fines when required.

Section 18(a) Any person who violates any licensing or registration provision of this chapter or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license or registration certificate issued thereunder, or commits any violation for which a license or registration certificate may be revoked under rules or regulations issued under this chapter may be subject to a civil penalty, to be imposed by the department, not to exceed ten thousand dollars (\$10,000). If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The department shall have the power to compromise, mitigate, or remit such penalties.

IC 10-19-12-5(e) discusses how the department will coordinate with other state agencies when required.

Section 5(e) The department shall coordinate the registration, regulation, and use of radiation generating equipment under subsection (d). The department shall do the following in carrying out the duties of this subsection:

Section 5(e)(1) Consult with and review regulations and procedures of a state agency or department that regulates, in part, radiation or radiation generating equipment to prevent unnecessary duplication, inconsistencies, or gaps in regulatory requirements.

Section 5(e)(2) Review, before and after, the holding of any public hearing required under the provisions of this chapter prior to promulgation, the proposed rules and regulations of any state agencies that relate to the use and control of radiation, to assure that the rules and regulations are consistent with other agencies. Proposed rules and regulations are not effective until thirty (30) days after submission to the department, unless either the governor or the department waives all or part of the thirty (30) day period. The waiting period runs concurrently with any other waiting period required by state law.

Section 5(e)(3) Consult with state agencies in an effort to resolve inconsistencies if the department determines that a proposed rule or regulation is inconsistent with an existing rule or regulation.

Section 5(e)(4) Notify the governor if an inconsistency under subdivision (3) has not been resolved. Upon notification, the governor may find that the proposed rules and regulations or parts thereof are inconsistent with the rules and regulations of other agencies of the state and may issue an order to that effect in which event the proposed rules or regulations or parts thereof shall not become effective. The governor may, in the alternative, upon a similar determination, direct the appropriate agency or agencies to amend or repeal existing rules or regulations to achieve consistency with the proposed rules or regulations.

IC 10-19-12-15 gives the department the authority to apply for a court order.

Section 15 Whenever, in the judgment of the department, any person has engaged in or is about to engage in any acts or practices that constitute or will constitute a violation of any provision of this chapter, or any rule, regulation, or order issued thereunder, the department may, in lieu of issuing an administrative order, apply for an order from a circuit or superior court in the county in which the person takes a substantial step toward violating a law, or a violation occurs. 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, a restraining order, or other order may be granted.

In Indiana, the Attorney General has authority over civil matters and actions. Actions which the Radioactive Materials Program Enforcement Committee, in consultation with The Office of General Counsel (OGC), determines to be “criminally negligent” would be referred to the Attorney General who is the lead for criminal violations in Indiana. This authority is provided in IC 4-6-2-1 and IC 4-6-3-2.

IC 4-6-2-1 provides the Attorney General’s Powers and Duties

Section 1(a) The attorney general shall prosecute and defend all suits instituted by or against the state of Indiana, the prosecution and defense of which is not otherwise provided for by law, whenever the attorney general has been given ten (10) days' notice of the pendency of the suit by the clerk of the court in which the suit is pending, or whenever the governor or a majority of the officers of state require the attorney general in writing, with reasonable notice, to prosecute or defend a suit. The attorney general shall represent the state in all criminal cases in the Supreme Court, and shall defend all suits brought against the state officers in their official relations, except suits brought against them by the state; and the attorney general shall be required to attend to the interests of the state in all suits, actions, or claims in which the state is or may become interested in the Supreme Court of this state.

Section 1(b) The attorney general may not defend a member (as defined in IC 2-2.1-4-5) in an action for legislative bolting brought under IC 2-2.1-4

While IC 4-6-3-2 provides Direction of Prosecutions Brought in the Name of the State

Section 2(a) The attorney general shall have charge of and direct the prosecution of all civil actions that are brought in the name of the state of Indiana or any state agency.

Section 2(b) In no instance under this section shall the state or a state agency be required to file a bond.

Section 2(c) This section does not affect the authority of prosecuting attorneys to prosecute civil actions.

Section 2(d) This section does not affect the authority of the inspector general to prosecute a civil action under IC 4-2-7-6 for the recovery of any of the following:

(1) Funds misappropriated, diverted, missing, or unlawfully gained.

(2) A civil penalty imposed by the state ethics commission under IC 4-2-6-12.

- g. The law must authorize inspections of licensee operations to ensure compliance with regulatory requirements. It should authorize inspections of unlicensed facilities to assess the risk resulting from accidents or environmental releases of materials. The law should permit access at all reasonable times.**

IC 10-19-12-9 provides for inspection and entry upon any private or public property at all reasonable times.

Section 9 The department or its duly authorized representatives shall have the power to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of this chapter and rules and regulations issued thereunder, except that entry into areas under the jurisdiction of the federal government shall be effective only with the concurrence of the federal government of its duly designated representative.

- h. The law must provide authority to take prompt enforcement action and should provide a variety of legal sanctions. The law should provide authority to suspend licenses and to impound materials. In cases of an imminent threat to public health and safety, the law should authorize immediate suspension without prior hearing.**

IC 10-19-12-6 authorizes the program to adopt rules for the suspension and revocation of licenses.

Section 6(a) The department shall adopt rules under IC 4-22-2 for general and specific licensing of radiation material, or devices or equipment utilizing such material. The rules must provide for the amendment, suspension, or revocation of licenses.

Section 6(a)(1) ... The department may at any time after the filing of the application, and before the expiration of the license, require further written statements and may make such inspections as the department may deem necessary in order to determine whether the license should be modified, suspended, or revoked...

IC 10-19-12-14(f) provides the department with the authority to adopt or issue emergency orders.

Section 14(f) Whenever the department finds that an emergency exists requiring immediate action to protect the public health and safety, the department may adopt emergency rules under IC 4-22-2-37.1 or issue emergency orders under IC 4-21.5-4 to address the emergency.

In Indiana, the Attorney General has authority over civil matters and actions. Actions which the Radioactive Materials Program Enforcement Committee, in consultation with The Office of General Counsel (OGC), determines to be “criminally negligent” would be referred to the Attorney General who is the lead for criminal violations in Indiana. This authority is provided in IC 4-6-2-1 and IC 4-6-3-2.

IC 4-6-2-1 provides the Attorney General’s Powers and Duties

Section 1(a) The attorney general shall prosecute and defend all suits instituted by or against the state of Indiana, the prosecution and defense of which is not otherwise provided for by law, whenever the attorney general has been given ten (10) days' notice of the pendency of the suit by the clerk of the court in which the suit is pending, or whenever the governor or a majority of the officers of state require the attorney general in writing, with reasonable notice, to prosecute or defend a suit. The attorney general shall represent the state in all criminal cases in the Supreme Court, and shall defend all suits brought against the state officers in their official relations, except suits brought against them by the state; and the attorney general shall be required to attend to the interests of the state in all suits, actions, or claims in which the state is or may become interested in the Supreme Court of this state.

Section 1(b) The attorney general may not defend a member (as defined in IC 2-2.1-4-5) in an action for legislative bolting brought under IC 2-2.1-4

While IC 4-6-3-2 provides Direction of Prosecutions Brought in the Name of the State

Section 2(a) The attorney general shall have charge of and direct the prosecution of all civil actions that are brought in the name of the state of Indiana or any state agency.

Section 2(b) In no instance under this section shall the state or a state agency be required to file a bond.

Section 2(c) This section does not affect the authority of prosecuting attorneys to prosecute civil actions.

Section 2(d) This section does not affect the authority of the inspector general to prosecute a civil action under IC 4-2-7-6 for the recovery of any of the following:

(1) Funds misappropriated, diverted, missing, or unlawfully gained.

(2) A civil penalty imposed by the state ethics commission under IC 4-2-6-12.

IC 4-21.5-4-1 allows the department to issue an order without a hearing:

Section 1 An agency may conduct proceedings under this chapter if:

(1) An emergency exists; or

(2) a statute authorizes the agency to issue a temporary order or otherwise take immediate agency action.

IC 4-21.5-4 allows for an agency to issue an emergency order if an emergency exists. The order would be created with a brief statement of the facts and the law that justifies the agency's decision to take emergency action. IC 10-19-12-17 allows for the immediate impoundment of sources of radiation. This would be done by issuing an emergency order signed by the State Fire Marshal and would be effective immediately upon issuance. The affected party can ask for an evidentiary hearing as an appeal, but it does not affect the initial emergency order or stay the action of the Department until a decision is made by the Administrative Law Judge.

IC 10-19-12-15 provides the authority to issue injunctions.

Section 15 Whenever, in the judgment of the department, any person has engaged in or is about to engage in any acts or practices that constitute or will constitute a violation of any provision of this chapter, or any rule, regulation, or order issued thereunder, the department may, in lieu of issuing an administrative order, apply for an order from a circuit or superior court in the county in which the person takes a substantial step toward violating a law, or a violation occurs. 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, a restraining order, or other order may be granted.

IC 10-19-12-17 authorizes the program to take emergency action to impound sources of radiation.

Section 17 The department shall have the authority in the event of an emergency to impound or order the impounding of sources of radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules or regulations issued thereunder.

IC 10-19-12-18(a) gives the program authority to impose civil penalties.

Section 18(a) Any person who violates any licensing or registration provision of this chapter or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license or registration certificate issued thereunder, or commits any violation for which a license or registration certificate may be revoked under rules or regulations issued under this chapter may be subject to a civil penalty, to be imposed by the department, not to exceed ten thousand dollars (\$10,000).

- i. The law should authorize suspension or revocation of a license for repeating or continued noncompliance. The authority to suspend or revoke a license may be conditioned on a prior administrative or judicial hearing. The program should also have authority to seek injunctive relief and refer licensees for criminal prosecution. The program should also consider authority to impose civil or administrative monetary penalties.**

IC 10-19-12-5(c)(4) provides the department with the authority to issue orders and modifications.

Section(5)(c) The department shall, for the protection of the occupational health and safety, public health and safety, and environment, do the following:

(c)(4) Issue such orders or modifications thereof as may be necessary in connection with proceedings under this chapter.

IC 10-19-12-6(a) gives the authority to adopt rules the provide for the amendment, suspension or revocation of license. Furthermore, 6(a)(1) specifically provides the department authority to consider additional information that can include repeating or continued noncompliance to determine whether to modify, suspend or revoke a license.

Section 6(a) ... The rules must provide for the amendment, suspension, or revocation of licenses...

Section 6(a)(1) Each application for a specific license shall be in writing and shall state such information as the department, by rule or regulation, may determine to be necessary to decide the technical and financial qualifications or any other qualifications of the applicant as the department may deem reasonable and necessary to protect the occupational health and safety and public health and safety. The department may at any time after the filing of the application, and before the expiration of the license, require further written statements and may make such inspections as the department may deem necessary in order to determine whether the license should be modified, suspended, or revoked. All applications and statements shall be signed by the applicant or licensee. The department may require any applications or statements to be made under oath or affirmation.

IC 10-19-12-7(d) allows the department to suspend or revoke licenses in the event a licensee fails to pay fees.

Section 7(d) When a registrant or licensee fails to pay the applicable fee, the department may suspend or revoke the registration or license or may issue an appropriate order.

IC 10-19-12-15 allows the department to seek injunctive relief.

Section 15 Whenever, in the judgment of the department, any person has engaged in or is about to engage in any acts or practices that constitute or will constitute a violation of any provision of this chapter, or any rule, regulation, or order issued thereunder, the department may, in lieu of issuing an administrative order, apply for an order from a circuit or superior court in the county in which the person takes a substantial step toward violating a law, or a violation occurs. 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, a restraining order, or other order may be granted.

IC 10-19-12-17 states the department has the emergency authority to impound or order the impounding of sources of radiation.

Section 17 The department shall have the authority in the event of an emergency to impound or order the impounding of sources of radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules or regulations issued thereunder.

IC 10-19-12-18 states how the department will issue civil penalties.

Section 18(a) Any person who violates any licensing or registration provision of this chapter or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license or registration certificate issued thereunder, or commits any violation for which a license or registration certificate may be revoked under rules or regulations issued under this chapter may be subject to a civil penalty, to be imposed by the department, not to exceed ten thousand dollars (\$10,000). If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The department shall have the power to compromise, mitigate, or remit such penalties.

Section 18(b) 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.

Section 18(c) The department is authorized to institute a civil action to collect a penalty imposed pursuant to this section. The department shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred to the department for collection.

IC 4-21.5-6 provides the general legislative authority to seek injunctive relief, criminal prosecution and civil/criminal penalties as appropriate.

IC 4-6-2-1 provides the Attorney General's Powers and Duties

Section 1(a) The attorney general shall prosecute and defend all suits instituted by or against the state of Indiana, the prosecution and defense of which is not otherwise provided for by law, whenever the attorney general has been given ten (10) days' notice of the pendency of the suit by the clerk of the court in which the suit is pending, or whenever the governor or a majority of the officers of state require the attorney general in writing, with reasonable notice, to prosecute or defend a suit. The attorney general shall represent the state in all criminal cases in the Supreme Court, and shall defend all suits brought against the state officers in their official relations, except suits brought against them by the state; and the attorney general shall be required to attend to the interests of the state in all suits, actions, or claims in which the state is or may become interested in the Supreme Court of this state.

Section 1(b) The attorney general may not defend a member (as defined in IC 2-2.1-4-5) in an action for legislative bolting brought under IC 2-2.1-4

SA-700 Section 4.1.1.3

Indiana is not requesting regulatory authority on land ownership and the use of sites for the disposal of low-level radioactive waste depositories in the state of Indiana for an indefinite period after the closure of the site.

SA-700 Section 4.1.1.4

The State of Indiana is not requesting regulatory authority for the requirements of the Uranium Mill Tailings Radiation Control Act of 1968, as amended (UMTRCA)

4.1.2 Organization of the Proposed Program

This section describes the organization of the Indiana Radioactive Materials Control Program (RMCP) and provides the basic organizational structure and resources to conduct the program activities. This section demonstrates the ability of Indiana's program to protect public health and safety against radiation hazards.

SA-700 Section 4.1.2.1

a. History of Radiation Control Programs in the State of Indiana

Radiation control activities in the State of Indiana have developed over more than six decades, shaped by technological advancements, national regulatory changes, and the increasing use of radioactive materials across industry, medicine, research, and emergency management. The below provides a comprehensive historical overview of Indiana's radiation-control programs, the agencies involved, and the evolution of statewide radiological preparedness and response capabilities.

Indiana's formal involvement in radiation oversight began in the late 1950s with the creation of the **Radiation Control Advisory Commission**, marking the state's first organized effort to address public-health concerns associated with radioactive materials.

Responsibility for radiation control soon transitioned to the **Indiana State Department of Health (ISDH)**, specifically within the **Division of Indoor and Radiologic Health**. This division included Indoor Air, Radon, Radioactive Materials, Radiation Machines, and Radiation Operators. Early program activities included:

- Conducting inspections of scrap yards for radioactive materials
- Tracking and documenting radiological health incidents

These efforts established Indiana's initial regulatory and public-health framework for radiation safety.

During the 1970s and 1980s, the **State Emergency Management Agency (SEMA)** began supporting radiological response operations and leading statewide radiological exercises.

ISDH worked closely with the **Indiana Department of Environmental Management (IDEM)** and the **Indiana Department of Natural Resources (DNR)** to manage and dispose of radioactive waste.

Following the 1979 Three Mile Island nuclear accident, Indiana established the **Radiological Emergency Preparedness (REP) Program**, formalizing planning, training, and exercise requirements for nuclear incidents. Indiana also began conducting nuclear event exercises with the **Indiana National Guard**, coordinated through SEMA.

Throughout this period, ISDH remained the primary authority for radiological issues, including inspections of radioactive materials discovered in scrap yards, landfills, and other public locations.

In 1983, Indiana joined the **Midwest Compact of the Low-Level Waste Forum**, a regional partnership focused on low-level radioactive waste management. Neither the compact nor the State of Indiana has pursued construction of a low-level waste disposal facility. (Appendix #4.1-8)

ISDH continued to lead inspections and responses to radiological materials found in the public sector, maintaining statewide oversight of radiological health and safety

In 2011, Indiana restructured its radiological oversight framework, dividing responsibilities between:

- **Indiana State Department of Health (ISDH)**
 - Oversight of electronically produced radiation
 - Operation of the state radiochemistry laboratory
- **Indiana Department of Homeland Security (IDHS)**
 - All radioactive-materials issues
 - Radiological response and prevention
- Indiana Department of Environmental Management
 - Radon

IDHS assumed responsibility for several specialized programs, including:

- Radiological Emergency Preparedness Program
- Radiological Transportation Program
- Preventive Radiological/Nuclear Detection Program
- Orphan Sources Program

IDHS also leads the **FEMA Ingestion Pathways Exercise** every eight years and conducts biennial drills with:

- Constellation's Dresden and Braidwood Nuclear Power Plants
- AEP's DC Cook Nuclear Plant
- Holtec's Palisades Plant (pending reopening)

IDHS continues to coordinate with IDEM on radioactive-waste disposal. IDEM approval is required for disposal reports involving scrap-yard radioactive materials.

Indiana's military and industrial history has resulted in several facilities with radiological relevance, including:

- Honeywell
- Rolls-Royce
- Naval Surface Warfare Center Crane Division

IDHS monitors radiological activities at these sites and assists with disposals as needed.

Indiana hosts several major radiopharmaceutical companies, including:

- Eli Lilly
- Cardinal Health
- Curium

These facilities contribute to the state's expanding radiological footprint.

Purdue University operates the PUR-1 research reactor, making it a key partner in Indiana's radiological landscape. The long-standing relationship between Purdue and the State of Indiana has strengthened as the state explores expanded nuclear-energy initiatives. The **Radiation**

Management and Control Program (RMCP) has participated in inspections of PUR-1 alongside the **Nuclear Regulatory Commission (NRC)**.

In 2021, Governor Eric Holcomb signed legislation and submitted a letter of intent to the **United States Nuclear Regulatory Commission (NRC)** declaring Indiana's intention to:

- Develop a **radioactive materials control program**, and
- Pursue an **Agreement State** relationship with the NRC

This agreement would allow Indiana to assume regulatory authority over:

- Byproduct materials
- Source materials
- Special nuclear materials in quantities not sufficient to form a critical mass

This action marked a significant step toward expanding Indiana's regulatory autonomy in radiological matters.

In 2022, the **Indiana State Department of Health (ISDH)** was renamed the **Indiana Department of Health (IDOH)**. The agency retained its responsibilities for electronically produced radiation and operation of the state radiochemistry laboratory.

In 2024, Governor Mike Braun signed legislation establishing nuclear energy as a strategic priority for Indiana's future. This policy further strengthened the state's commitment to expanding nuclear technologies, energy production, and radiological infrastructure.

Indiana's radiation-control programs have grown from a small advisory commission in the 1950s into a comprehensive, multi-agency system responsible for public health, emergency preparedness, industrial oversight, and radiological safety. Recent legislative actions and structural changes signal a renewed commitment to nuclear energy and expanded regulatory authority. Through continued collaboration among IDOH, IDHS, IDEM, academic institutions, and industry partners, Indiana maintains a robust and adaptive framework for managing radiological risks and supporting the safe use of radioactive materials across the state. Indiana has always had a strong response and passion to radiological response, in recent years not only building a strong REP Program, but also a strong Preventative Radiological Nuclear Detection program (PRND). The PRND program has helped Indiana Radiation Programs build programs with Department of Energy (DOE), Counter- Weapons of Mass Destruction – Mobile Deployment Detection Unit (CWMD-MDDU), and Department of War (DoW).

b. A description of the current structure of the program, including regional offices.

The State of Indiana seeks to enter into an Agreement with the NRC for assuming regulatory authority over byproduct radioactive materials, source materials, and special nuclear materials in quantities not sufficient to form a critical mass. This authority will reside in the Indiana Department of Homeland Security for the State of Indiana. Staff administering the program are part of the Radioactive Materials Control Program (RMCP). Essentially, all required regulatory elements of the RMCP are carried out by the staff within the Indiana Department of Homeland Security. The RMCP is within the Indiana Department of Homeland Security and falls under the Arson Section Chief, as shown in Figure 1. The Section works with the Agency's Legal Counsel, Executive Director, Fire Marshal, and Chief of Staff to seek injunctive relief or pursue impoundment when, in the judgment of the Department, a person has engaged in or is engaging in any acts or practices in violation of 290 IAC 3. The radiation team is located primarily at the

central office in Indianapolis, with one Senior Health Physicist located in Southwest Indiana and the Radiological Emergency Preparedness Manager in Northwest Indiana

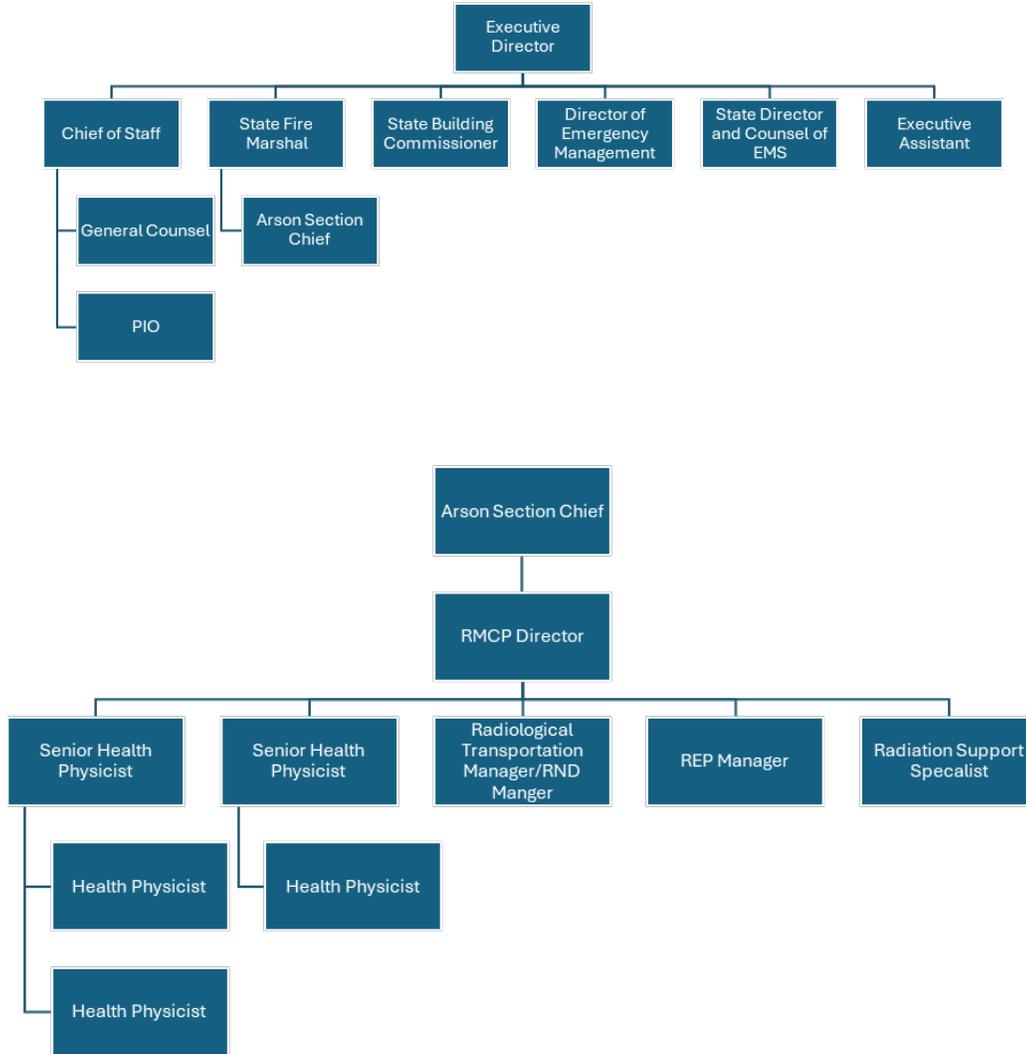


Figure 1: Indiana Department of Homeland Security Organization Chart

The Department is organized under the Office of Public Safety which includes the following six departments.

Indiana State Police (ISP), whose mission is to provide optimal law enforcement services to the citizens of Indiana, consistent with the highest traditions of the Department. This also includes Commercial Vehicle Enforcement, which assists the Radiological Transportation Program in escorting shipments that fall under Part 37 restrictions, as well as Highway

Restricted Controlled Quantity (HRCQ) shipments. The superintendent of Indiana State Police (ISP) is currently the head of the Public Safety Office.

Indiana Law Enforcement Academy (ILEA), whose mission statement is to provide optimal law enforcement services to the citizens of Indiana, consistent with the highest traditions of the Department. Through our enforcement, investigative, and crime prevention efforts, we will improve the quality of life for all Indiana Residents.

Indiana State Department of Toxicology (ISDT) whose mission is to provide quality forensic toxicological services and education about the science of toxicology for the state of Indiana.

Indiana Department of Corrections whose mission is to promote public safety by providing meaningful, effective opportunities for the successful reentry of inmates into society

The Integrated Public Safety Commission (IPSC) in Indiana's mission is to facilitate statewide public safety communications, creating reliable, interoperable systems for all first responders to strengthen community safety by overcoming financial/tech barriers, ultimately saving lives through agencies like the statewide SAFE-T radio network and data sharing initiatives. IPSC has provided communication support in the past for IDHS and would continue to do so in the event of an emergency.

Indiana Criminal Justice Institute whose mission is to provide leadership, resources, and services to Indiana's criminal justice system in order to promote public safety, reduce victimization, and improve the quality of life for all Indiana residents.

Indiana Department of Homeland Security focuses on protecting Indiana residents', property and prosperity by preventing disasters and ensuring public safety with values like Service, Integrity, and Respect. The Department houses 6 offices:

Office of the Executive Director: The Office of the Executive Director consists of four administrative and support sections: OGC, finance and administration, information technology and public affairs. The director also oversees the operational divisions below.

Office of Emergency Management: The primary role of this division is to support first responders and their communities as they prepare for and respond to disasters or large-scale emergencies. The division also works closely with state and local responders while guiding Indiana's all-hazards emergency preparedness. This includes the development of emergency management plans and exercises to practice those plans. Division staff guide and assist local governments in assessing specific risks to their communities and build individualized initiatives to fill the gaps identified. Each county has its own Emergency Management Agency (EMA) that responds to local disasters. When a response overwhelms the capabilities of local officials or an EMA is in need of statewide resources or coordination, the county can request support and assistance from IDHS. The Director of Emergency Management leads this division and serves as the state liaison to the Federal Emergency Management Agency (FEMA). In addition to managing a state-of-the-art

Emergency Operations Center (EOC) to coordinate large-scale responses, the division directs mitigation and resiliency efforts to help communities protect and prevent disasters. When disaster strikes, the division is key to helping communities become whole again. IDHS Radiation Programs works with the Office of Emergency Management when training for large scale radiation emergencies, including a Nuclear Power Plant Emergency, or a Nuclear Detonation.

Office of the Building Commissioner: The Indiana State Building Commissioner, appointed by the governor, oversees building plan reviews and code services. The reviews verify that Class 1 structure construction plans are in compliance with the rules of the Indiana Fire Prevention and Building Safety Commission, including the state-adopted building codes.

Office of Emergency Medical Services: The EMS division leads and supports more than 800 EMS agencies and 24,000 EMS personnel statewide. It oversees EMS certifications and training, and the division works closely with the Emergency Medical Services Commission to develop and implement EMS standards.

Office of School Safety: The Office of School Safety is responsible for school safety specialist training and certifications, and it supports Indiana schools' safety efforts in a variety of ways by establishing and maintaining guidelines on school facility security, emergency response protocols and school safety plans. It collaborates with the Safe School Committees, the Secured School Safety Board, the Indiana Department of Education, the Institute for Criminal Justice, and other state agencies to address school safety issues.

Office of the State Fire Marshal: The Indiana State Fire Marshal serves as the director of fire and building safety. Appointed by the governor, the fire marshal directly oversees the branches of boilers and pressure vessels, code enforcement, elevators and amusement rides, fire certification, fire investigations, hazardous materials/radiation/CBRNE, and training. Within this area is the Indiana Fire and Public Safety Academy, which provides public safety education, training and advanced studies to the state's first responders, ensuring that responders of all disciplines are well-prepared.

Within the Office of the State Fire Marshal lives Radiation Programs that includes the following:

- Radiological Emergency Preparedness (REP)
- Radiological Transportation Program
- Radiological and Nuclear Detection (RND)
- Radiological Materials Control Program (RMCP)

More information about Indiana Department of Homeland Security can be found here: <https://www.in.gov/dhs/about-idhs/>

More information about Indiana's Radiation Programs can be found here:

<https://www.in.gov/dhs/fire-and-building-safety/fire-investigations/hazmat-and-radiation/>

The current relationship with IDHS and the Indiana Department of Health (IDOH) is strictly regarding the use of the radiochemistry lab for REP related incidents. The IDOH radiochemistry lab is well trained and has analytical techniques from drinking water, surface water, soil, milk, and foodstuffs. Most recently, these actions occurred with IDHS Radiation in the international Cobalt Magnet 2025 exercise, where the Indiana Radiation Team was not only a lead planner, but a primary player in the DOE sponsored exercise. IDHS will continue to work with the IDOH radiochemistry lab for REP exercises or other needs as they arise.

The IDOH's radiology program currently has the authority to maintain a registry that tracks all sources of ionizing radiation, which includes Atomic Energy Act (AEA) radioactive materials. After the Agreement becomes effective, IDOH's authority to track the AEA radioactive material sources will be moved to IDHS who will regulate Indiana's new Agreement State licenses for AEA radioactive materials. The IDOH will only continue tracking machine produced sources of ionizing radiation that do not contain AEA radioactive materials.

IDHS will have all jurisdiction when it comes to the public health and safety of regulated AEA radioactive materials. Other programs such as radon monitoring and non-AEA radioactive materials waste disposal fall under the purview of the Indiana Department of Environmental Management (IDEM) with IDHS assisting when needed.

For the purposes of radiological emergency response, license compliance, and inspections, the Section owns, operates, and maintains over three hundred radiation-detecting devices. The Section is equipped with significant resources for routine and non-routine radiation protection activity. This includes a large number of handheld instruments and assorted probes, portable gamma ray spectroscopy instruments, fixed gamma detectors, and neutron detectors emergency response supplies and vehicles. The IDOH radiochemistry lab is equipped with lab grade equipment needed for a response. An instrument inventory is included as an appendix to section 4.4.

Currently, the Radiation Section has a staff comprised of: One Program Director, two Senior Health Physicists, three Health Physicist Specialists, one Radiological Transportation Manager/Preventive Radiological and Nuclear Detection Specialist, one hazmat technician, one Radiological Emergency Preparedness Manager, and one Radiation Support Specialist. The Section's composition is greatly diversified in radiation protection fields. The health physicists are all cross trained in radiological response, and the response team is currently familiarizing themselves with relevant NRC procedures and guidance documents. Two health physicists currently working toward their Certified Health Physicist (CHP), with one taking part two in Summer 2026. It should also be noted that IDHS OGC has taken basic radiation courses to ensure they have some knowledge of radiation for the programs. The Program Director is also the governor's designated NRC State Liaison Officer and the Chair of the Midwest Waste Compact. There is a strong radiation safety culture inherent in the Section's actions. The

Section also has developed a strong relationship with the Counter-Weapons of Mass Destructions (CWMD) and do quarterly drills with them involving DOE Reach back. As well as working on official visits with United States allies in training for RND events and radiological counter-terrorism. In the past, the Section has worked on several DARPA-sponsored projects for new CBRN equipment.

The Section is committed to the continuous learning and training of the staff as demonstrated by the participation in numerous training programs including FEMA Radiological Emergency Response Operations (RERO), various hazmat courses, DOE Radiation Specialist Training, Radiological Assessment System for Consequence Analysis (RASCAL), Radiological Accident Assessments Concepts Course (RACC), annual NERHC training and exercises, and FEMA's Center For Homeland and Domestic Security Radiological Emergency Preparedness Executive and Early Career programs.

The Section maintains a minimum of two staff on-call 24/7/365 to respond to radiological incidents. On-call personnel are notified by the Agency's Emergency Dispatch Center (WatchDesk). The majority of the radiation team is equipped with an emergency response vehicle, and all staff have their own radiation detection, identification equipment, and a personal radiation detector (PRD). This allows staff the ability to quickly respond to radiological incidents such as lost, discovered, abandoned, or stolen radioactive material. The Section responded to 165 real radiological incidents in the 2025 calendar year, including an incident with the Mexican Consulate, several FBI investigations, and uranium hexafluoride found in a home with explosives.

Indiana is a founding member of the Midwest Radiological Emergency Preparedness conference, whose members include Illinois, Ohio, Wisconsin, Iowa, Minnesota, and Michigan, to better communicate radiological response between Midwest States. This came to fruition in October 2025, and we meet virtually three quarters of the year and in person once a year.

c. Individual discussions of each of the program elements in Section 4 of SA-700. Legal Elements of the Agreement State Radioactive Materials Control Program

The Radioactive Materials Control Program is founded in the statute described in the Indiana Code Chapter (IC) 10-19-12. The statute designates the Indiana Department of Homeland Security as the radiation control agency and, among other duties, provides radioactive materials licensing, inspection, and regulatory compliance enforcement authority to IDHS. In accordance with IC 4-22-2, IDHS makes rules to regulate radioactive materials licenses. All statutory information needed to address the evaluation criteria in the Handbook for Processing and Agreement is provided in Section 4.1.1 of this application.

The Indiana Department of Homeland Security has chosen to incorporate parts of Title 10 Chapter I of the Code of Federal Regulations (10 CFR) by reference, rather than create separate compatible rules. Future amendments are incorporated by reference in accordance with IC 10-19-12-5(c)(3) and IC 4-22-2-21 whenever the NRC's regulations change. A complete section of IC 10-19-12 is attached in Appendix 4.1-1. Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 61, 70, 71, 150, 170, and 171 of the CFR are incorporated by reference except for those sections

reserved to the NRC and those otherwise listed (such as some compatibility C sections where the state requirements are more restrictive and some compatibility D sections).

The RMCP's rules are found in 290 IAC 3. 290 IAC 3-1-2 provides reconciliations of differences. The current version of the Radioactive Materials Rule is attached in Appendix 4.1-2.

Legal elements of the RMCP are understood by the staff of the RMCP for administrative and operational purposes. When legal assistance is needed, for example, with revising statutes or regulations, or for routine or escalated enforcement actions, OGC may provide official policy and legal advice. OGC is shown in Figure 2.

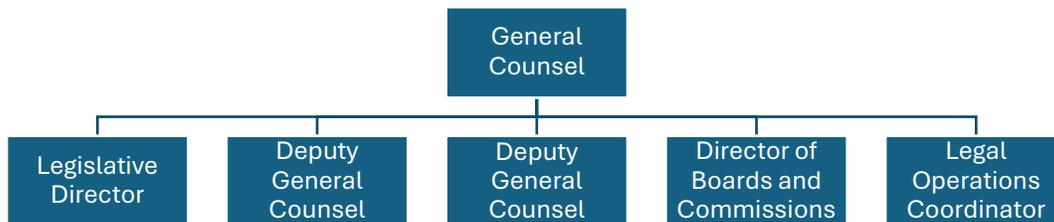


Figure 2: Office of General Counsel

IDHS's OGC assists the RMCP with rulemaking, provides legal counsel to RMCP staff, and conducts legal review and interpretations for the RMCP staff. The OGC provides legislative assistance to the RMCP through the Legislative Director and legal counsel via the assigned Deputy General Counsel. IDHS General Counsel, or a representative, provides legal guidance to the Radioactive Materials Program Enforcement Committee. The OGC can assist in the legal matters that arise between Department staff and programs, other state agencies, local agencies, federal agencies, business entities and the public. The OGC provides legal support for all rulemaking and enforcement actions. The OGC creates, reviews, or edits potential rules and enforcement actions. The Attorney General's office has approval authority before the Governor's office during the rulemaking process. The Attorney General's office represents the agency in all court proceedings after the administrative process.

For the Agreement State application process, the OGC has worked with RMCP staff in revising Indiana Statute to ensure there exists authority to enter into an Agreement, revising the Radioactive Materials Control rules to ensure compatibility with NRC regulations and to meet the requirements of IC 10-19-12, and reviewed this Request for an Agreement for legal purposes. The Radiation Program Director has direct access to the OGC and staff of attorneys and policy advisors. The OGC is as follows:

- General Counsel – Sean Wooding, Oversees OGC and legal counsel for IDHS: litigation, subpoenas, public records, contracting, ethics, rulemaking, ODL compliance, legislation, admin review, orders, HR issues, and general counsel.
- Legislative Director – Alyssa Schroeder, Functions as the Department’s legislative liaison. Works with legislators to advance the Department’s legislative agenda.
- Deputy General Counsel – Kristi Shute, Responsible for the execution and negotiation of contracts, drafting of grants and agreements, and Ethics Officer
- Deputy General Counsel – Tyler Burgauer, Responsible for the Division of Fire and Building Safety,
- Deputy General Counsel – OPEN, Responsible for the Divisions of the Fire Academy, Emergency Medical Services, Radiation, and Hazmat, also the primary for all litigation involving the Department.
- Legal Operations Coordinator - Mary Swift, Oversees the administrative functions of the OGC: admin review intake, mail, public records processing, litigation, and subpoena intake, OGC purchasing, HighQ administrator, contract reviewer.

d. For each program element, cross references to the pertinent portions of the States Supporting documentation for the application.

Table 2 provides a cross-reference from each of the elements in the Handbook for Processing an Agreement to Indiana references.

Table 2

Cross Reference of Program Elements 4.1 Through 4.7 to Indiana and NRC References

Section	Program Element	Information from Indiana	Criteria Number	References
4.1	Legal Elements			
4.1.1	Statutory Authority	Indiana Statutes Title 290. Department of Homeland Security Article 3. Standards for Protection Against Radiation Indiana Statutes Title 410. Indiana Utility Regulatory Commission Article 5. Radiological Health	1, 2, 9b, 12, 13, 14, 17, 19, 21, 23, 24, 25, 27, 28, 29, 30, and 31	Criteria Policy Statement; Suggested State Legislation; Statement of Principles and Policy for the Agreement State Program
4.1.2	Program Organization	Application text in Section 4.1.2	1,24 and 33	Criteria Policy Statement; Program descriptions of existing Agreement States from IMPEP reports; MD 5.9; SA-200
4.1.3	Content of Agreement	Application text in Section 4.1.3, including Proposed Agreement.	27	Criteria Policy Statement MD 5.8

4.2	Regulatory Requirements Program Elements			
4.2.1	Radiation Protection Elements	Incorporation of 10 CFR 20 by reference with exceptions and 290 IAC 3 Rules 1, 2, 4, 6, 8, 11, 13, 15, 17	2, 3, 4, 5, 6, 9a, 11, 22, and 23	Criteria Policy Statement MD 5.9; SA-200; 10 CFR Parts 20, 30, 32, 34, 35, 37, 40, 70, and 150.
4.2.2	Transboundary Requirements	Incorporation of 10 CFR 20 by reference with exceptions, and 290 IAC 3 Rules 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17	9(a) and (b), 10, and 23	Criteria Policy Statement; MD 5.9; SA-200 Appendix A; 10 CFR Parts 19, 20, 30, 31, 32, 34, 35, 36, 37, 39, 40, 61, 70, 71, and 150.
4.2.3	Orderly Pattern of Regulation	Incorporation of 10 CFR 20 by reference with exceptions and 290 IAC 3 Rules 1, 2, 3, 4, 5, 8, 9, 10, 12, 13, 14, 15, 16, and 17	1, 7, 8, 11, 23, and 32	Criteria Policy Statement; MD 5.6; 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 61, 70, 71, and 150
4.2.4	Health and Safety Significance	Incorporation of 10 CFR 20 by reference with exceptions and 290 IAC 3 Rules 1, 2, 3, 4, 5, 8, 9, 10, 12, 13, 14, 15, 16, and 17	1, 7, 8, 11, 23, and 32	Criteria Policy Statement; MD 5.6; 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 61, 70, 71, and 150.
4.3	Licensing Program Elements			
4.3.1	Materials Licensing	<p>RMCPP 1.1 <i>Review of Initial Application for License or an Amendment Request</i></p> <p>RMCPP 1.2 <i>License Termination/Revocation</i></p> <p>RMCPP 1.3 <i>License Termination/Revocation</i></p> <p>RMCPP 1.4 <i>Renewal Notices, Receipt, and Tracking of Licensing Actions.</i></p> <p>The Department is incorporating by reference specific licensing procedures and licensing guidance of the NRC</p>	1, 7, 8, 9a, 13, 14, 15, 20, and 23	Criteria Policy Statement; MD 5.6; SA-104; NUREG-1556 series; NUREG-1757; NUREG-1575 (MARSSIM).

		including the NUREG 1556 Series.		
4.3.2	Sealed Source & Device Safety Evaluations	N/A	13 and 23	Criteria Policy Statement; NUREG-1556, Volume 3; MD 5.6
4.3.3	Low-Level Waste Site Licensing	N/A	9b and 13	Criteria Policy Statement; NUREG-1199; NUREG 1200; NUREG-1300; NUREG-1274; MD 5.6; SA-109.
4.3.4	Uranium or Thorium Mill Licensing	N/A	29, 30, 31, 32, 33, 34, and 35	Criteria Policy Statement; Uranium Recovery Regulations, Guidance and Communications; MD 5.6; SA-110.
4.3.5	Licensing Quality Assurance	<p>RMCPP 1.2 <i>License Termination/Revocation</i></p> <p>RMCPP 1.3 <i>License Termination/Revocation</i></p> <p>RMCPP 1.4 <i>Renewal Notices, Receipt, and Tracking of Licensing Actions.</i></p> <p>The Department is incorporating by reference specific licensing procedures and licensing guidance of the NRC including the NUREG 1556 Series.</p>	1 and 13	Criteria Policy Statement; MD 5.6; SA-104.
4.3.6	Licensing Administrative Procedures	<p>RMCPP 1.2 <i>License Termination/Revocation</i></p> <p>RMCPP 1.3 <i>NRC Licenses Affected by Agreement States</i></p> <p>RMCPP 4.1 <i>Renewal Notices, Receipt, and Tracking of Licensing Actions.</i></p> <p>The Department is incorporating by reference specific licensing procedures and licensing guidance of the NRC</p>	1, 13, and 25	Criteria Policy Statement.

		including the NUREG 1556 Series.		
4.4	Inspection Program Elements			
4.4.1	Procedures for Inspecting Facilities Where Radioactive Material Is Stored or Used	<p>RMCPP 2.1 <i>Scheduling of Inspections</i></p> <p>RMCPP 2.2 <i>Inspection Preparation</i></p> <p>RMCPP 2.3 <i>Performance-Based Inspections</i></p> <p>RMCPP 2.4 <i>Documentation of Inspection Results</i></p> <p>RMCPP 4.1 <i>Enforcement</i>, RMCPP 2.5 <i>Materials Inspection Checklist and Definitions</i></p> <p>RMCPP 2.6 <i>Assuring the Technical Quality of Inspections</i></p> <p>RMCPP 4.2 <i>Inspection Planning and Report Tracking</i></p> <p>The Department is incorporating by reference specific inspection procedures and guidance of the NRC including NUREG-1556.</p>	1, 16, 18, and 36	Criteria Policy Statement; MD 5.6; SA-101; SA-102; IMC 1220; IMC 2800; IMC 2801; NRC Inspection Procedures in the IP 8XXXX series.
4.4.2	Procedures for Assuring the Technical Quality of Inspections and Inspection Reports	<p>RMCPP 2.6 <i>Assuring the Technical Quality of Inspections</i></p> <p>The Department is incorporating by reference specific inspection procedures and guidance of the NRC including NUREG-1556.</p>	1 and 16	Criteria Policy Statement; MD 5.6; SA-102; IMC 2800; IMC 2801.
4.4.3	Administrative Procedures for Inspections	<p>RMCPP 2.1 <i>Scheduling of Inspections</i></p> <p>RMCPP 2.2 <i>Inspection Preparations</i></p> <p>RMCPP 2.3 <i>Performance-Based Inspections</i></p>	1	Criteria Policy Statement; IMC 2800; IMC 2801.

		<p>RMCPP 2.4 <i>Documentation of Inspection Results</i></p> <p>RMCPP 4.2 <i>Inspection Planning and Report Tracking</i></p> <p>The Department is incorporating by reference specific inspection procedures and guidance of the NRC including NUREG-1556.</p>		
4.5	Enforcement Program Elements			
4.5.1	Routine Enforcement Procedures	RMCPP 4.1 <i>Enforcement</i>	18, 19 and 23	Criteria Policy Statement; NRC Enforcement Policy; IMC 2800; IMC 2801.
4.5.2	Escalated Enforcement Procedures	RMCPP 4.1 <i>Enforcement</i>	18, 19 and 23	Criteria Policy Statement; NRC Enforcement Policy; IMC 2800; IMC 2801.
4.6	Technical Staff and Training			
4.6.1	Organization	<p>RMCPP 5.1 <i>Qualifications and Training</i></p> <p>Attachment 5.1-1 <i>Health Physicist Qualification Journal</i></p> <p>It is attached in Section 4.6.2</p>	20 and 34	Criteria Policy Statement; MD 5.6; SA-103
4.6.2	Qualification Program	<p>RMCPP 5.1 <i>Qualifications and Training</i></p> <p>Attachment 5.1-1 <i>Health Physicist Qualification Journal</i></p>	2, 20 and 34	Criteria Policy Statement; MD 5.6; IMC 1248; NRC/OAS Training Work Group “Recommendations for Agreement State Training Programs”.
4.6.3	Current Staff Qualification Program	<p>Table 4.6-4 <i>Current Staff Training Completion</i></p> <p>Appendix 4.6-1 <i>Resumes of Current Staff</i></p>	20 and 34	Criteria Policy Statement; MD 5.6; IMC 1248.
4.7	Event and Allegation Response			

	Program Elements			
4.7.1	Procedures for Responding to Events and Allegations	RMCPP 3.1 <i>Management of Allegations</i> RMCPP 3.2 <i>Incident Response</i> RMCPP 3.3 <i>Scrap Yard Incident Response</i>	1 and 11	Criteria Policy Statement; MD 5.6; MD 8.8; IMC 1301; IMC 1302; IMC 1303; IMC 1330; SA-105; SA-300; SA-400.
4.7.2	Procedures for Identifying Significant Events and Submittals for Entry into the Nuclear Material Event Database	RMCPP 3.4 <i>Nuclear Materials Event Database (NMED) Input</i>	1 and 11	Criteria Policy Statement; SA-300.

4.1.3 Content of the Proposed Agreement

Indiana is applying for a limited Agreement transferring to the State the authority to regulate byproduct materials as defined in 42 U.S.C. § 2014(e)(1), (3), and (4); source materials; and special nuclear materials, in quantities not sufficient to form a critical mass. The proposed Agreement follows below, and is formatted in accordance with, and with the content from, the Exhibit in NRC Management Directive 5.8. Indiana is not applying for an Agreement transferring to the State authority to regulate byproduct materials as defined in 42 U.S.C. § 2014(e)(2); for the regulation of the land disposal of byproduct, source, or special nuclear waste received from other persons; or for the evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided in the regulations or orders of the Commission.

The State of Indiana is requesting regulatory authority for 42 U.S.C. § 2014(e)(1)

42 U.S.C. § 2014(e)(1) defines byproduct material as “any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material”.

The State of Indiana is requesting regulatory authority for 42 U.S.C. § 2014(e)(3).

Byproduct materials as defined in 42 U.S.C. § 2014(e)(3) is “any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or any material that has been made radioactive by use of a particle accelerator, including by use of a fusion machine; and if made radioactive by use of a particle accelerator that is not a fusion machine, is produced, extracted, or converted after extraction, before, on, or after the August 8, 2025, for use for a commercial, medical, or research activity.”

The State of Indiana is requesting regulatory authority for 42 U.S.C. § 2014(e)(4).

The definition in 42 U.S.C. § 2014(e)(4) is “any discrete source of naturally occurring radioactive material, other than source material, that the Commission, in consultation with the Administrator of the Environmental Protection Agency (EPA), the Secretary of the Department of Energy (DOE), the Secretary of the Department of Homeland Security (DHS), and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and before, on, or after August 8, 2025 is extracted or converted after extraction for use in a commercial, medical, or research activity.”

The State of Indiana is requesting regulatory authority for source materials, and special nuclear materials, in quantities not sufficient to form critical mass.

AN AGREEMENT BETWEEN THE UNITED STATES NUCLEAR REGULATORY COMMISSION AND THE STATE OF INDIANA FOR THE DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY AND RESPONSIBILITY WITHIN THE STATE PURSUANT TO SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

WHEREAS, The United States Nuclear Regulatory Commission (hereinafter referred to as “the Commission”) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 et seq. (hereinafter referred to as “the Act”), to enter into an agreement with the Governor of the State of Indiana (hereinafter referred to as “the State”) providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1), (3), and (4) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

WHEREAS, The Governor of the State of Indiana is authorized under IC 10-19-12-11 to enter into this Agreement with the Commission; and,

WHEREAS, The Governor of the State of Indiana certified on [DATE] 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 this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

WHEREAS, The Commission found on [DATE] that the program of the State of Indiana for the regulation of the materials covered by this Agreement is compatible with the Commission’s program for the regulation of such materials and is adequate to protect public health and safety; and,

WHEREAS, The State of Indiana and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, The Commission and the State of Indiana recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

WHEREAS, This Agreement is entered into pursuant to the provisions of the Act;

NOW, THEREFORE, it is hereby agreed between the Commission and the Governor of Indiana acting on behalf of the State as follows:

ARTICLE I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

- A. Byproduct material as defined in Section 11e.(1) of the Act;
- B. Byproduct material as defined in Section 11e.(3) of the Act;
- C. Byproduct material as defined in Section 11e.(4) of the Act;
- D. Source materials; and
- E. Special nuclear materials in quantities not sufficient to form a critical mass.

ARTICLE II

This Agreement does not provide for discontinuance of any authority, and the Commission shall retain authority and responsibility with respect to:

- A. The regulation of the construction, operation, and decommissioning of any production or utilization facility or any uranium enrichment facility;
- B. The regulation of byproduct material as defined in Section 11e.(2) of the Act;
- C. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
- D. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear material waste as defined in regulations or orders of the Commission;
- E. The regulation of the disposal of such other byproduct, source or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission;
- F. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear material and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;
- G. The regulation of activities not exempt from Commission regulation as stated in 10 CFR Part 150; and
- H. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons.

ARTICLE III

With the exception of those activities identified in Article II, paragraphs A., C. through E. and G., this Agreement may be amended, upon application by the State and approval by the Commission, to include the additional areas specified in Article II, paragraphs B., F., and H., whereby the State may then exert regulatory authority and responsibility with respect to those activities.

ARTICLE IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

ARTICLE V

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to promote the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

ARTICLE VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for: (a) protection against hazards of radiation; and (b) to assure that Commission and State programs for protection against the hazards of radiation are coordinated and compatible.

The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for: (a) protection against the hazards of radiation; and (b) to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

ARTICLE VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which reciprocity will be accorded.

ARTICLE VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of Indiana, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act, if the Commission finds that (1) such termination or suspension is required to protect the public health

and safety, or (2) the State of Indiana has not complied with one or more of the requirements of Section 274 of the Act.

Pursuant to Section 274j of the Act, the Commission may, after notifying the Governor, temporarily suspend all or part of this Agreement without notice or hearing, if, in the judgment of the Commission, an emergency situation exists with respect to any material covered by this agreement creating danger which requires immediate action to protect public health and safety of persons either within or outside the State and the State has failed to take steps necessary to contain or eliminate the cause or danger within a reasonable time after the situation arose. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State program to be adequate to protect the public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

ARTICLE IX

This Agreement shall become effective on [DATE] and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Executed at Rockville, Maryland this [DATE] day of [MONTH], [YEAR].

Or

Executed at Indianapolis, Indiana this [DATE] day of [MONTH], [YEAR].

For the United States Nuclear Regulatory Commission

Ho K. Neih

Chairman of the U.S. Nuclear Regulatory Commission

For the State of Indiana

Michael Braun

Governor of Indiana

**Indiana Department of Homeland Security
Radioactive Materials Control Program**



**Appendix #4.1-1
Indiana Code
Title 10. Public Safety
Article 19. Department of Homeland Security
Chapter 12. Nuclear Regulatory Agreement**

IC 10-19-12

Chapter 12. Nuclear Regulatory Agreement

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[10-19-12-18](#) Civil penalties

IC 10-19-12-1 Nuclear regulatory agreement

Sec. 1. This agreement shall be effective immediately upon:

- (1) approval by the U.S. Nuclear Regulatory Commission; and
- (2) signing by the governor and the chairman of the U.S. Nuclear Regulatory Commission.

As added by P.L.28-2022, SEC.2.

IC 10-19-12-2 Public policy

Sec. 2. It is the policy of the state in furtherance of its responsibility to protect the occupational health and safety, public health and safety, and environment to:

(1) institute and maintain a regulatory program for sources of ionizing radiation and nonionizing radiation so as to provide for compatibility and equivalency with the standards and regulatory programs of the federal government, an integrated effective system of regulation within the state, and a system consonant insofar as possible with those of other states;

(2) institute and maintain a program to permit development and use of sources of radiation for peaceful purposes consistent with the health and safety of the public; and

(3) provide for the availability of capacity either within or outside Indiana for the disposal of low-level radioactive waste generated within Indiana except for waste generated as a result of defense or federal research and development activities and to recognize that such radioactive waste can be most safely and efficiently managed on a regional basis.

As added by P.L.28-2022, SEC.2.

IC 10-19-12-3 Purpose

Sec. 3. It is the purpose of this chapter to provide:

(1) a program of effective regulation of sources of radiation for the protection of the occupational health and safety and public health and safety;

(2) a program to promote an orderly regulatory pattern within Indiana, among the states, and between the federal government and Indiana, and facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation to the end that duplication of regulation may be minimized;

(3) a program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to byproduct, source, and special nuclear materials; and

(4) a program to permit use of sources of radiation consistent with the health and safety of the public.

As added by P.L.28-2022, SEC.2.

IC 10-19-12-4 Definitions

Sec. 4. As used in this chapter:

(1) "Byproduct material" means:

(A) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(B) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content;

(C) any discrete source of radium-226 that is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity;

(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; and

(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.

(2) "Civil penalty" means any monetary penalty levied on a licensee or registrant because of violations of statutes, regulations, licenses, or registration certificates, but does not include criminal penalties.

(3) "Closure" or "site closure" means all activities performed at a waste disposal site, such as stabilization and contouring, to assure that the site is in a stable condition so that only minor custodial care, surveillance, and monitoring are necessary at the site following termination of a licensed operation.

(4) "Decommissioning" means final operational activities at a facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material, and to carry out any other activities to prepare the site for postoperational care.

(5) "Department" means the Indiana department of homeland security established by [IC 10-19-2-1](#).

(6) "Disposal of low-level radioactive waste" means the isolation of such waste from the biosphere by emplacement in a land burial facility.

(7) "General license" means a license effective under regulations promulgated by the department without the filing of an application with the department or the issuance of licensing documents to particular persons to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing, radioactive material.

(8) "High-level radioactive waste" means:

(A) irradiated reactor fuel;

(B) liquid wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuel; and

(C) solids into which such liquid wastes have been converted.

(9) "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.

(10) "Low-level radioactive waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material.

(11) "Nonionizing radiation" means the following:

(A) Any electromagnetic radiation, other than ionizing electromagnetic radiation.

(B) Any sonic, ultrasonic, or infrasonic wave.

(12) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, state agency other than the department, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, but not including federal government agencies.

(13) "Radiation" means ionizing radiation and nonionizing radiation.

(14) "Radiation generating equipment" means any manufactured product or device, or component part of such a product or device, or any machine or system that during operation can generate or emit radiation except those that emit radiation only from radioactive material.

(15) "Radioactive material" means material (solid, liquid, or gas) that emits ionizing radiation spontaneously. It includes accelerator produced, byproduct, naturally occurring, source, and special nuclear materials.

(16) "Registration" means registration with the department in accordance with rules and regulations adopted pursuant to this chapter.

(17) "Source material" 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.

(18) "Source material mill tailings" means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from underground solution extraction processes, but not including underground ore bodies depleted by such solution extraction processes.

(19) "Source material milling" means any processing of ore, including underground solution extraction of unmined ore, primarily for the purpose of extracting or concentrating uranium or thorium that results in the production of source material mill tailings.

(20) "Sources of radiation" means collectively, radioactive material and radiation generating equipment.

(21) "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.

(22) "Specific license" means a license, issued to a named person upon application filed under the regulations promulgated under this chapter, to use, manufacture, produce, transfer, receive, acquire, or possess quantities of, or devices or equipment utilizing, radioactive material.

(23) "Spent nuclear fuel" means irradiated nuclear fuel that has undergone at least one (1) year's decay since being used as a source of energy in a power reactor. Spent fuel includes the special nuclear material, byproduct material, source material, and other radioactive material associated with fuel assemblies.

(24) "Transuranic waste" means radioactive waste containing alpha emitting transuranic elements, with radioactive half-lives greater than five (5) years, in excess of ten (10) nanocuries per gram.

As added by P.L.28-2022, SEC.2.

IC 10-19-12-5 Duties; registration, regulation, and use of radiation generating equipment

Sec. 5. (a) The Indiana department of homeland security is designated as the state agency responsible for carrying out the duties of this chapter.

(b) The executive director of the department may use the authority granted under [IC 10-19-3-4](#) and [IC 10-19-3-5](#) to carry out the duties of this chapter.

(c) The department shall, for the protection of the occupational health and safety, public health and safety, and environment, do the following:

(1) Develop programs for evaluation and control of hazards associated with use of sources of radiation.

(2) Develop programs with due regard for compatibility with federal programs for regulation of byproduct, source, and special nuclear materials.

(3) 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.

(4) Issue such orders or modifications thereof as may be necessary in connection with proceedings under this chapter.

(5) Advise, consult, and cooperate with other state agencies, the federal government, other states and interstate agencies, political subdivisions, and other organizations concerned with control of sources of radiation.

(6) Have the authority to accept and administer 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.

(7) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of radiation.

(8) Collect and disseminate information relating to control of sources of radiation, including maintenance of a file of:

(A) all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(B) registrants possessing sources of radiation requiring registration under the provisions of this chapter and any administrative or judicial action pertaining thereto; and

(C) all of the department's rules and regulations relating to regulation of sources of radiation, pending or promulgated, and proceedings thereon.

(d) Registration of radiation generating equipment and regulations regarding the use of radiation generating equipment shall be in accordance with [IC 16-41-35](#).

(e) The department shall coordinate the registration, regulation, and use of radiation generating equipment under subsection (d). The department shall do the following in carrying out the duties of this subsection:

(1) Consult with and review regulations and procedures of a state agency or department that regulates, in part, radiation or radiation generating equipment to prevent unnecessary duplication, inconsistencies, or gaps in regulatory requirements.

(2) Review, before and after, the holding of any public hearing required under the provisions of this chapter prior to promulgation, the proposed rules and regulations of any state agencies that relate to the use and control of radiation, to assure that the rules and regulations are consistent with other agencies. Proposed rules and regulations are not effective until thirty (30) days after submission to the department, unless either the governor or the department waives all or part of the thirty (30) day period. The waiting period runs concurrently with any other waiting period required by state law.

(3) Consult with state agencies in an effort to resolve inconsistencies if the department determines that a proposed rule or regulation is inconsistent with an existing rule or regulation.

(4) Notify the governor if an inconsistency under subdivision (3) has not been resolved. Upon notification, the governor may find that the proposed rules and regulations or parts thereof are inconsistent with the rules and regulations of other agencies of the state and may issue an order to that effect in which event the proposed rules or regulations or parts thereof shall not become effective. The governor may, in the alternative, upon a similar determination, direct the appropriate agency or agencies to amend or repeal existing rules or regulations to achieve consistency with the proposed rules or regulations.

(f) The agencies of the state shall keep the department fully and currently informed as to their activities relating to development and regulation of sources of radiation.

As added by P.L.28-2022, SEC.2.

IC 10-19-12-6 General and specific licensing

Sec. 6. (a) 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. The rules must also provide the following:

(1) Each application for a specific license shall be in writing and shall state such information as the department, by rule or regulation, may determine to be necessary to decide the technical and financial qualifications or any other qualifications of the applicant as the department may deem reasonable and necessary to protect the occupational health and safety and public health and safety. The department may at any time after the filing of the application, and before the expiration of the license, require further written statements and may make such inspections as the department may deem necessary in order to determine whether the license should be modified, suspended, or revoked. All applications and statements shall be signed by the applicant or licensee. The department may require any applications or statements to be made under oath or affirmation.

(2) Each license shall be in such form and contain such terms and conditions as the department may by rule or regulation prescribe.

(3) No license issued under the authority of this chapter and no right to possess or use sources of radiation granted by any license shall be assigned or in any manner disposed of unless the

department shall, after securing full information, find that the transfer is in accordance with the provisions of this chapter, and shall give its consent in writing.

(4) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations, or orders issued in accordance with the provisions of this chapter.

(b) The department is authorized to require registration or licensing of other sources of radiation.

(c) The department is authorized to exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this section when the department makes a finding that the exemption of such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

(d) Rules and regulations promulgated under this chapter may provide for recognition of other state or federal licenses as the department shall deem desirable, subject to such registration requirements as the department may prescribe.

As added by P.L.28-2022, SEC.2.

IC 10-19-12-7 Fees

Sec. 7. (a) The department shall prescribe and collect such fees as may be established by regulation for radiation protection services provided under this chapter. Fees collected under this section shall be deposited in the fire and building services fund established under [IC 22-12-6-1](#). Services for which fees may be established include the following:

(1) Registration of sources of radiation.

(2) Issuance, amendment, and renewal of licenses for radioactive materials.

(3) Inspections of registrants or licensees.

(4) Environmental surveillance activities to assess the radiological impact of activities conducted by licensees.

(b) In determining rates of such fees, the department shall, as an objective, obtain sufficient funds therefrom to reimburse the state for all or a substantial portion of the direct and indirect costs of the radiation protection services specified in subsection (a). The department shall take into account any special arrangements between the state and a registrant, a licensee, another state, or a federal agency whereby the cost of the services is otherwise partially or fully recovered.

(c) The department may, upon application by an interested person, or on its own initiative, grant such exemptions from the requirements of this section as it determines are in the public interest. Applications for exemption under this subsection may include activities such as, but not limited to, the use of licensed materials for educational or noncommercial displays or scientific collections.

(d) When a registrant or licensee fails to pay the applicable fee, the department may suspend or revoke the registration or license or may issue an appropriate order.

As added by P.L.28-2022, SEC.2.

IC 10-19-12-8 Surety requirements; radiation funds; site surveillance and care

Sec. 8. (a) For licensed activities involving disposal of low-level radioactive waste, the department shall, and for other classes of licensed activity the department may, establish by rule or regulation standards and procedures to ensure that the licensee will provide an adequate surety or other financial arrangement to permit the completion of all requirements established by the department for the decontamination, closure, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with such licensed activity, in case the licensee should default for any reason in performing such requirements.

(b) All sureties required under subsection (a) that are forfeited shall be paid to the department for deposit by the state treasurer in a special fund called the radiation site closure and disposal fund. All money in this fund is hereby appropriated and may be expended by the department as necessary to complete such requirements on which licensees have defaulted. Money in this fund shall not be used for normal operating expenses of the department. Money in the fund shall not revert back to the state general fund.

(c) For licensed activities involving the 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 standards and procedures to ensure that the licensee, before termination of the license, will make available such funding arrangements as may be necessary to provide for long-term site surveillance and care.

(d) All funds collected from licensees under subsection (c) shall be paid to the department for deposit by the state treasurer in a special fund called the radiation long-term care fund. All funds accrued as interest on money deposited in this fund are hereby appropriated and may be expended by the department for the continuing long-term surveillance, maintenance, and other care of facilities from which such funds are collected as necessary for protection of the public health and safety and the environment. Money in the fund shall not revert back to the state general fund. Notwithstanding any other provisions of this subsection, if title to and custody of any radioactive material and its disposal site are transferred to the United States upon termination of any license for which funds have been collected for such long-term care, the collected funds and interest accrued thereon shall be transferred to the United States.

(e) The sureties or other financial arrangements and funds required by subsections (a) and (c) shall be established in amounts sufficient to ensure compliance with those standards, if any, established by the U.S. Nuclear Regulatory Commission pertaining to closure, decommissioning, reclamation, and long-term site surveillance and care of such facilities and sites.

(f) In order to provide for the proper care and surveillance of sites subject to subsection (c), the department, on behalf of the state, may acquire by gift or transfer from another government agency or private person any land and appurtenances necessary to fulfill the purposes of this section. Any such gift or transfer is subject to approval and acceptance by the department.

(g) The department may by contract, agreement, lease, or license with any person, including another state agency, provide for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site subject to this section as needed to carry out the purposes of this section.

(h) In the event that a person licensed by any governmental agency other than the department desires to transfer a site to the state for the purpose of administering or providing long-term care, a lump sum deposit shall be made to the radiation long-term care fund. The amount of such deposit shall be determined by the department taking into account the factors in subsections (c) and (e).

(i) All state, local, or other governmental agencies, shall be exempt from the requirements of subsections (a) and (c).

As added by P.L.28-2022, SEC.2.

IC 10-19-12-9 Inspection and compliance

Sec. 9. The department or its duly authorized representatives shall have the power to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of this chapter and rules and regulations issued thereunder, except that entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

As added by P.L.28-2022, SEC.2.

IC 10-19-12-10 Record keeping

Sec. 10. The department is authorized to require by rule, regulation, or order the keeping of such records with respect to activities under licenses and registration certificates issued under this chapter as may be necessary to effectuate the purposes of this chapter. These records shall be made available for inspection by, or copies thereof shall be submitted to, the department on request.

As added by P.L.28-2022, SEC.2.

IC 10-19-12-11 Federal-state agreements; assumption of regulatory authority

Sec. 11. (a) The governor, on behalf of the state, is authorized to enter into agreements with the U.S. Nuclear Regulatory Commission under Section 274b of the Atomic Energy Act of 1954, as amended, providing for discontinuance of certain of the commission's licensing and related regulatory authority with respect to byproduct, source, and special nuclear materials and the assumption of regulatory authority therefore by this state.

(b) Any person who, on the effective date of an agreement under subsection (a), possesses a license issued by the U.S. Nuclear Regulatory Commission for radioactive materials subject to the agreement shall be deemed to possess a like license issued under this chapter, which shall expire either ninety (90) days after receipt from the department of a notice of expiration of such license, or on the date of expiration specified in the U.S. Nuclear Regulatory Commission license, whichever is earlier.

As added by P.L.28-2022, SEC.2.

IC 10-19-12-12 Federal-state agreements; inspection and training programs

Sec. 12. (a) The department is authorized to enter into an agreement or agreements with the U.S. Nuclear Regulatory Commission under Section 274i of the Atomic Energy Act of 1954, as amended, other federal government agencies as authorized by law, other states or interstate agencies, whereby this state will perform on a cooperative basis with the commission, other federal government agencies, other states, or interstate agencies, inspections or other functions relating to control of sources of radiation.

(b) The department may institute training programs for the purpose of qualifying personnel to carry out the provisions of this chapter, and may make said personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of the purposes of this chapter.

As added by P.L.28-2022, SEC.2.

IC 10-19-12-13 Conflicting laws

Sec. 13. Ordinances, resolutions, or regulations, now or hereafter in effect, of the governing body of a municipality or county or of state agencies, other than the department under section 5 of this chapter, relating to byproduct, source, and special nuclear materials shall be superseded by this chapter.

As added by P.L.28-2022, SEC.2.

IC 10-19-12-14 Administrative procedure; public notice and hearing

Sec. 14. (a) Rules shall be promulgated under this chapter in accordance with [IC 4-22-2](#).

(b) Orders shall be issued under this chapter in accordance with [IC 4-21.5](#).

(c) In any proceeding for licensing ores processed primarily for their source material content and disposal of byproduct material or for licensing disposal of low-level radioactive waste, the department shall provide:

- (1) an opportunity, after public notice, for written comments and a public hearing, with a transcript;
- (2) an opportunity for cross-examination; and
- (3) a written determination of the action to be taken, which is based upon findings included in the determination and upon evidence presented during the public comment period.

(d) In any proceeding for licensing ores processed primarily for their source material content and disposal of byproduct material or for licensing disposal of low-level radioactive waste, the department shall prepare, for each licensed activity that has a significant impact on the human environment, a written analysis of the impact of such licensed activity on the environment. The analysis shall be available to the public before the commencement of hearings held pursuant to subsection (c) and shall include the following:

- (1) An assessment of the radiological and non-radiological impacts to the public health.
- (2) An assessment of any impact on any waterway and groundwater.
- (3) Consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted.
- (4) Consideration of the long-term impacts, including decommissioning, decontamination, and reclamation of facilities and sites associated with the licensed activities and management of any radioactive materials that will remain on the site after such decommissioning, decontamination, and reclamation.

(e) The department shall prohibit any major construction with respect to any activity for which an environmental impact analysis is required by subsection (d) prior to completion of such analysis.

(f) Whenever the department finds that an emergency exists requiring immediate action to protect the public health and safety, the department may adopt emergency rules under [IC 4-22-2-37.1](#) or issue emergency orders under [IC 4-21.5-4](#) to address the emergency.

As added by P.L.28-2022, SEC.2.

IC 10-19-12-15 Injunction proceedings

Sec. 15. Whenever, in the judgment of the department, any person has engaged in or is about to engage in any acts or practices that constitute or will constitute a violation of any provision of this chapter, or any rule, regulation, or order issued thereunder, the department may, in lieu of issuing an administrative order, apply for an order from a circuit or superior court in the county in which the person takes a substantial step toward violating a law, or a violation occurs. 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, a restraining order, or other order may be granted.

As added by P.L.28-2022, SEC.2.

IC 10-19-12-16 Prohibited uses of sources of radiation

Sec. 16. It shall be unlawful for any person to use, manufacture, produce, distribute, sell, transport, transfer, install, repair, receive, acquire, own, or possess any source of radiation unless licensed by or registered with the department in conformance with rules and regulations, if any, promulgated in accordance with the provisions of this chapter.

As added by P.L.28-2022, SEC.2.

IC 10-19-12-17 Impounding sources of radiation

Sec. 17. The department shall have the authority in the event of an emergency to impound or order the impounding of sources of radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules or regulations issued thereunder.

As added by P.L.28-2022, SEC.2.

IC 10-19-12-18 Civil penalties

Sec. 18. (a) Any person who violates any licensing or registration provision of this chapter or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license or registration certificate issued thereunder, or commits any violation for which a license or registration certificate may be revoked under rules or regulations issued under this chapter may be subject to a civil penalty, to be imposed by the department, not to exceed ten thousand dollars (\$10,000). If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The department shall have the power to compromise, mitigate, or remit such penalties.

(b) 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](#).

(c) The department is authorized to institute a civil action to collect a penalty imposed pursuant to this section. The department shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred to the department for collection.

(d) All money collected from civil penalties under this section shall be deposited in the fire and building services fund established by [IC 22-12-6-1](#).

As added by P.L.28-2022, SEC.2.

**Indiana Department of Homeland Security
Radioactive Materials Control Program**



**Appendix #4.1-2
Indiana Administrative Code
Title 290 Article 3
Standards For Protection Against Radiation**

ARTICLE 3. STANDARDS FOR PROTECTION AGAINST RADIATION

Rule 1. General Provisions

290 IAC 3-1-1 Applicability

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 1. (a) This article, except as otherwise specifically provided, applies to all persons that use, store, produce, transport, possess, or dispose of radioactive materials within the state of Indiana.

(b) This article does not apply to any person to the extent a person is subject to regulation by the NRC. (*Department of Homeland Security; 290 IAC 3-1-1*)

290 IAC 3-1-2 Reconciliation of differences

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 5-14-3; IC 10-19-12; IC 10-19-12-18

Sec. 2. To reconcile differences between this article and the incorporated language, the following words and phrases shall be substituted for the language in the incorporated material as follows:

(1) Unless otherwise specified in this section, a reference to "department" means the Indiana department of homeland security.

(2) A reference to "NRC", "Commission", "Regional Office", "Director, Office of Nuclear Material Safety and Safeguards or his/her designee", "United States Nuclear Regulatory Commission", "U.S. Nuclear Regulatory Commission", "Administrator of the appropriate Regional Office", "Regional Administrator", or "Atomic Energy Commission", means the Indiana department of homeland security, except when used in:

(A) the definition of "Agreement State" in 10 CFR 30.4, 35.2, 37.5, 40.4, 70.4, and 150.3;

(B) the definition of "Sealed Source and Device Registry" in 10 CFR 32.2 and 35.2;

(C) 10 CFR 35, when referring to the NRC's Medical Uses Licensee Toolkit web page;

(D) the reference to master material license or licensee in 10 CFR 35;

(E) the definition of "Fingerprint orders" in 10 CFR 37.5;

(F) 10 CFR 37.25(b)(2);

(G) 10 CFR 37.27(a) and (c);

(H) 10 CFR 37.29(a)(1) and (a)(7);

(I) 10 CFR 37.31(d);

(J) the reference to the NRC's license verification system in 10 CFR 37.71(a) through (c);

(K) 10 CFR 39.63(l);

(L) 10 CFR 40.4;

(M) 10 CFR 40.35(f);

(N) 10 CFR 61.55(a)(2)(iv);

(O) 10 CFR 70.19(a)(2), (a)(3), and (c)(3);

(P) 10 CFR 71.17(e);

(Q) 10 CFR 71.88(a)(4);

(R) 10 CFR 71.93(c);

(S) The definitions of "Certificate Holder" and "Certificate of Compliance" in 10 CFR 71.4.

(3) A reference to "NRC or Agreement State", "Commission or the licensing agency of an Agreement State", "Commission or the appropriate agency of an Agreement State", "Commission or the Atomic Energy Commission or an Agreement State", "Atomic Energy Commission, the Commission, or an Agreement State", "with the Commission or with an Agreement State", "U.S. Nuclear Regulatory Commission or the legally binding requirements issued by Agreement States", "Commission or Agreement State", or "Commission or an Agreement State" means the "Indiana Department of Homeland Security, the NRC, or Agreement State".

(4) A reference to "or equivalent Agreement State regulations" means "NRC regulations in Chapter 10 of the Code of Federal Regulations, or equivalent Agreement State regulations". A reference to "or equivalent Agreement State requirements" means "NRC requirements, or equivalent Agreement State requirements". A reference to "comparable provisions of an Agreement State" means "comparable provisions of the NRC or of an Agreement State". A reference to "an Agreement State" means "an Agreement State or the NRC". 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".

(5) A reference to the Advisory Committee on the Medical Uses of Isotopes (ACMUI) is deemed to be a reference to the department's radiation advisory committee.

(6) Any notifications, communications, reports, correspondence, or oath and affirmations referenced in the incorporated sections of the Code of Federal Regulations shall be directed to the department using the contact information specified in section 4 of this rule. However:

(A) fingerprints for FBI criminal history records check and related fees shall be submitted to the NRC in accordance with 10 CFR 37.27;

(B) the submission required before the first use of an NRC approved package shall be sent in accordance with 10 CFR 71.17(c)(3), to the NRC, ATTN: Document Control Desk, Director, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, using the appropriate methods listed in 10 CFR 71.1(a), the licensee's name and license number, and the package identification number specified in the package approval.

(7) Any requirement to use an NRC form may also be satisfied by use of an equivalent form approved by the department.

(8) In 10 CFR 30.32(g); 31.5(b)(1)(ii); 31.5(c)(3)(ii); 31.5(c)(5); 31.5(c)(13)(iv); 31.6; 31.7(a); ; 31.8(b); 31.8(c)(3); 31.10(a); 31.10(b)(1); 31.11(c)(4); 31.11(d)(1); 31.12(c)(4); 32.51a(b); 32.51a(b)(1) and (4); 32.51a(e); 32.52(b); 32.52(b)(7); 32.55(d); 32.56; 32.62(e); 32.74(a)(3); 34.89(b)(12); 39.41(f); 39.51; 39.75(e); 40.25(b); 40.25(d)(3); 40.35(d)(2) and (e)(2); 40.55(d)(2); 170.31, Table 1, Category 16, "Reciprocity"; 170.31(1); and 171.17(b)(2), a reference made to "an Agreement State", or "non-Agreement State" means "an Agreement State or the NRC".

(9) In 10 CFR 31.6 and 31.8(a)(1), where the words "any non-agreement state" or "offshore waters" are used, substitute the words "State of Indiana".

(10) In 10 CFR 39.51, where the phrase "or by an Agreement State" is used, substitute the words "by the NRC or by an Agreement State".

(11) In 10 CFR 70.19(a)(1), a reference to "a non-agreement State" means "the State of Indiana".

(12) In 10 CFR 37.77(a)(1), the following language is preserved: "The contact information, including telephone and mailing addresses, of governors and governors' designees, is available on the NRC's Web site at <https://scp.nrc.gov/special/designee.pdf>. A list of the contact information is also available upon request from the Director, Division of Materials Safety, Security, State, and Tribal Programs, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001." [Note: NRC website relocated at www.nrc.gov/materials/adv-notification-designees.html.] Additionally, the language in 10 CFR 37.77(d) is preserved.

(13) Required statements for labeling referenced in 10 CFR are preserved.

(14) In 10 CFR 71.97(c)(3)(ii) and (iii) and in 71.97(f) the language is preserved.

(15) In 10 CFR 30.12 and 30.41(b)(1), the definition of "Department of Energy" in 10 CFR 40.4 and 70.4; 40.11; 40.14(c); 40.51(b)(1); 70.11; and 70.42(b)(1); the word "Department" means "U.S. Department of Energy".

(16) In 10 CFR 30.41(b)(2), 40.51(b)(2), and 70.42(b)(2), "agency in any Agreement State" means "agency in any Agreement State or agency under NRC jurisdiction".

(17) In 10 CFR 30.41(b)(4), 40.51(b)(4), and 70.42(b)(4), a reference made to "any person in an Agreement State, subject to the jurisdiction of that State, who has been exempted from the licensing requirements and regulations of that State" 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".

(18) For purposes of 10 CFR Part 71, Subpart H, and 10 CFR 170 and 171 only, the terms "certificate of compliance", "compliance holder", "certificate holder", or "applicant for certificate of

compliance" apply to the NRC as they are the sole authority for issuing a package certificate of compliance.

(19) In 10 CFR 150.20, the words:

(A) "non-agreement states", "areas of exclusive federal jurisdiction within agreement states", or "offshore waters" used in (a)(1)(i), (ii), (iii); (b), (b)(3), and (b)(4) mean "The State of Indiana";

(B) "agreement state license" means "agreement state license of Nuclear Regulatory Commission license";

(C) "license issued by an agreement state" means "license issued by an agreement state or the Nuclear Regulatory Commission"; and

(D) "license from an agreement state" means "license from an agreement state of the Nuclear Regulatory Commission".

(20) In 10 CFR 19.15; 19.16; 30.12; 30.13; 30.14; 30.15; 30.18; 30.19; 30.20; 30.21; 30.22; 30.34; 30.41(b)(3); 30.61(b); 40.31(d); 40.32(a); 40.41(a), (b), and (e)(4); 40.51(b)(3); 40.71; 70.21(b); 70.31(a); 70.32(a)(3); 70.32(b)(5); 70.36; 70.42(b)(3); 70.81; and 150.20(b), a reference to "the Act", "Atomic Energy Act of 1954", "act", "Section 81 of the Act", "Section 81 and 82 of the Act", or "section 182 of the Act", means IC 10-19-12, entitled, "Nuclear Regulatory Agreement".

(21) References to parts of Chapter 10 of the Code of Federal Regulations that remain under the NRC's regulatory authority (e.g., 10 CFR Parts 50, 52, 54, 60, 63, 72, 76, and 110; and the phrase "common defense and security") are not incorporated.

(22) In 10 CFR 19.11(a)(4); 30.10(b); 40.10(b); 70.10(b); and 71.8(c), the reference to 10 CFR 2, subpart B is replaced with IC 10-19-12-18 (equivalent state regulations and provisions).

(23) In 10 CFR 40.31(c), the reference to 10 CFR Parts 2 and 9, relating to public records, is replaced with IC 5-14-3. Similarly, in 10 CFR 70.21(d), the reference to part 2 is replaced with IC 5-14-3.

(24) In 10 CFR 30.32(f); 30.33; 40.31(f); and 40.32(e), the reference to 10 CFR Part 51 is replaced with IC 13 (equivalent state regulations and provisions).

(25) 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 section 4(a) of this rule.

(26) In 10 CFR 61.55(a)(2)(iv), the reference to "part 60 or 63 of this chapter" is replaced with "10 CFR 60 or 63".

(27) In 10 CFR 39.11, the reference to the definition of "person" in 10 CFR 30.4 is a reference to the definition of "person" in IC 10-19-12.

(28) In 10 CFR 31.2; 31.5(b)(10); 31.7(b); 31.8(c); 31.11(f); 31.12(b); 40.13; 40.22(d); and 70.19(c), the reference to "21 of this chapter" is replaced by "10 CFR Part 21".

(29) In 10 CFR 34.45(a)(9) and 10 CFR 39.63(l), the phrase "as required by part 21 of this chapter" is excluded.

(30) Any reference to "part 73 of this chapter" is a reference to 10 CFR Part 73.

(31) In 10 CFR 150.20, "74.11, 74.15, and 74.19 of this chapter" is replaced by "10 CFR 74.11, 74.15, and 74.19".

(Department of Homeland Security; 290 IAC 3-1-2)

290 IAC 3-1-3 Definitions

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 4-21.5; IC 4-22; IC 10-19-2-1; IC 10-19-12

Sec. 3. The following definitions apply throughout this article:

- (1) "Civil penalty" means any monetary penalty levied on a licensee or registrant because of violations of statutes, regulations, licenses, or registration certificates, but does not include criminal penalties.
- (2) "Closure" or "site closure" means all activities performed at a waste disposal site, such as stabilization and contouring, to ensure that the site is in a stable condition so that only minor custodial care, surveillance, and monitoring are necessary at the site after termination of a licensed operation.
- (3) "Decommissioning" means final operational activities at a facility to dismantle site structures, decontaminate site surfaces and remaining structures, stabilize and contain residual radioactive material, and carry out any other activities to prepare the site for postoperational care.
- (4) "Department" means the department of homeland security established by IC 10-19-2-1.
- (5) "Disposal of low-level radioactive waste" means the isolation of that waste from the biosphere by emplacement in a land burial facility.
- (6) "General license" means a license effective under regulations promulgated by the department, without the filing of an application with the department, or the issuance of licensing documents to particular persons to transfer, acquire, own, possess, or use quantities of, or devices or equipment using, radioactive material.
- (7) "Government agency" means any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.
- (8) "High-level radioactive waste" means:
 - (A) irradiated reactor fuel;
 - (B) liquid wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuel; and
 - (C) solids into which those liquid wastes have been converted.

(9) "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.

(10) "Low-level radioactive waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material.

(11) "Nonionizing radiation" means the following:

(A) Any electromagnetic radiation, other than ionizing electromagnetic radiation.

(B) Any sonic, ultrasonic, or infrasonic wave.

(12) "Radiation" means ionizing radiation and nonionizing radiation.

(13) "Radiation generating equipment" means a manufactured product or device, or component part of the product or device, or a machine or system that during operation can generate or emit radiation, except those that emit radiation only from radioactive material.

(14) "Radioactive material" means material (solid, liquid, or gas) that emits ionizing radiation spontaneously. It includes accelerator produced, byproduct, naturally occurring, source, and special nuclear materials.

(15) "Registration" means registration with the department in accordance with the Indiana Administrative Procedure Act, IC 4-21.5 and IC 4-22.

(16) "Source material milling" means any processing of ore, including underground solution extraction of unmined ore, primarily for the purpose of extracting or concentrating uranium or thorium that results in the production of source material mill tailings.

(17) "Source material mill tailings" means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from underground solution extraction processes, but not including underground ore bodies depleted by those solution extraction processes.

(18) "Sources of radiation" means collectively, radioactive material and radiation generating equipment.

(19) "Specific license" means a license, issued to a named person upon application filed under the regulations promulgated under this article, to use, manufacture, produce, transfer, receive, acquire, or possess quantities of, or devices or equipment using, radioactive material.

(20) "Spent nuclear fuel" means irradiated nuclear fuel that has undergone at least one (1) year of decay since being used as a source of energy in a power reactor. Spent fuel includes the special nuclear material, byproduct material, source material, and other radioactive material associated with fuel assemblies.

(21) "Transuranic waste" means radioactive waste containing alpha emitting transuranic elements, with radioactive half-lives greater than five (5) years, exceeding ten (10) nanocuries per gram.

(Department of Homeland Security; 290 IAC 3-1-3)

290 IAC 3-1-4 Communications

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-2.1-1; IC 10-19-12

Sec. 4. (a) In accordance with IC 10-19-2.1-1, and except where specifically stated otherwise, all notifications, correspondence, communications, reports, or oath and affirmation certifications required to be submitted under this article shall be submitted electronically in writing and addressed to the department at rmcp@dhs.in.gov. Submissions made by paper shall be made out to:

Indiana Department of Homeland Security

Radioactive Materials Control Program

302 West Washington Street, Room E208

Indianapolis, IN 46204

(b) In case of an emergency, or when an immediate or a twenty-four (24) hour notification is required, the notification shall be made telephonically to (317) 233-6611. (*Department of Homeland Security; 290 IAC 3-1-4*)

290 IAC 3-1-5 Implementation

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 5. On the date the state of Indiana becomes an agreement state as published in the Federal Register, a person that possesses a general or specific license issued by the NRC for source, byproduct, or special nuclear material, in quantities not sufficient to form a critical mass, is deemed to possess a like license issued under this section. The license expires on the earlier of ninety (90) days after the department receives a notice of expiration of the license, or the date of expiration specified in the NRC license. (*Department of Homeland Security; 290 IAC 3-1-5*)

290 IAC 3-1-6 Inspections

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-11-3; IC 10-19-12

Sec. 6. (a) Requirements regarding inspections are as required by the materials incorporated by reference.

(b) This section does not limit the authority granted in IC 10-19-11-3. (*Department of Homeland Security; 290 IAC 3-1-6*)

290 IAC 3-1-7 Violation

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12-15; IC 10-19-12-18

Sec. 7. Violations of this article may be enforced by IC 10-19-12-15 and IC 10-19-12-18. (*Department of Homeland Security; 290 IAC 3-1-7*)

290 IAC 3-1-8 Records

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 8. Unless otherwise stated in this article, requirements regarding records are as required by the material incorporated by reference. In addition, for the purpose of this article, records shall be provided in the form of printed materials or electronic records capable of producing legible, accurate, and complete records during the required retention period. Records may not be provided on microform. The licensee shall maintain adequate safeguards against tampering with and loss of records. Records, such as letters, drawings, and specification, must include all pertinent information, such as stamps, initials, and signatures. (*Department of Homeland Security; 290 IAC 3-1-8*)

290 IAC 3-1-9 Reports

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 9. (a) Unless otherwise stated in this article, requirements regarding reports of theft or loss of licensed material are as required by the materials incorporated by reference.

(b) The requirement in 10 CFR 20.2201(a)(1)(ii) and (b)(1) is modified from thirty (30) to fifteen (15) days.

(c) Reports required by 10 CFR 20.2201 must include, to the extent that the information is available at the time of notification, the following information:

- (1) The name of the person making the report and their call-back telephone number.
- (2) The time and date of the event.
- (3) The exact location of the event, if available.

(Department of Homeland Security; 290 IAC 3-1-9)

290 IAC 3-1-10 Vacating premises

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 10. Each specific licensee shall, not less than thirty (30) days before vacating or relinquishing possession or control of a premises, which may have been contaminated with radioactive material as a result of the licensee's activities, notify the department in writing of the intent to vacate. When deemed necessary by the department, the licensee shall decontaminate the premises in such a manner as the department may specify. *(Department of Homeland Security; 290 IAC 3-1-10)*

Rule 2. Standards for Protection Against Radiation

290 IAC 3-2-1 Applicability

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 1. (a) This article, except as otherwise specifically provided, applies to all persons that use, store, produce, transport, possess, or dispose of radioactive materials within the state of Indiana.

(b) This article does not apply to any person to the extent a person is subject to regulation by the NRC.

(c) The requirements of this rule are in addition to, and not in substitution for, other requirements of this article. The provisions of 290 IAC 3-3 through 290 IAC 3-18 also apply. *(Department of Homeland Security; 290 IAC 3-2-1)*

290 IAC 3-2-2 Incorporated material

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 2. (a) Except as provided in this rule, and to the extent that the provisions are not inconsistent with this article, 10 CFR Part 20 is incorporated by reference.

(b) The following requirements of 10 CFR Part 20 are not incorporated in this article:

(1) 20.1001

(2) 20.1002

(3) 20.1003 (Definitions of "Byproduct material", "Commission", "Decommission", "Department", "Generally applicable environmental radiation standards", "Source material", and "Special Nuclear Material")

(4) 20.1007

(5) 20.1008

(6) 20.1009

(7) 20.1205

(8) 20.1406(b)

(9) 20.1905(g)

(10) 20.2106(d)

(11) 20.2109

(12) 20.2110

(13) 20.2203(c) and (d)

(14) 20.2206(a)(1), (3), (4), (5), and (6)

(15) 20.2401

(16) 20.2402

(17) Appendix D to 10 CFR Part 20

(18) Appendix F to 10 CFR Part 20

(Department of Homeland Security; 290 IAC 3-2-1)

Rule 3. Notices, Instructions, and Reports to Workers; Inspections and Compliance Procedures

290 IAC 3-3-1 Applicability

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 1. (a) This article, except as otherwise specifically provided, applies to all persons that use, store, produce, transport, possess, or dispose of radioactive materials within the state of Indiana.

(b) This article does not apply to any person to the extent a person is subject to regulation by the NRC.

(c) The requirements of this rule are in addition to, and not in substitution for, other requirements of this article. The provisions of 290 IAC 3-2 and 290 IAC 3-4 through 290 IAC 3-18 also apply. (*Department of Homeland Security; 290 IAC 3-3-1*)

290 IAC 3-3-2 Incorporated material

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 2. (a) Except as provided in this rule, and to the extent that the provisions are not inconsistent with this article, 10 CFR Part 19 is incorporated by reference.

(b) The following requirements of 10 CFR Part 19 are not incorporated in this rule:

- (1) 19.1
- (2) 19.2
- (3) 19.5
- (4) 19.8
- (5) Any references to 10 CFR 52 in 19.11(a)
- (6) 19.11(b) and (e)
- (7) 19.14(a)

(8) 19.18

(9) 19.20

(10) 19.30

(11) 19.32

(12) 19.40

(Department of Homeland Security; 290 IAC 3-3-2)

Rule 4. Rules of General Applicability to Domestic Licensing of Byproduct Material

290 IAC 3-4-1 Applicability

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 1. (a) This article, except as otherwise specifically provided, applies to all persons that use, store, produce, transport, possess, or dispose of radioactive materials within the state of Indiana.

(b) This article does not apply to any person to the extent a person is subject to regulation by the NRC.

(c) The requirements of this rule are in addition to, and not in substitution for, other requirements of this article. The provisions of 290 IAC 3-2, 290 IAC 3-3, and 290 IAC 3-5 through 290 IAC 3-18 also apply. *(Department of Homeland Security; 290 IAC 3-4-1)*

290 IAC 3-4-2 Incorporated material

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 2. (a) Except as provided in this rule, and to the extent that the provisions are not inconsistent with this article, 10 CFR Part 30 is incorporated by reference.

(b) The following requirements of 10 CFR Part 30 are not incorporated in this rule:

(1) 30.1

(2) 30.3(b), (c), and (d)

(3) 30.4 (Paragraph (2) of the definition of "Commencement of Construction", and paragraph (9)(ii) of the definition of "Construction", "Byproduct material", "Decommission", "Government agency", "Person", "Production facility", "Source material", "Special nuclear material", and "Utilization facility")

(4) 30.6

(5) 30.7

(6) 30.8

(7) 30.11(b) and (c)

(8) 30.21(c)

(9) 30.34(d); (e)(1) and (3); and (k)

(10) 30.41(b)(6)

(11) 30.52

(12) 30.55

(13) 30.63

(14) 30.64

(Department of Homeland Security; 290 IAC 3-4-2)

Rule 5. General Domestic Licenses for Byproduct Material

290 IAC 3-5-1 Applicability

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 1. (a) This article, except as otherwise specifically provided, applies to all persons that use, store, produce, transport, possess, or dispose of radioactive materials within the state of Indiana.

(b) This article does not apply to any person to the extent a person is subject to regulation by the NRC.

(c) The requirements of this rule are in addition to, and not in substitution for, other requirements of this article. The provisions of 290 IAC 3-2 through 290 IAC 3-4 and 290 IAC 3-6 through 290 IAC 3-18 also apply. (*Department of Homeland Security; 290 IAC 3-5-1*)

290 IAC 3-5-2 Incorporated material

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 2. (a) Except as provided in this rule, and to the extent that the provisions are not inconsistent with this article, 10 CFR Part 31 is incorporated by reference.

(b) The following requirements of 10 CFR Part 31 are not incorporated in this rule:

(1) 31.1

(2) 31.3

(3) 31.4

(4) 31.5(a), excluding "Federal"

(5) 31.13

(6) 31.14

(7) 31.15

(8) 31.16

(9) 31.17

(10) 31.18

(11) 31.19

(12) 31.20

(13) 31.21

(14) 31.22

(15) 31.23

(*Department of Homeland Security; 290 IAC 3-5-2*)

**Rule 6. Specific Domestic Licenses to Manufacture or Transfer Certain Items
Containing Byproduct Material**

290 IAC 3-6-1 Applicability

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 1. (a) This article, except as otherwise specifically provided, applies to all persons that use, store, produce, transport, possess, or dispose of radioactive materials within the state of Indiana.

(b) This article does not apply to any person to the extent a person is subject to regulation by the NRC.

(c) The requirements of this rule are in addition to, and not in substitution for, other requirements of this article. The provisions of 290 IAC 3-2 through 290 IAC 3-5 and 290 IAC 3-7 through 290 IAC 3-18 also apply. (*Department of Homeland Security; 290 IAC 3-6-1*)

290 IAC 3-6-2 Incorporated material

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 2. (a) Except as provided in this rule, and to the extent that the provisions are not inconsistent with this article, 10 CFR Part 32 is incorporated by reference.

(b) The following requirements of 10 CFR Part 32 are not incorporated in this rule:

- (1) 32.1
- (2) 32.3
- (3) 32.8
- (4) 32.11
- (5) 32.12
- (6) 32.14
- (7) 32.15
- (8) 32.16
- (9) 32.18

- (10) 32.19
- (11) 32.20
- (12) 32.21
- (13) 32.21a
- (14) 32.22
- (15) 32.23
- (16) 32.25
- (17) 32.26
- (18) 32.27
- (19) 32.28
- (20) 32.29
- (21) 32.30
- (22) 32.31
- (23) 32.32
- (24) 32.210(a) through (h)
- (25) 32.211
- (26) 32.301
- (27) 32.303

(Department of Homeland Security; 290 IAC 3-6-2)

290 IAC 3-6-3 Requirements for license to manufacture, prepare, or transfer for commercial distribution of radioactive drugs containing material for medical use under 290 IAC 3-13

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 3. In addition to the provisions of 10 CFR 32.72(b)(4), an individual may function as an authorized nuclear pharmacist only if they are licensed as a pharmacist by the Indiana board of pharmacy. *(Department of Homeland Security; 290 IAC 3-6-3)*

290 IAC 3-6-4 Registration of product information

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 4. The department does not administer a sealed source and device registration program. A manufacturer or an initial distributor of a sealed source or device containing a sealed source that is subject to this article shall submit a request for evaluation of radiation safety information about its product and for its registration to the NRC under 10 CFR 32.210. (*Department of Homeland Security; 290 IAC 3-6-4*)

Rule 7. Specific Domestic Licenses of Broad Scope for Byproduct Material

290 IAC 3-7-1 Applicability

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 1. (a) This article, except as otherwise specifically provided, applies to all persons that use, store, produce, transport, possess, or dispose of radioactive materials within the state of Indiana.

(b) This article does not apply to any person to the extent a person is subject to regulation by the NRC.

(c) The requirements of this rule are in addition to, and not in substitution for, other requirements of this article. The provisions of 290 IAC 3-2 through 290 IAC 3-6 and 290 IAC 3-8 through 290 IAC 3-18 also apply. (*Department of Homeland Security; 290 IAC 3-7-1*)

290 IAC 3-7-2 Incorporated material

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 2. (a) Except as provided in this rule, and to the extent that the provisions are not inconsistent with this article, 10 CFR Part 33 is incorporated by reference.

(b) The following requirements of 10 CFR Part 33 are not incorporated in this rule:

(1) 33.1

(2) 33.8

(3) 33.21

(4) 33.23

(Department of Homeland Security; 290 IAC 3-7-2)

Rule 8. Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations

290 IAC 3-8-1 Applicability

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12; IC 16-41-35

Sec. 1. (a) This rule establishes radiation safety requirements for persons using sources of radiation for industrial radiography operations.

(b) Except for industrial radiation machines regulated under IC 16-41-35, the requirements in this rule apply to all licensees or registrants that use sources of radiation for industrial radiography; provided, however, that nothing in this rule shall apply to the use of sources of radiation in the healing arts.

(c) The requirements of this rule are in addition to, and not in substitution for, other requirements of this article. The provisions of 290 IAC 3-2 through 290 IAC 3-7 and 290 IAC 3-9 through 290 IAC 3-18 also apply. *(Department of Homeland Security; 290 IAC 3-8-1)*

290 IAC 3-8-2 Incorporated material

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 2. (a) Except as provided in this rule, and to the extent that the provisions are not inconsistent with this article, 10 CFR Part 34 is incorporated by reference.

(b) The following provisions of 10 CFR Part 34 are not incorporated in this rule:

(1) 34.1

(2) 34.8

(3) 34.87

(4) 34.121

(5) 34.123

(Department of Homeland Security; 290 IAC 3-8-2)

290 IAC 3-8-3 Reconciliation of differences

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 3. To reconcile differences between this rule and the incorporated sections of 10 CFR Part 34, the following words and phrases shall be substituted for the language in 10 CFR Part 34 as follows:

(1) A reference to "licensee" is deemed to include "registrant".

(2) A reference to "license" is deemed to include "registration".

(3) A referenced to "licensed" is deemed to include "registered".

(Department of Homeland Security; 290 IAC 3-8-3)

Rule 9. Medical Use of Radioactive Material

290 IAC 3-9-1 Applicability

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 1. (a) This article, except as otherwise specifically provided, applies to all persons that use, store, produce, transport, possess, or dispose of radioactive materials within the state of Indiana.

(b) This article does not apply to any person to the extent a person is subject to regulation by the NRC.

(c) The requirements of this rule are in addition to, and not in substitution for, other requirements of this article. The provisions of 290 IAC 3-2 through 290 IAC 3-8 and 290 IAC 3-10 through 290 IAC 3-18 also apply. (*Department of Homeland Security; 290 IAC 3-9-1*)

290 IAC 3-9-2 Incorporated material

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 2. (a) Except as provided in this rule, and to the extent that the provisions are not inconsistent with this article, 10 CFR Part 35 is incorporated by reference.

(b) The following provisions of 10 CFR Part 35 are not incorporated in this rule:

(1) 35.1

(2) 35.8

(3) 35.11(c)(1)

(4) 35.13(a)(1)

(5) 35.4001

(6) 35.4002

(*Department of Homeland Security; 290 IAC 3-9-2*)

290 IAC 3-9-3 Reports

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 3. (a) In addition to the requirements outlined in 10 CFR 35 Subpart M, the licensee shall notify the department by telephone upon discovery, but not later than the next business day, that:

(1) a patient or human research subject has departed from the licensee's facility without authorization under 10 CFR 35.75; or

(2) a patient or human research subject containing radioactive material has died, and it is possible that any individual could receive an effective dose equivalent to exceeding the dose limits set forth in 10 CFR 20.1301 as a result of the deceased's body.

(b) In addition to the requirements outlined in 10 CFR 35 Subpart M, the licensee shall submit a written report to the department within thirty (30) days after the discovery of an event listed in subsection (a). The written report must include:

- (1) the licensee's name;
- (2) the date and time of the unauthorized departure or date of death, as appropriate;
- (3) the date and time when patient release was expected to occur, if applicable;
- (4) the address of the patient's or human research subject's home or anticipated destination following the unauthorized departure, if applicable;
- (5) the radionuclide, chemical and physical form, and calculated activity at the time of the unauthorized departure or death;
- (6) the apparent reason or reasons for the unauthorized departure or death before the authorized release, if applicable;
- (7) the names (or titles) and address or addresses of known individuals who might have received a TEDE exceeding five (5) mSv (one-half (0.5) rem); and
- (8) a description of any changes in the licensee's patient release criteria or patient instructions that are designed to avoid a recurrence of such an event.

(Department of Homeland Security; 290 IAC 3-9-3)

Rule 10. Licenses and Radiation Safety Requirements for Irradiators

290 IAC 3-10-1 Applicability

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 1. (a) This rule establishes the requirement for the issuance of a license authorizing radioactive materials in irradiators used to irradiate objects or material using gamma radiation. This rule also establishes radiation safety requirements for operating irradiators.

(b) This rule applies to panoramic irradiators that have either dry or wet storage of the radioactive sealed sources, and to underwater irradiators in which both the source and product being irradiated are under water. Irradiators whose dose rate exceeds five (5) grays (500 rads) per hour at one (1) meter from the radioactive sealed sources in air or water, as applicable for the irradiator type, are covered by this rule.

(c) The requirements set out in this rule do not apply to self-contained dry source storage irradiators in which both the source and area subject to irradiation are contained within a device

and are not accessible by personnel, medical radiology or teletherapy, radiography (the irradiation of materials for nondestructive testing purposes), gauging, or open-field (agricultural) irradiations.

(d) The requirements of this rule are in addition to, and not in substitution for, other requirements of this article. The provisions of 290 IAC 3-2 through 290 IAC 3-9 and 290 IAC 3-11 through 290 IAC 3-18 also apply.

(e) Nothing in this rule relieves the licensee from complying with other applicable federal, state, and local regulations governing the siting, zoning, land use, and building code requirements for industrial facilities. (*Department of Homeland Security; 290 IAC 3-10-1*)

290 IAC 3-10-2 Incorporated material

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 2. (a) Except as provided in this rule, and to the extent that the provisions are not inconsistent with this article, 10 CFR Part 36 is incorporated by reference.

(b) The following provisions of 10 CFR Part 36 are not incorporated in this rule:

(1) 36.1(a)

(2) 36.2 (paragraph (2) of the definition of "Commencement of Construction", and paragraph (9)(ii) of the definition "Construction").

(3) 36.8

(4) 36.91

(5) 36.93

(*Department of Homeland Security; 290 IAC 3-10-2*)

290 IAC 3-10-3 Reconciliation of differences

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 3. To reconcile difference between this rule and the incorporated sections of 10 CFR Part 36, the following words and phrases shall be substituted for the language in 10 CFR Part 36 as follows:

(1) A reference to "licensee" is deemed to include "registrant".

(2) A reference to "license" is deemed to include "registration".

(3) A reference to "licensed" is deemed to include "registered".

(Department of Homeland Security; 290 IAC 3-10-3)

Rule 11. Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material

290 IAC 3-11-1 Applicability

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 1. (a) This article, except as otherwise specifically provided, applies to all persons that use, store, produce, transport, possess, or dispose of radioactive materials within the state of Indiana.

(b) This article does not apply to any person to the extent a person is subject to regulation by the NRC.

(c) The requirements of this rule are in addition to, and not in substitution for, other requirements of this article. The provisions of 290 IAC 3-2 through 290 IAC 3-10 and 290 IAC 3-12 through 290 IAC 3-18 also apply. *(Department of Homeland Security; 290 IAC 3-11-1)*

290 IAC 3-11-2 Incorporated material

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 2. (a) Except as provided in this rule, and to the extent that the provisions are not inconsistent with this article, 10 CFR Part 37 is incorporated by reference.

(b) The following requirements of 10 CFR Part 37 are not incorporated in this rule:

(1) 37.1

(2) 37.3

(3) 37.5 (definition of "Byproduct material", "Commission", "Government Agency", and "Person")

(4) 37.7

(5) 37.13

(6) 37.101

(7) 37.107

(8) 37.109

(Department of Homeland Security; 290 IAC 3-11-2)

Rule 12. Licenses for Well Logging and Radiation Safety Requirements for Well Logging Operations

290 IAC 3-12-1 Applicability

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 1. (a) This rule prescribes requirements for the issuance of a license authorizing the use of sources of radiation in well logging in a single well. This rule also prescribes radiation safety requirements for persons using sources of radiation in these operations.

(b) This rule applies to all licensees that use sources of radiation for well logging operations, including mineral logging, radioactive markers, or subsurface tracer studies.

(c) The requirements set out in this rule do not apply to the issuance of a license authorizing the use of sources of radiation in tracer studies involving multiple wells, such as field flooding studies, or to the use of sources of radiation auxiliary to well logging but not lowering into wells.

(d) The requirements of this rule are in addition to, and not in substitution for, other requirements of this article. The provisions of 290 IAC 3-2 through 290 IAC 3-11 and 290 IAC 3-13 through 290 IAC 3-18 also apply. *(Department of Homeland Security; 290 IAC 3-12-1)*

290 IAC 3-12-2 Incorporated material

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 2. (a) Except as provided in this rule, and to the extent that the provisions are not inconsistent with this article, 10 CFR Part 39 is incorporated by reference.

(b) The following provisions of 10 CFR Part 39 are not incorporated in this rule:

(1) 39.1

(2) 39.8

(3) 39.101

(4) 39.103

(Department of Homeland Security; 290 IAC 3-12-2)

Rule 13. Domestic Licensing of Source Material

290 IAC 3-13-1 Applicability

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 1. (a) This article, except as otherwise specifically provided, applies to all persons that use, store, produce, transport, possess, or dispose of radioactive materials within the state of Indiana.

(b) This article does not apply to any person to the extent a person is subject to regulation by the NRC.

(c) The requirements of this rule are in addition to, and not in substitution for, other requirements of this article. The provisions of 290 IAC 3-2 through 290 IAC 3-12 and 290 IAC 3-14 through 290 IAC 3-18 also apply. *(Department of Homeland Security; 290 IAC 3-13-1)*

290 IAC 3-13-2 Incorporated material

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 2. (a) Except as provided in this rule, and to the extent that the provisions are not inconsistent with this article, 10 CFR Part 40 is incorporated by reference.

(b) The following requirements of 10 CFR Part 40 are not incorporated in this rule:

(1) 40.1

(2) 40.2

(3) 40.2a

(4) 40.4 (definition of "Byproduct material", "Reconciliation", paragraph (2) in the definition of "Commencement of Construction", "Commission", paragraph (9)(ii) in the definition of "Construction", "Decommission", "Foreign obligations", "Government agency", "Persons", "Source material", and "Special nuclear material")

(5) 40.5

(6) 40.7

(7) 40.8

(8) 40.12(b)

(9) 40.13(c)(5)(iv)

(10) 40.20(b) and (c)

(11) 40.22(a), excluding "Federal"

(12) 40.23

(13) 40.26

(14) 40.27

(15) 40.28

(16) 40.31(g) and (j) through (m)

(17) 40.32(d) and (g), and any portion of (e) that applies to uranium enrichment and uranium hexafluoride facilities

(18) 40.33

(19) 40.35(f)

(20) 40.38

(21) 40.41(d), (e)(1) and (3), (g), and (h)

(22) 40.51(b)(6)

(23) 40.52

(24) 40.53

(25) 40.56

(26) 40.64

(27) 40.66

(28) 40.67

(29) 40.81

(30) 40.82

(31) Criterion 11A through F and 12 of Appendix A

(Department of Homeland Security; 290 IAC 3-13-2)

Rule 14. Licensing Requirements for Land Disposal of Radioactive Waste

290 IAC 3-14-1 Applicability

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 1. (a) This article, except as otherwise specifically provided, applies to all persons that use, store, produce, transport, possess, or dispose of radioactive materials within the state of Indiana.

(b) This article does not apply to any person to the extent a person is subject to regulation by the NRC.

(c) The requirements of this rule are in addition to, and not in substitution for, other requirements of this article. The provisions of 290 IAC 3-2 through 290 IAC 3-13 and 290 IAC 3-15 through 290 IAC 3-18 also apply. *(Department of Homeland Security; 290 IAC 3-14-1)*

290 IAC 3-14-2 Incorporated material

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 2. (a) Except as provided in this rule, and to the extent that the provisions are not inconsistent with this article, 10 CFR Part 61 is incorporated by reference.

(b) The following requirements of 10 CFR Part 61 are not incorporated in this rule:

- (1) 61.1
- (2) 61.2 (definition of "Commission", "Government agency", and "Person")
- (3) 61.3
- (4) 61.4
- (5) 61.5
- (6) 61.6
- (7) 61.7
- (8) 61.8
- (9) 61.9
- (10) 61.9a
- (11) 61.9b
- (12) 61.10
- (13) 61.11
- (14) 61.12
- (15) 61.13
- (16) 61.14
- (17) 61.15
- (18) 61.16
- (19) 61.20
- (20) 61.21
- (21) 61.22
- (22) 61.23(a) through (l)
- (23) 61.24
- (24) 61.25
- (25) 61.26

(26) 61.27
(27) 61.28
(28) 61.29
(29) 61.30
(30) 61.31
(31) 61.32
(32) 61.40
(33) 61.41
(34) 61.42
(35) 61.43
(36) 61.44
(37) 61.50
(38) 61.51
(39) 61.52
(40) 61.53
(41) 61.54
(42) 61.58
(43) 61.59
(44) 61.61
(45) 61.62
(46) 61.63
(47) 61.70
(48) 61.71
(49) 61.72
(50) 61.73
(51) 61.80
(52) 61.81
(53) 61.82
(54) 61.83
(55) 61.84

(Department of Homeland Security; 290 IAC 3-14-2)

Rule 15. Specific Domestic Licenses of Special Nuclear Material

290 IAC 3-15-1 Applicability

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 1. (a) This article, except as otherwise specifically provided, applies to all persons that use, store, produce, transport, possess, or dispose of radioactive materials within the state of Indiana.

(b) This article does not apply to any person to the extent a person is subject to regulation by the NRC.

(c) The requirements of this rule are in addition to, and not in substitution for, other requirements of this article. The provisions of 290 IAC 3-2 through 290 IAC 3-14 and 290 IAC 3-16 through 290 IAC 3-18 also apply. *(Department of Homeland Security; 290 IAC 3-15-1)*

290 IAC 3-15-2 Incorporated material

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 2. (a) Except as provided in this rule, and to the extent that the provisions are not inconsistent with this article, 10 CFR Part 70 is incorporated by reference.

(b) The following requirements of 10 CFR Part 70 are not incorporated in this rule:

(1) 70.1

(2) 70.2

(3) 70.4 (paragraph (2) in the definition of "Commencement of Construction", "Commission", paragraph (9)(ii) in the definition of "Construction", "Decommission", "Government agency", "Person", "Source material", and "Special nuclear material")

(4) 70.5

- (5) 70.7
- (6) 70.8
- (7) 70.13
- (8) 70.14
- (9) 70.20a
- (10) 70.20b
- (11) 70.21(a)(1), (c), (f), (g), and (h)
- (12) 70.22 (b), (c), and (f) through (n)
- (13) 70.23(a)(1), (a)(6) through (a)(12), and (b)
- (14) 70.23a
- (15) 70.24
- (16) 70.25(a)(1), (c), (d), and (f)
- (17) 70.31(c), (d), and (e)
- (18) 70.32(a)(1), (4), (5), (6), and (7); (b)(1), (3), and (4); and (c) through (k)
- (19) 70.37
- (20) 70.40
- (21) 70.42(b)(6)
- (22) 70.44
- (23) 70.51(c)
- (24) 70.52
- (25) 70.55(c)
- (26) 70.59
- (27) 70.60
- (28) 70.61
- (29) 70.62
- (30) 70.64
- (31) 70.65
- (32) 70.66
- (33) 70.72
- (34) 70.73

(35) 70.74

(36) 70.76

(37) 70.82

(38) 70.91

(39) 70.92

(40) Appendix A to Part 70

(Department of Homeland Security; 290 IAC 3-15-2)

Rule 16. Packaging and Transportation of Radioactive Material

290 IAC 3-16-1 Applicability

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 1. (a) This rule establishes requirements for packaging, preparation for shipment, and transportation of licensed material.

(b) The packaging and transportation of licensed material are also subject to the requirements of other agencies (e.g., the U.S. Department of Transportation, U.S. Nuclear Regulatory Commission, and U.S. Postal Service) having jurisdiction over means of transport.

(c) The requirements of this rule are in addition to, and not in substitution for, other requirements of this article. The provisions of 290 IAC 3-2 through 290 IAC 3-15, 290 IAC 3-17, and 290 IAC 3-18 also apply.

(d) This rule applies to any licensee authorized by specific or general license issued by the department to receive, possess, use, or transfer licensed material, if the licensee delivers that material to a carrier for transport, transports the material outside the site of usage as specified in the department license, or transports that material on public highways. No provision of this rule authorizes the possession of licensed material. *(Department of Homeland Security; 290 IAC 3-16-1)*

290 IAC 3-16-2 Incorporated material

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 2. (a) Except as provided in this rule, and to the extent that the provisions are not inconsistent with this article, 10 CFR Part 71 is incorporated by reference.

(b) The following provisions of 10 CFR Part 71 are not incorporated in this rule:

(1) 71.0(a), (b), (d), (e), (f), and (g)

(2) 71.1

(3) 71.6

(4) 71.9

(5) 71.10

(6) 71.11

(7) 71.14(b)

(8) 71.16

(9) 71.18

(10) 71.19

(11) 71.24

(12) 71.25

(13) 71.31

(14) 71.33

(15) 71.35

(16) 71.37

(17) 71.38

(18) 71.39

(19) 71.41

(20) 71.43

(21) 71.45

(22) 71.51

(23) 71.53

(24) 71.55

(25) 71.57

- (26) 71.59
- (27) 71.61
- (28) 71.63
- (29) 71.64
- (30) 71.65
- (31) 71.70
- (32) 71.71
- (33) 71.73
- (34) 71.74
- (35) 71.75
- (36) 71.77
- (37) 71.85(a), (b), and (c)
- (38) 71.91(b)
- (39) 71.99
- (40) 71.100
- (41) 71.101 (c)(2), (d), and (e)
- (42) 71.107
- (43) 71.109
- (44) 71.111
- (45) 71.113
- (46) 71.115
- (47) 71.117
- (48) 71.119
- (49) 71.121
- (50) 71.123
- (51) 71.125

(Department of Homeland Security; 290 IAC 3-16-2)

Rule 17. Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274

290 IAC 3-17-1 Applicability

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 1. (a) This article, except as otherwise specifically provided, applies to all persons that use, store, produce, transport, possess, or dispose of radioactive materials within the state of Indiana.

(b) This article does not apply to any person to the extent a person is subject to regulation by the NRC.

(c) The requirements of this rule are in addition to, and not in substitution for, other requirements of this article. The provisions of 290 IAC 3-2 through 290 IAC 3-16, 290 IAC 3-17, and 290 IAC 3-18 also apply. (*Department of Homeland Security; 290 IAC 3-17-1*)

290 IAC 3-17-2 Incorporated material

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 2. (a) Except as provided in this rule, and to the extent that the provisions are not inconsistent with this article, 10 CFR Part 150 is incorporated by reference.

(b) The following requirements of 10 CFR Part 150 are not incorporated in this rule:

(1) 150.1

(2) 150.2

(3) 150.3 (definitions of "Byproduct material", "Commission", "Foreign obligations", "Government Agency", "Person", "Production Facility", "Reconciliation", "Source material", "Special Nuclear Material", and "Utilization facility")

(4) 150.4

(5) 150.7

(6) 150.8

(7) 150.10

- (8) 150.14
- (9) 150.15
- (10) 150.15a
- (11) 150.16
- (12) 150.17
- (13) 150.17a
- (14) 150.19
- (15) 150.21
- (16) 150.30
- (17) 150.31
- (18) 150.32
- (19) 150.33

(Department of Homeland Security; 290 IAC 3-17-2)

290 IAC 3-17-3 Medical use limitation

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 3. The department will not accept any applications for reciprocity under this rule for activities authorized by regulations equivalent to 290 IAC 3-13 entitled "Medical Use of Radioactive Material". These activities will only be authorized under a specific license issued by the department.
(Department of Homeland Security; 290 IAC 3-17-3)

Rule 18. Fees

290 IAC 3-18-1 Applicability

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 1. This section applies to any person that is an applicant for, or holder of, a radioactive materials license issued under this article, "Standards for Protection Against Radiation".
(Department of Homeland Security; 290 IAC 3-18-1)

290 IAC 3-18-2 Incorporated material

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 2. (a) Except as provided in this rule, and to the extent that the provisions are not inconsistent with this article, 10 CFR Parts 170 and 171 are incorporated by reference.

(b) The following provisions of 10 CFR Parts 170 and 171 are not incorporated in this rule:

- (1) 170.1
- (2) 170.2
- (3) 170.3
- (4) 170.4
- (5) 170.5
- (6) 170.8
- (7) 170.11(a)
- (8) 170.12(c)(1), (c)(3), and (d) through (f)
- (9) 170.21
- (10) 170.51
- (11) 171.1
- (12) 171.3
- (13) 171.5
- (14) 171.7
- (15) 171.8
- (16) 171.9
- (17) 171.11(b) and (d)
- (18) 171.13
- (19) 171.15
- (20) 171.16(a)(1)(v) and (a)(2)
- (21) 171.17(a)

(22) 171.19

(23) 171.23

(24) 171.25

(25) 171.26

(26) In 10 CFR 170.31 and 171.16, the following categories of materials licenses and types of fees are also not incorporated:

(A) 1.A.

(B) 1.B.

(C) 1.E.

(D) 1.F.

(E) 2.A.(1) and (2).

(F) 2.A.(4).

(G) 2.C.

(H) 3.D.

(I) 3.H.

(J) 4.A.

(K) 8.

(L) 9.

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(S) 18.

(Department of Homeland Security; 290 IAC 3-18-2)

290 IAC 3-18-3 Radioactive materials fees

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 3. (a) Annual license fees for radioactive materials are those set forth in 10 CFR 170, and other radioactive materials fees as described in 10 CFR 171:

(1) No refund shall be made if a license is terminated or suspended.

(2) If, by amendment or otherwise, a license changes to another fee category, the fee for the new category will take effect on the anniversary date of the license.

(b) Fees shall be paid using a method approved by the department.

(c) An initial application for a license must be accompanied by the appropriate fees set forth in 10 CFR 170. Thereafter, if the department approves the license application, the department shall issue an annual fee invoice in accordance with the appropriate fee schedule in 10 CFR Part 171 on a quarterly basis. The invoice quarter will be based on the month of license issuance. Invoices will be issued during the quarter prior. Fees shall be paid by the last day of the quarter as shown on the license fee invoice. This subsection does not apply to full cost recovery licenses.

(d) An application for reciprocal recognition of a license must be accompanied by the fees set forth in 10 CFR 170 and 10 CFR 171.

(e) The department shall not accept an initial application for a license or reciprocal recognition of a license before payment of the fees required by subsections (c) and (d).

(f) If a single license authorizes more than one (1) activity (e.g., human use and irradiator activities), annual fees will be assessed for each fee category applicable to the license. If a person holds more than one (1) license, the total annual fee assessed will be the cumulative total of the annual fees applicable to each license held.

(g) Special provisions for calculating annual fees during the agreement state transition period:

(1) The annual fees for the NRC licenses that are transferred to the state of Indiana on the date the state of Indiana becomes an agreement state shall be invoiced during the next invoice quarter based on the month of license issuance.

(2) During the first year after the date the department attains agreement state status, the annual fee for each NRC license transferred to the state of Indiana shall be prorated, based on the schedule of fees in 10 CFR 171, for the period from the date agreement state status is attained until the license's next invoice quarter.

(Department of Homeland Security; 290 IAC 3-18-3)

290 IAC 3-18-4 Eligibility for waiver of annual fee

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 4. (a) A broad-scope (academic or medical) licensee that provides in-kind services to the department or performs services under an accepted written agreement with the department, or both, which are valued at an equal or greater amount than their annual license fee, shall submit a written request for a waiver from payment of the annual license fee. Upon approval by the department, this waiver only remains in effect for the annual licensing period. A new waiver must be submitted for each subsequent annual licensing period.

(b) A licensee that is a governmental agency of the state of Indiana shall submit a written request for a waiver from payment of the annual license fee. Upon approval by the department, this waiver remains in effect until the expiration of the license. A new waiver request must be submitted with each subsequent license renewal.

(c) Revocation of the annual fee waiver:

(1) Upon written notice of noncompliance to the licensee, the department may revoke any waiver, approved under subsection (a) or (b), for failure to provide or perform the services under the accepted written agreement.

(2) The department may also invoice the licensee for any difference between the originally waived annual fee and the value of services already performed during that annual licensing period.

(Department of Homeland Security; 290 IAC 3-18-4)

290 IAC 3-18-5 Reciprocity fees

Authority: IC 10-19-12-6; IC 10-19-12-14

Affected: IC 10-19-12

Sec. 5. (a) An annual application to operate in Indiana under reciprocity must be accompanied by the applicable fee listed in 10 CFR 170.31, Table 1. Reciprocity fees are nonrefundable. There will be no prorating of reciprocity fees.

(b) A reciprocity application shall not be considered before payment of the full amount specified. Reciprocity applications for which no remittance is received shall be returned to the applicant.

(c) No additional reciprocity fees are required for the same category of activity during the remainder of that calendar year. All reciprocity authorizations expire December 31 of the year in which the application was submitted. Any additional reciprocity activity beyond December 31 of that year requires a new reciprocity application.

(d) A person holding a specific license issued by the NRC or any agreement state and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity, and where radiation safety records are normally maintained and is applying for reciprocity for the sole purpose of providing federally sponsored radiation training, the licensee may request in writing that the required reciprocity fee be waived. (*Department of Homeland Security; 290 IAC 3-18-5*)

**Indiana Department of Homeland Security
Radioactive Materials Control Program**



**Appendix #4.1-3
Title 4, Article 22, Chapter 2
Adoption of Administrative Rules**

IC 4-22-2Chapter 2. Adoption of Administrative Rules

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- [4-22-2-0.3](#) Legalization of certain rules adopted without approval of fire prevention and building safety commission
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[4-22-2-46](#) Repealed

IC 4-22-2-0.1 Application of certain amendments to chapter

Sec. 0.1. (a) The amendments made to this chapter by P.L.44-1995 apply as follows:

- (1) The amendments made to sections 13, 19, 23, 25, and 28 of this chapter apply to a rulemaking action that commences after June 30, 1995.
- (2) The addition of sections 23.1 and 46 (repealed) of this chapter applies to a rulemaking action that commences after June 30, 1995.

(b) This chapter (as effective January 1, 2023) continues to apply after June 30, 2023, to a rulemaking action that is commenced under this chapter before July 1, 2023, and is pending on July 1, 2023.

As added by P.L.220-2011, SEC.44. Amended by P.L.53-2014, SEC.54; P.L.249-2023, SEC.7.

IC 4-22-2-0.3 Legalization of certain rules adopted without approval of fire prevention and building safety commission

Sec. 0.3. The adoption of any rule by a state agency without the approval of the fire prevention and building safety commission before July 1, 1987, is legalized and validated.

As added by P.L.220-2011, SEC.45.

IC 4-22-2-0.5 Effect to be given to provisions of P.L.229-2011; publication

Sec. 0.5. The general assembly recognizes that the general assembly has enacted more than one (1) act in the 2011 legislative session amending [IC 4-22-2-37.1](#), including P.L.11-2011, P.L.42-2011, P.L.119-2011, and P.L.175-2011. The general assembly has incorporated the changes made in those acts into the version of [IC 4-22-2-37.1](#) amended by P.L.229-2011. It is the intent of the general assembly that to the extent there is a conflict between the version of [IC 4-22-2-37.1](#) enacted in P.L.229-2011 and an amendment made to [IC 4-22-2-37.1](#) by any other act, the version of [IC 4-22-2-37.1](#) amended by P.L.229-2011 be given effect. The publisher is directed to publish only the version of [IC 4-22-2-37.1](#) enacted in P.L.229-2011 in the Indiana Code.

As added by P.L.63-2012, SEC.4.

IC 4-22-2-1 Repealed

Formerly: Acts 1945, c. 120, s.1. As amended by P.L.5-1984, SEC.173. Repealed by P.L.31-1985, SEC.50.

IC 4-22-2-2 Repealed

Formerly: Acts 1945, c. 120, s.2. As amended by Acts 1977, P.L.38, SEC.1; Acts 1978, P.L.16, SEC.1; Acts 1979, P.L.24, SEC.1. Repealed by P.L.31-1985, SEC.50.

IC 4-22-2-3 Definitions

Sec. 3. (a) "Agency" means any officer, board, commission, department, division, bureau, committee, or other governmental entity exercising any of the executive (including the administrative) powers of state government. The term does not include the judicial or legislative departments of state government or a political subdivision as defined in [IC 36-1-2-13](#).

(b) "Rule" means the whole or any part of an agency statement of general applicability that:

(1) has or is designed to have the effect of law; and

(2) implements, interprets, or prescribes:

(A) law or policy; or

(B) the organization, procedure, or practice requirements of an agency.

The term includes a fee, a fine, a civil penalty, a financial benefit limitation, or another payment amount set by an agency that otherwise qualifies as a rule.

(c) "Rulemaking action" means the process of formulating or adopting a rule. The term does not include an agency action.

(d) "Agency action" has the meaning set forth in [IC 4-21.5-1-4](#).

(e) "Person" means an individual, corporation, limited liability company, partnership, unincorporated association, or governmental entity.

(f) "Publisher" refers to the publisher of the Indiana Register and Indiana Administrative Code, which is the legislative council, or the legislative services agency operating under the direction of the council.

(g) "Unit" means a county, city, town, township, local health department, or school corporation.

(h) The definitions in this section apply throughout this article.

Formerly: Acts 1945, c. 120, s.3; Acts 1967, c.183, s.1. As amended by Acts 1977, P.L.38, SEC.2; Acts 1978, P.L.17, SEC.1; Acts 1979, P.L.25, SEC.1; Acts 1980, P.L.74, SEC.6; Acts 1982, P.L.27, SEC.1; P.L.31-1985, SEC.1; P.L.7-1987, SEC.5; P.L.8-1993, SEC.28; P.L.249-2023, SEC.8; P.L.93-2024, SEC.8.

IC 4-22-2-3.2 Repealed

As added by P.L.291-2013, SEC.4. Repealed by P.L.53-2014, SEC.55.

IC 4-22-2-4 Repealed

Formerly: Acts 1945, c. 120, s.4. As amended by Acts 1977, P.L.38, SEC.3. Repealed by P.L.31-1985, SEC.50.

IC 4-22-2-4.5 Repealed

As added by P.L.6-1984, SEC.2. Repealed by P.L.31-1985, SEC.50.

IC 4-22-2-5 Repealed

Formerly: Acts 1945, c. 120, s.5. As amended by Acts 1977, P.L.38, SEC.4; Acts 1979, P.L.24, SEC.2; Acts 1981, P.L.37, SEC.1. Repealed by P.L.31-1985, SEC.50.

IC 4-22-2-5.3 Repealed

As added by Acts 1981, P.L.37, SEC.2. Repealed by P.L.31-1985, SEC.50.

IC 4-22-2-5.5 Repealed

As added by Acts 1979, P.L.24, SEC.3. Repealed by P.L.31-1985, SEC.50.

IC 4-22-2-6 Repealed

Formerly: Acts 1945, c. 120, s.6. As amended by P.L.5-1984, SEC.174. Repealed by P.L.31-1985, SEC.50.

IC 4-22-2-7 Repealed

Formerly: Acts 1945, c. 120, s.7. Repealed by Acts 1977, P.L.38, SEC.8.

IC 4-22-2-7.1 Repealed

As added by Acts 1977, P.L.38, SEC.5. Amended by Acts 1978, P.L.16, SEC.2; Acts 1981, P.L.37, SEC.3; Acts 1982, P.L.27, SEC.2. Repealed by P.L.31-1985, SEC.50.

IC 4-22-2-8 Repealed

Formerly: Acts 1945, c. 120, s.8. Repealed by P.L.31-1985, SEC.50.

IC 4-22-2-9 Repealed

Formerly: Acts 1945, c. 120, s.9. Repealed by Acts 1977, P.L.38, SEC.8.

IC 4-22-2-10 Repealed

Formerly: Acts 1945, c. 120, s.10. Repealed by Acts 1977, P.L.38, SEC.8.

IC 4-22-2-11 Repealed

Formerly: Acts 1945, c. 120, s.11. As amended by Acts 1977, P.L.38, SEC.7; Acts 1978, P.L.16, SEC.3; Acts 1981, P.L.37, SEC.4; Acts 1982, P.L.27, SEC.3. Repealed by P.L.31-1985, SEC.50.

IC 4-22-2-12 Repealed

As added by Acts 1977, P.L.38, SEC.6. Amended by Acts 1978, P.L.16, SEC.4; Acts 1981, P.L.37, SEC.5. Repealed by P.L.31-1985, SEC.50.

IC 4-22-2-13 Application of chapter

Sec. 13. (a) Subject to subsections (b), (c), and (d), this chapter applies to the addition, amendment, or repeal of a rule in every rulemaking action.

(b) This chapter does not apply to the following agencies:

- (1) Any military officer or board.
- (2) Any state educational institution.

(c) This chapter does not apply to a rulemaking action that results in any of the following rules:

- (1) A resolution or directive of any agency that relates solely to internal policy, internal agency organization, or internal procedure and does not have the effect of law.
- (2) A restriction or traffic control determination of a purely local nature that:
 - (A) is ordered by the commissioner of the Indiana department of transportation;
 - (B) is adopted under [IC 9-20-1-3\(d\)](#), [IC 9-21-4-7](#), or [IC 9-20-7](#); and
 - (C) applies only to one (1) or more particularly described intersections, highway portions, bridge causeways, or viaduct areas.
- (3) A rule adopted by the secretary of state under [IC 26-1-9.1-526](#).
- (4) An executive order or proclamation issued by the governor.
- (5) A rule adopted by the board of trustees of the Indiana public retirement system, as provided in [IC 5-10.5-4-2](#). However, the board shall submit rules adopted by the board to the publisher for publication in the Indiana Register.

(d) Except as specifically set forth in [IC 13-14-9](#):

- (1) [IC 13-14-9](#) provides supplemental procedures for notice and public comment concerning proposed rules for the boards listed in [IC 13-14-9-1](#); and
- (2) the department of environmental management and the boards listed in [IC 13-14-9-1](#) shall comply with the procedures in [IC 13-14-9](#) in lieu of complying with sections 26, 27, and 29 (except section 29(c)) of this chapter.

In adopting rules, all other provisions of [IC 4-22-2](#) apply to these agencies.

As added by P.L.31-1985, SEC.2. Amended by P.L.18-1990, SEC.8; P.L.2-1991, SEC.21; P.L.34-1993, SEC.1; P.L.44-1995, SEC.1; P.L.1-1996, SEC.28; P.L.57-2000, SEC.1; P.L.2-2007, SEC.52; P.L.249-2023, SEC.9.

IC 4-22-2-14 Procedural rights and duties

Sec. 14. This chapter creates only procedural rights and imposes only procedural duties. These procedural rights and duties are in addition to those created and imposed by other law.

As added by P.L.31-1985, SEC.3.

IC 4-22-2-15 Delegation of rulemaking actions

Sec. 15. Any rulemaking action that this chapter allows or requires an agency to perform, other than final adoption of a rule under section 29, 37.1, or 37.2 of this chapter or [IC 13-14-9](#), may be performed by the individual or group of individuals with the statutory authority to adopt rules for the agency, a member of the agency's staff, or another agent of the agency. Final adoption of a rule under section 29, 37.1, or 37.2 of this chapter or [IC 13-14-9](#), including readoption of a rule that is subject to sections 23 through 36 or to section 37.1 of this chapter and recalled for

further consideration under section 40 of this chapter, may be performed only by the individual or group of individuals with the statutory authority to adopt rules for the agency.

As added by P.L.31-1985, SEC.4. Amended by P.L.1-1991, SEC.15; P.L.249-2023, SEC.10; P.L.93-2024, SEC.9.

IC 4-22-2-16 "Governing body", "public agency", and "official action" defined

Sec. 16. For the purposes of this section, "governing body", "public agency", and "official action" have the meanings set forth in [IC 5-14-1.5](#). When a governing body of a public agency performs an official action under this chapter, the agency shall comply with [IC 5-14-1.5](#) (the Open Door Law).

As added by P.L.31-1985, SEC.5.

IC 4-22-2-17 Public access to rules and proposed rules; remote webcast hearings

Sec. 17. (a) [IC 5-14-3](#) applies to the text of a rule that an agency intends to adopt from the earlier of the date that the agency takes any action under section 23 of this chapter, otherwise notifies the public of its intent to adopt a rule under any statute, or adopts the rule.

(b) [IC 5-14-3](#) applies both to a rule and to the full text of a matter directly or indirectly incorporated by reference into the rule.

(c) Subject to subsection (e), after June 30, 2023, a public hearing or other public meeting in which an agency receives comments concerning a rulemaking action from the general public must be webcast on the state website during the hearing or meeting for the public to view the proceedings. Webcasts must be archived as public records on the state website.

(d) Subject to subsection (e), after June 30, 2023, an agency that conducts a public hearing or other public meeting at which the agency receives comments concerning a rulemaking action from the general public must provide a method by which members of the public can attend and comment remotely.

(e) The office of management and budget in consultation with the office of technology and the publisher shall establish how and where webcasts will be available, how agencies will provide opportunities for the general public to attend and comment remotely, and where notices of upcoming webcasts will be posted. The governor, by executive order, may delay the implementation of subsection (c) or (d), or both, for one (1) or more agencies if the governor finds that implementation of subsection (c) or (d), or both, is not technically feasible. The governor shall include specific findings concerning the reasons for a delay in the executive order. A delay under this subsection may not extend beyond December 31, 2025.

(f) Inadequacy or insufficiency of webcasting, archive of webcasting, or remote access under this section or a statement in a notice of the availability of webcasting, archive of webcasting, or remote access does not invalidate a rulemaking action.

As added by P.L.31-1985, SEC.6. Amended by P.L.249-2023, SEC.11.

IC 4-22-2-17.5 Distribution of electronic documents submitted to the publisher

Sec. 17.5. (a) The legislative services agency shall provide electronic summaries or electronic copies of documents submitted to the publisher under this article or [IC 13-14-9](#) to legislators and legislative committees in the manner and on the schedule specified by the legislative council or the personnel subcommittee of the legislative council acting for the legislative council.

(b) If requested in the manner specified by the legislative council or the personnel subcommittee of the legislative council acting for the legislative council, an agency shall provide to the legislative services agency any data, studies, or analyses relied on by the agency

to develop a regulatory analysis or a revised regulatory analysis. The agency shall comply with any policies adopted by the legislative council or the personnel subcommittee of the legislative council governing the format, timing, and manner of delivery of the data, studies, or analyses.
As added by P.L.249-2023, SEC.12.

IC 4-22-2-18 Joint rules

Sec. 18. (a) If more than one (1) agency is required by statute to adopt the same rule, the agencies may publish a joint notice of a public hearing and conduct a joint public hearing. However, each agency shall separately draft and adopt a rule that covers the same subject matter.

(b) If an agency is authorized to adopt a rule and one (1) or more agencies are required to approve the rule, only the agency that is authorized to adopt the rule is required to comply with this chapter.

As added by P.L.31-1985, SEC.7.

IC 4-22-2-19 Action preceding effectiveness of authorizing statute

Sec. 19. (a) This section does not apply to the adoption of rules required to receive or maintain:

- (1) delegation;
- (2) primacy; or
- (3) approval;

for state implementation or operation of a program established under federal law.

(b) If an agency will have statutory authority to adopt a rule at the time that the rule becomes effective, the agency may conduct any part of its rulemaking action before the statute authorizing the rule becomes effective. However, an agency shall:

- (1) begin a rulemaking process needed to implement the statutory change not later than sixty (60) days after the effective date of the statute that authorizes the rule; or
- (2) if an agency cannot comply with subdivision (1), provide electronic notice to the publisher stating the reasons for the agency's noncompliance.

(c) For purposes of this section, a rulemaking process is commenced when:

- (1) the agency publishes a proposed rule under section 23 or 37.2 of this chapter; or
- (2) in the case of a change in a statute described in section 38 of this chapter, the agency files with the publisher a rule document under section 38 of this chapter.

Except as otherwise provided in [IC 4-22-2.3](#), if an interim rulemaking procedure is commenced under section 37.2 of this chapter, the agency shall commence a permanent rulemaking process under section 23 of this chapter before the adopted interim rule expires.

As added by P.L.31-1985, SEC.8. Amended by P.L.44-1995, SEC.2; P.L.215-2005, SEC.1; P.L.123-2006, SEC.2; P.L.53-2014, SEC.56; P.L.249-2023, SEC.13.

IC 4-22-2-19.1 Retroactive changes affecting taxpayer liability

Sec. 19.1. A state agency may not retroactively apply a change in the agency's interpretation of a statute, regulation, or one of the agency's information bulletins, if that change increases a taxpayer's liability for a state tax or a property tax.

As added by P.L.17-1996, SEC.1.

IC 4-22-2-19.5 Standards for rules

Sec. 19.5. (a) To the extent possible, a rule adopted under this article or [IC 13-14-9](#) shall comply with the following:

- (1) Minimize the expenses to:

- (A) regulated entities that are required to comply with the rule;
 - (B) persons who pay taxes or pay fees for government services affected by the rule; and
 - (C) consumers of products and services of regulated entities affected by the rule.
- (2) Achieve the regulatory goal in the least restrictive manner.
 - (3) Avoid duplicating standards found in state or federal laws.
 - (4) Be written for ease of comprehension.
 - (5) Have practicable enforcement.

(b) Subsection (a) does not apply to a rule that must be adopted in a certain form to comply with federal law.

As added by P.L. 17-1996, SEC.2. Amended by P.L.249-2023, SEC.14.

IC 4-22-2-19.6 Adoption of a rule that includes a fee, fine, or civil penalty; requirements; effect of nonconformity

Sec. 19.6. (a) A rule adopted under this article or [IC 13-14-9](#) that includes a fee, fine, or civil penalty must comply with this section. Subsections (b), (c), and (d) do not apply to a rule that must be adopted in a certain form to comply with federal law.

(b) For each fee, fine, or civil penalty imposed by an agency that is not set as a specific amount in a state law, a rule must describe the circumstances for which the agency will assess a fee, fine, or civil penalty and set forth the amount of the fee, fine, or civil penalty:

- (1) as a specific dollar amount;
- (2) under a formula by which a specific dollar amount can be reasonably calculated by persons regulated or otherwise affected by the rule; or
- (3) as a range of potential dollar amounts, stating the factors that the agency will utilize to set a specific dollar amount in an individual case with sufficient certainty that a review of an agency action under [IC 4-21.5](#) or comparable process can evaluate whether the amount was reasonable.

A rule concerning fines or civil penalties does not prohibit an agency to enter into a settlement agreement with a person against whom a fine or civil penalty is being assessed to determine the fine or civil penalty to be paid for a violation.

(c) The amount of a fee must be reasonably based on the amount necessary to carry out the purposes for which the fee is imposed.

(d) An agency setting a fine or civil penalty shall consider the following:

- (1) Whether the violation has a major or minor impact on the health, safety, or welfare of a person, the health or safety of animals or natural resources, or other facts set forth in the agency's rule.
- (2) The number of previous violations committed by the offender of laws, rules, or programs administered by the agency.
- (3) The need for deterrence of future violations.
- (4) Whether the conduct, if proved beyond a reasonable doubt, would constitute a criminal offense, and the level of penalty set by law for the criminal offense.

(e) An agency is not liable for a fee, fine, or civil penalty that is not in conformity with this section if:

- (1) the fee, fine, or civil penalty was included in a rule that became effective before January 1, 2023, and that otherwise complies with subsection (b);
- (2) the fee, fine, or civil penalty was:
 - (A) set by an agency before January 1, 2023;
 - (B) reviewed by the budget committee:

(i) in the case of the department of environmental management, the boards listed in [IC 13-14-9-1](#), the natural resources commission, the department of natural resources, the Indiana gaming commission, and the Indiana horse racing commission, before December 31, 2023; and

(ii) in the case of an agency not described in item (i), before July 1, 2024; and

(C) included in a rule that complies with this section and becomes effective before:

(i) in the case of the department of environmental management, the boards listed in [IC 13-14-9-1](#), the natural resources commission, the department of natural resources, the Indiana gaming commission, and the Indiana horse racing commission, December 31, 2024; and

(ii) in the case of an agency not described in item (i), July 1, 2025; or

(3) the agency withdraws or otherwise ceases to enforce or apply the fee, fine, or civil penalty before:

(A) in the case of the department of environmental management, the boards listed in [IC 13-14-9-1](#), the natural resources commission, the department of natural resources, the Indiana gaming commission, and the Indiana horse racing commission, December 31, 2023; and

(B) in the case of an agency not described in clause (A), July 1, 2024.

Readoption without changes under [IC 4-22-2.6](#) of a nonconforming fee, fine, or civil penalty that meets the requirements of subdivision (1) or (2) does not invalidate the nonconforming fee, fine, or civil penalty.

(f) Beginning January 1, 2024, an agency shall post on its website a schedule of fines and civil penalties that apply to violations of laws, rules, and requirements of federal programs administered by the agency.

As added by P.L.249-2023, SEC.15. Amended by P.L.128-2024, SEC.16.

IC 4-22-2-19.7 Agency rules; public comment

Sec. 19.7. An agency, to the extent feasible and permitted by law, shall afford the public a meaningful opportunity to comment on proposed rules through the agency's Internet web site. An agency shall consider providing a comment period that exceeds the minimum required by law.

As added by P.L.152-2012, SEC.5.

IC 4-22-2-20 Submission of rules and other documents; form

Sec. 20. (a) Whenever an agency submits a rule to the publisher, the attorney general, or the governor under this chapter, the agency shall submit the rule in the form of a written document that:

(1) is clear, concise, and easy to interpret and to apply; and

(2) uses the format, numbering system, standards, and techniques established under section 42 of this chapter.

(b) After June 30, 2006, all documents submitted to the publisher under this chapter must be submitted electronically in the format specified by the publisher.

As added by P.L.31-1985, SEC.9. Amended by P.L.215-2005, SEC.2; P.L.123-2006, SEC.3; P.L.291-2013, SEC.5; P.L.53-2014, SEC.57.

IC 4-22-2-21 Incorporation by reference

Sec. 21. (a) If incorporation of the text in full would be cumbersome, expensive, or otherwise inexpedient, an agency may incorporate by reference into a rule part or all of any of the following matters:

(1) A federal or state statute, rule, or regulation.

(2) A code, manual, or other standard adopted by an agent of the United States, a state, or a nationally recognized organization or association.

(3) A manual of the department of local government finance adopted in a rule described in [IC 6-1.1-31-9](#).

(4) The following requirements:

(A) The schedule, electronic formatting, and standard data, field, and record coding requirements for:

(i) the electronic data file under [IC 6-1.1-4-25](#) concerning the parcel characteristics and parcel assessments of all parcels and personal property return characteristics and assessments; and

(ii) the electronic data file under [IC 36-2-9-20](#) concerning the tax duplicate.

(B) The schedule, electronic formatting, and standard data, field, and record coding requirements for data required to be submitted under [IC 6-1.1-5.5-3](#) or [IC 6-1.1-11-8](#).

(C) Data export and transmission format requirements for information described in clauses (A) and (B).

(b) Each matter incorporated by reference under subsection (a) must be fully and exactly described.

(c) An agency may refer to a matter that is directly or indirectly referred to in a primary matter by fully and exactly describing the primary matter.

(d) Except as otherwise provided in this article, whenever an agency submits a rule to the attorney general, the governor, or the publisher under this chapter, the agency shall also submit a copy of the full text of each matter incorporated by reference under subsection (a) into the rule, other than the following:

(1) An Indiana statute or rule.

(2) A form or instructions for a form numbered by the Indiana archives and record administration under [IC 5-15-5.1-6](#).

(3) The source of a statement that is quoted or paraphrased in full in the rule.

(4) Any matter that has been previously filed with the:

(A) secretary of state before July 1, 2006; or

(B) publisher after June 30, 2006.

(5) Any matter referred to in subsection (c) as a matter that is directly or indirectly referred to in a primary matter.

(e) An agency may comply with subsection (d) by submitting a paper or an electronic copy of the full text of the matter incorporated by reference.

As added by P.L.31-1985, SEC.10. Amended by P.L.34-1993, SEC.2; P.L.6-1997, SEC.4; P.L.90-2002, SEC.9; P.L.28-2004, SEC.43; P.L.123-2006, SEC.4; P.L.149-2016, SEC.10; P.L.204-2016, SEC.7; P.L.249-2023, SEC.16.

IC 4-22-2-22 Attorney general as legal advisor

Sec. 22. The attorney general is the legal advisor to all agencies in the drafting and preparation of rules.

As added by P.L.31-1985, SEC.11.

IC 4-22-2-22.5 Agency rulemaking docket

Sec. 22.5. (a) This section applies to a rule that an agency intends to:

(1) adopt under sections 23 through 36 of this chapter or section 37.2 of this chapter;

(2) adopt under [IC 13-14-9](#); or

(3) readopt under [IC 4-22-2.6](#).

(b) As used in this section, "pending rulemaking action" means any rulemaking action in which:

(1) either:

(A) a notice of a public comment period has been published under section 23 or 37.2 of this chapter;

(B) a rulemaking action has been commenced under [IC 13-14-9](#); or

(C) a rulemaking action has been commenced under [IC 4-22-2.6](#); and

(2) the rule has not become effective under section 36 of this chapter.

(c) Each agency shall maintain a current rulemaking docket that is indexed.

(d) A current rulemaking docket must list each pending rulemaking action. The docket must state or contain:

(1) the subject matter of the proposed rule;

(2) notices related to the proposed rule, or links to the Indiana Register where these notices may be viewed;

(3) how comments may be made;

(4) the time within which comments may be made;

(5) where comments and the agency's written response to those comments may be inspected;

(6) the date, time, and place where a public hearing required under:

(A) section 26 of this chapter; or

(B) [IC 13-14-9](#);

will be held;

(7) a description of relevant scientific and technical findings related to the proposed rule, if applicable; and

(8) a reasonable estimate of the timetable for action, updated periodically as circumstances change, if necessary.

(e) The agency shall maintain the rulemaking docket on the agency's website. The information must be in an open format that can be easily searched and downloaded. Access to the docket shall, to the extent feasible and permitted by law, provide an opportunity for public comment on the pertinent parts of the rulemaking docket, including relevant scientific and technical findings. Upon request, the agency shall provide a written rulemaking docket.

As added by P.L. 152-2012, SEC.6. Amended by P.L. 72-2014, SEC.7; P.L. 249-2023, SEC. 17.

IC 4-22-2-22.7 Regulatory analysis for proposed rules

Sec. 22.7. (a) Before complying with section 22.8, 37.1, or 37.2 of this chapter, an agency shall conduct a regulatory analysis for the proposed rule that complies with the requirements of this section.

(b) The office of management and budget shall set standards for the criteria, analytical method, treatment technology, economic, fiscal, and other background data to be used by an agency in the regulatory analysis. The regulatory analysis must be submitted in a form that can be easily loaded into commonly used business analysis software and published in the Indiana Register using the format jointly developed by the publisher, the office of management and budget, and the budget agency. The office of management and budget may provide more stringent requirements for rules with fiscal impacts and costs above a threshold amount determined by the office of management and budget.

(c) At a minimum, the regulatory analysis must include findings and any supporting data, studies, or analyses prepared for a rule that demonstrate compliance with the following:

(1) The cost benefit requirements in [IC 4-3-22-13](#).

(2) Each of the standards in section 19.5 of this chapter.

(3) If applicable, the requirements for fees, fines, and civil penalties in section 19.6 of this chapter.

(4) The annual economic impact on small businesses statement required under [IC 4-22-2.1-5](#).

(5) If applicable, the information required under [IC 13-14-9-4](#).

(6) A determination whether the combined implementation and compliance costs of a proposed rule are at least one million dollars (\$1,000,000) for businesses, units, and individuals over any two (2) year period.

(7) Any requirement under any other law to conduct an analysis of the cost, benefits, economic impact, or fiscal impact of a rule, if applicable.

(d) The regulatory analysis must include a statement justifying any requirement or cost that is:

(1) imposed on a regulated entity under the rule; and

(2) not expressly required by:

(A) the statute authorizing the agency to adopt the rule; or

(B) any other state or federal law.

The statement required under this subsection must include a reference to any data, studies, or analyses relied upon by the agency in determining that the imposition of the requirement or cost is necessary.

(e) Except as provided in subsection (f), if the implementation and compliance costs of a proposed rule are expected to exceed the threshold set forth in subsection (c)(6), the publisher may not publish the proposed rule until the budget committee has reviewed the rule.

(f) Subsection (e) does not apply to a proposed rule if the proposed rule is:

(1) a provisional rule that was issued as the result of the governor declaring an emergency under [IC 10-14-3](#) and is only valid during the emergency;

(2) a provisional or interim rule that complies only with the requirements of a:

(A) federal law;

(B) federal regulation; or

(C) federal grant or loan program; or

(3) an interim rule that incorporates a new or updated:

(A) building;

(B) equipment;

(C) firefighting;

(D) safety; or

(E) professional;

code.

(g) If an agency has made a good faith effort to comply with this section, a rule is not invalid solely because the regulatory analysis for the proposed rule is insufficient or inaccurate.

As added by P.L.249-2023, SEC. 18. Amended by P.L.93-2024, SEC. 10.

IC 4-22-2-22.8 Submission or regulatory analysis for proposed rule; requirements; review process; implementation and compliance costs exceeding threshold; revised regulatory analysis

Sec. 22.8. (a) After conducting a regulatory analysis under section 22.7 of this chapter, if an agency elects to adopt a rule subject to section 23 of this chapter or [IC 13-14-9](#), the agency shall submit a request to the budget agency and the office of management and budget to authorize commencement of the public comment periods under this chapter or [IC 13-14-9](#) (as applicable). The request must include the following:

(1) A general description of the subject matter of the proposed rule.

(2) The full text of the proposed rule (including a copy of any matter incorporated by reference under section 21 of this chapter) in the form required by the publisher, including citations to any related authorizing and affected Indiana statutes.

(3) The regulatory analysis, including supporting data, prepared under section 22.7 of this chapter.

(4) Any other information required by the office of management and budget.

(b) The budget agency and the office of management and budget shall expedite the review of the request to adopt a rule. The budget agency and the office of management and budget may do the following:

(1) Return the request to the agency with a statement describing any additional information needed to authorize or disapprove further rulemaking actions on one (1) or more of the rules in the request.

(2) Authorize the commencement of the public comment periods on one (1) or more of the rules in the request with or without changes.

(3) Disapprove commencement of the public comment periods on one (1) or more of the rules with a statement of reasons for the disapproval.

(c) If an agency has requested authorization for more than one (1) rule in the same request, the budget agency and the office of management and budget may make separate determinations with respect to some or all of the rules in the request. Approval of a request shall be treated as a determination that the review conducted and findings made by the agency comply with the requirements of section 22.7 of this chapter and this section. The budget agency and the office of management and budget may not approve any part of a proposed rule that adds or amends language to increase or expand application of a fee, fine, or civil penalty or a schedule of fees, fines, or civil penalties before submitting the proposed rule to the budget committee for review.

(d) If the implementation and compliance costs of a proposed rule are expected to exceed the threshold set forth in section 22.7(c)(6) of this chapter, the office of management and budget shall submit the rule to the legislative council, in an electronic format under [IC 5-14-6](#), within thirty (30) days of completing the review of the regulatory analysis. The chairperson of legislative council shall inform members of the budget committee of a rule submitted under this subsection. The budget agency and the office of management and budget may not approve any part of a proposed rule covered by this subsection prior to review of the proposed rule by the budget committee.

(e) Notice of the determination shall be provided to the agency in an electronic format required by the publisher. The budget agency and the office of management and budget may return to the agency any copy of a matter incorporated by reference under section 21 of this chapter that was submitted with the request.

(f) If an agency revises a proposed rule after the budget agency and the office of management and budget authorize commencement of the public comment periods, the agency must obtain a new notice of determination under subsection (e). The agency shall resubmit to the budget agency and the office of management and budget the revised proposed rule and a revised regulatory analysis with sufficient information for the budget agency and the office of management and budget to determine the impact the revisions have on the regulatory analysis previously reviewed by the budget agency and the office of management and budget. After obtaining a new notice of determination, the agency shall submit to the publisher the new notice of determination, the revised proposed rule, and the revised regulatory analysis.

As added by P.L.249-2023, SEC. 19. Amended by P.L.93-2024, SEC. 11.

IC 4-22-2-23 Notice of first public comment period; solicitation of comments; publication

Sec. 23. (a) An agency shall provide notice in the Indiana Register of the first public comment period required by this section. To publish notice of the first public comment period in the Indiana Register, the agency must submit the following to the publisher:

- (1) A statement of the date, time, and place at which the hearing required by section 26 of this chapter will be convened, including information for how to attend the public hearing remotely.
- (2) The full text of the agency's proposed rule in the form required by section 20 of this chapter and the documents required by section 21 of this chapter.
- (3) The latest version of the regulatory analysis submitted to the budget agency and the office of management and budget under section 22.8 of this chapter.
- (4) The determination of the budget agency and the office of management and budget authorizing commencement of the public comment periods.
- (5) If the proposed rule adds or amends language to increase or expand application of a fee, fine, or civil penalty or a schedule of fees, fines, or civil penalties, the agenda of the budget committee meeting at which the rule was scheduled for review.
- (6) If the proposed rule is expected to exceed the threshold set forth in section 22.7(c)(6) of this chapter, the agenda of the budget committee meeting at which the rule was scheduled for review.
- (7) The notice required under subsection (b).

(b) The notice of the first public comment period must include the following:

- (1) A general description of the subject matter of the proposed rule.
- (2) An overview of the intent and scope of the proposed rule and the statutory authority for the rule.
- (3) The latest version of the regulatory analysis submitted to the budget agency and the office of management and budget under section 22.8 of this chapter, excluding any appendices containing any data, studies, or analyses referenced in the regulatory analysis.
- (4) Information concerning where, when, and how a person may submit written comments on the proposed rule, including contact information concerning the small business regulatory coordinator required by section 28.1 of this chapter.
- (5) Information concerning where, when, and how a person may inspect and copy the regulatory analysis, and any data, studies, or analyses referenced under subdivision (3).
- (6) Information concerning where, when, and how a person may inspect any documents incorporated by reference into the proposed rule under section 21 of this chapter.
- (7) An indication that, if the agency does not receive any substantive comments during the public comment period or public hearing, the agency may adopt a rule that is the same as or does not substantially differ from the text of the proposed rule published under this section. Inadequacy or insufficiency of the published description or regulatory analysis in a notice published under this section does not invalidate a rulemaking action.

(c) Although the agency may comply with the publication requirements of this section on different days, the agency must comply with all of the publication requirements of this section at least thirty (30) days before the public hearing required by section 26 of this chapter is convened.

(d) The publisher shall review materials submitted under this section and determine the date that the publisher intends to publish the text of the proposed rule and the notice in the Indiana Register. If the submitted material complies with this section, the publisher shall establish the intended publication date, assign a document control number to the proposed rule, and provide a written or an electronic mail authorization to proceed to the agency. The publisher shall publish the following in the Indiana Register on the intended publication date:

(1) The notice of the first public comment period, including any information required under [IC 13-14-9-4](#) (if applicable).

(2) The full text of the agency's proposed rule (excluding the full text of a matter incorporated by reference under section 21 of this chapter).

As added by P.L.31-1985, SEC. 12. Amended by P.L.44-1995, SEC.3; P.L.1-1996, SEC.29; P.L.215-2005, SEC.3; P.L.152-2012, SEC.7; P.L.249-2023, SEC.20; P.L.93-2024, SEC.12.

IC 4-22-2-23.1 Solicitation of comments

Sec. 23.1. Before or after an agency submits a request to the budget agency and the office of management and budget under section 22.8 of this chapter, the agency may solicit comments from all or any segment of the public on the need for a rule, the drafting of a rule, or any other subject related to a rulemaking action. The procedures that the agency may use include the holding of conferences and the inviting of written suggestions, facts, arguments, or views. An agency's failure to consider comments received under this section does not invalidate a rule subsequently adopted.

As added by P.L.44-1995, SEC.4. Amended by P.L.123-2006, SEC.5; P.L.249-2023, SEC.21.

IC 4-22-2-24 Second public comment period; notice requirements; publication of notice

Sec. 24. (a) If:

(1) an agency receives substantive comments during the first public comment period or the public hearing under section 23 of this chapter; or

(2) the rule establishes a requirement or limitation that is more stringent than an applicable federal requirement or limitation;

the agency must conduct a second public comment period under this section.

(b) To publish a notice of the second public comment period in the Indiana Register, the agency must submit the following to the publisher:

(1) The full text of the agency's proposed rule in the form required by section 20 of this chapter.

The agency also shall submit the documents required by section 21 of this chapter (if the agency has not previously provided the publisher with the documents). The publisher shall determine the number of copies of the rule and other documents to be submitted under this subdivision.

(2) The notice required under subsection (c).

(c) The agency shall include the following in the second public comment period notice published in the Indiana Register:

(1) A statement of the date, time, and place at which the public hearing required by section 26 of this chapter will be convened, including information for how to attend the hearing remotely.

(2) A general description of the subject matter of the proposed rule.

(3) A summary of the written comments received by the agency during the first public comment period and a summary of the response of the agency to written comments submitted under section 23 of this chapter during the first public comment period.

(4) Either a statement indicating that no changes in the regulatory analysis have been made from the version of the regulatory analysis published under section 23 of this chapter or the latest version of the regulatory analysis (excluding any appendices containing any data, studies, or analyses referenced in the regulatory analysis) submitted to the budget agency and the office of management and budget under section 22.8 of this chapter, if any changes have been made in the regulatory analysis after submitting the material to the publisher under section 23 of this chapter.

(5) An explanation of any differences between the text of the proposed rule published for the first public comment period under section 23 of this chapter and the text of the proposed rule published for the second public comment period under this section.

(6) Information concerning where, when, and how a person may submit written comments on the proposed rule, including contact information concerning the small business regulatory coordinator required by section 28.1 of this chapter.

(7) Information concerning where, when, and how a person may inspect and copy the regulatory analysis and any data, studies, or analyses referenced in a regulatory analysis referenced in subdivision (4).

(8) Information concerning where, when, and how a person may inspect any documents incorporated by reference into the proposed rule under section 21 of this chapter.

(9) An indication that the notice is for the second of two (2) thirty (30) day periods in which the public may comment on the proposed rule and that following the second public comment period the agency may adopt a version of the proposed rule that is the same as or does not substantially differ from the text of the proposed rule published under this section.

Inadequacy or insufficiency of the published description or regulatory analysis in a notice published under this section does not invalidate a rulemaking action.

(d) Although the agency may comply with the publication requirements in this section on different days, the agency must comply with all of the publication requirements in this section at least thirty (30) days before the public hearing required by section 26 of this chapter is convened.

(e) The publisher shall review materials submitted under this section and determine the date that the publisher intends to include the material in the Indiana Register. If the submitted material complies with this section, the publisher shall establish the intended publication date, assign a document control number to the proposed rule, and provide a written or an electronic mail authorization to proceed to the agency. The publisher shall publish the following in the Indiana Register on the intended publication date:

(1) The notice of the second public comment period, including any information required under [IC 13-14-9-4](#) (if applicable).

(2) The full text of the agency's proposed rule (excluding the full text of a matter incorporated by reference under section 21 of this chapter).

As added by P.L.31-1985, SEC.13. Amended by P.L.188-2005, SEC.1; P.L.215-2005, SEC.4; P.L.239-2005, SEC.1; P.L.1-2006, SEC.71; P.L.249-2023, SEC.22.

IC 4-22-2-25 Limitation on time in which to adopt rule

Sec. 25. (a) An agency has one (1) year from the date that it publishes a notice in the Indiana Register of the first public comment period under section 23 of this chapter to comply with sections 23 through 33 of this chapter and obtain the approval or deemed approval of the governor. If an agency determines that a rule cannot be adopted within one (1) year after the publication of the notice of the first public comment period under section 23 of this chapter, the agency shall, before the two hundred fiftieth day following the publication of the notice of the first public comment period under section 23 of this chapter, notify the publisher by electronic means:

(1) the reasons why the rule was not adopted and the expected date the rule will be completed; and

(2) the expected date the rule will be approved or deemed approved by the governor or withdrawn under section 41 of this chapter.

(b) If a rule is not approved before the later of:

- (1) one (1) year after the agency publishes notice of the first public comment period under section 23 of this chapter; or
 - (2) the expected date contained in a notice concerning the rule that is provided to the publisher under subsection (a);
- a later approval or deemed approval is ineffective, and the rule may become effective only through another rulemaking action initiated under this chapter.

As added by P.L.31-1985, SEC. 14. Amended by P.L.44-1995, SEC.5; P.L.123-2006, SEC.6; P.L.53-2014, SEC.58; P.L.5-2015, SEC.6; P.L.249-2023, SEC.23.

IC 4-22-2-26 Public hearings

Sec. 26. (a) After the notices and the text of an agency's proposed rule are published under sections 23 and (if applicable) 24 of this chapter, the agency shall conduct a public hearing on the proposed rule.

(b) The agency shall convene the public hearing on the date and at the time and place stated in its notices and include an option for remote attendance.

(c) The agency may conduct the public hearing in any informal manner that allows for an orderly presentation of comments and avoids undue repetition. However, the agency shall afford any person attending the public hearing an adequate opportunity to comment on the agency's proposed rule through the presentation of oral and written facts or argument.

(d) The agency may recess the public hearing and reconvene it on a different date or at a different time or place by:

- (1) announcing the date, time, and place of the reconvened public hearing in the original public hearing before its recess; and
- (2) recording the announcement in the agency's record of the public hearing.

(e) An agency that complies with subsection (d) is not required to give any further notice of a public hearing that is to be reconvened.

As added by P.L.31-1985, SEC. 15. Amended by P.L.249-2023, SEC.24.

IC 4-22-2-27 Consideration of comments received at public hearings

Sec. 27. The individual or group of individuals who will finally adopt the rule under section 29 of this chapter shall fully consider comments received by the agency during each public comment period and comments received at the public hearings required by sections 23, 24, and 26 of this chapter and may consider any other information before adopting the rule. Attendance at the public hearing or review of a written record or summary of the public hearing is sufficient to constitute full consideration.

As added by P.L.31-1985, SEC. 16. Amended by P.L.249-2023, SEC.25.

IC 4-22-2-27.5 Summary of public comments received and the agency's response to the public comments; publication

Sec. 27.5. In addition to the information submitted to the attorney general under section 31 of this chapter, to the governor under section 33 of this chapter, and to the publisher under section 35 of this chapter, an agency shall submit to the attorney general, the governor, and the publisher a summary of the comments received by the agency during each public comment period and public hearing under sections 23, 24, and 26 of this chapter or [IC 13-14-9](#) and a summary of the response of the agency to the comments. The publisher shall publish the summaries with the final adopted and approved rule.

As added by P.L.249-2023, SEC.26.

IC 4-22-2-28 Fiscal impact of rules; review

Sec. 28. (a) As used in this section, "ombudsman" refers to the small business ombudsman designated under [IC 5-28-17-6](#).

(b) The ombudsman:

(1) shall review a proposed rule that imposes requirements or costs on small businesses (as defined in [IC 4-22-2.1-4](#)); and

(2) may review a proposed rule that imposes requirements or costs on businesses other than small businesses (as defined in [IC 4-22-2.1-4](#)).

After conducting a review under subdivision (1) or (2), the ombudsman may suggest alternatives to reduce any regulatory burden that the proposed rule imposes on small businesses or other businesses. The agency that intends to adopt the proposed rule shall respond in writing to the ombudsman concerning the ombudsman's comments or suggested alternatives before adopting the proposed rule under section 29 of this chapter.

As added by P.L.31-1985, SEC.17. Amended by P.L.44-1995, SEC.6; P.L.17-1996, SEC.3; P.L.240-2003, SEC.2; P.L.4-2005, SEC.20; P.L.188-2005, SEC.2; P.L.226-2005, SEC.1; P.L.123-2006, SEC.7; P.L.110-2010, SEC.2; P.L.291-2013, SEC.6; P.L.187-2014, SEC.9; P.L.53-2014, SEC.59; P.L.5-2015, SEC.7; P.L.237-2017, SEC.8; P.L.249-2023, SEC.27; P.L.9-2024, SEC.99; P.L.93-2024, SEC.13.

IC 4-22-2-28.1 Small business regulatory coordinator; contact information; guidance to small businesses; record of comments received; annual report

Sec. 28.1. (a) The following definitions apply throughout this section:

(1) "Coordinator" refers to the small business regulatory coordinator assigned to a rule by an agency under subsection (b).

(2) "Director" refers to the director or other administrative head of an agency.

(3) "Small business" has the meaning set forth in [IC 5-28-2-6](#).

(b) For each rulemaking action and rule finally adopted as a result of a rulemaking action by an agency, the agency shall assign one (1) staff person to serve as the agency's small business regulatory coordinator with respect to the proposed or adopted rule. The agency shall assign a staff person to a rule under this subsection based on the person's knowledge of, or experience with, the subject matter of the rule. A staff person may serve as the coordinator for more than one (1) rule proposed or adopted by the agency if the person is qualified by knowledge or experience with respect to each rule. The first public comment period notice published under section 23 of this chapter must include the name, address, telephone number, and electronic mail address of the small business coordinator for the proposed rule, the name, address, telephone number, and electronic mail address of the small business ombudsman designated under [IC 5-28-17-6](#), and a statement of the resources available to regulated entities through the small business ombudsman designated under [IC 5-28-17-6](#). In the case of a rule finally adopted, the final rule, as published in the Indiana Register, must include the name, address, telephone number, and electronic mail address of the coordinator.

(c) This subsection applies to a rule adopted by the department of environmental management or the board listed in [IC 13-14-9-1](#). In addition to the information required by subsection (b), the department and a board shall include in the notice provided under section 23 of this chapter and in the publication of the final rule in the Indiana Register:

(1) a statement of the resources available to regulated entities through the technical and compliance assistance program established under [IC 13-28-3](#);

(2) the name, address, telephone number, and electronic mail address of the ombudsman designated under [IC 13-28-3-2](#); and

(3) if applicable, a statement of:

(A) the resources available to small businesses through the small business stationary source technical assistance program established under [IC 13-28-5](#); and

(B) the name, address, telephone number, and electronic mail address of the ombudsman for small business designated under [IC 13-28-5-2\(3\)](#).

The coordinator assigned to the rule shall work with the ombudsman described in subdivision (2) and the office of voluntary compliance established by [IC 13-28-1-1](#) to coordinate the provision of services required under subsection (d) and [IC 13-28-3](#). If applicable, the coordinator assigned to the rule shall work with the ombudsman referred to in subdivision (3)(B) to coordinate the provision of services required under this section and [IC 13-28-5](#).

(d) The coordinator assigned to a rule shall serve as a liaison between the agency and any small business subject to regulation under the rule. The coordinator shall provide guidance to small businesses affected by the rule on the following:

(1) Any requirements imposed by the rule, including any reporting, record keeping, or accounting requirements.

(2) How the agency determines or measures compliance with the rule, including any deadlines for action by regulated entities.

(3) Any penalties, sanctions, or fines imposed for noncompliance with the rule.

(4) Any other concerns of small businesses with respect to the rule, including the agency's application or enforcement of the rule in particular situations. However, in the case of a rule adopted by the department of environmental management or a board listed in [IC 13-14-9-1](#), the coordinator assigned to the rule may refer a small business with concerns about the application or enforcement of the rule in a particular situation to the ombudsman designated under [IC 13-28-3-2](#) or, if applicable, under [IC 13-28-5-2\(3\)](#).

(e) The coordinator assigned to a rule shall provide guidance under this section in response to questions and concerns expressed by small businesses affected by the rule. The coordinator may also issue general guidelines or informational pamphlets to assist small businesses in complying with the rule. Any guidelines or informational pamphlets issued under this subsection shall be made available:

(1) for public inspection and copying at the offices of the agency under [IC 5-14-3](#); and

(2) electronically through electronic gateway access.

(f) The coordinator assigned to a rule shall keep a record of all comments, questions, and complaints received from small businesses with respect to the rule. The coordinator shall deliver the record, along with any accompanying documents submitted by small businesses, to the director:

(1) not later than ten (10) days after the date on which the rule is submitted to the publisher under section 35 of this chapter; and

(2) before July 15 of each year during which the rule remains in effect.

The coordinator and the director shall keep confidential any information concerning a small business to the extent that the information is exempt from public disclosure under [IC 5-14-3-4](#).

(g) Not later than November 1 of each year, the director shall:

(1) compile the records received from all of the agency's coordinators under subsection (f);

(2) prepare a report that sets forth:

(A) the number of comments, complaints, and questions received by the agency from small businesses during the most recent state fiscal year, categorized by the subject matter of the rules involved;

(B) the number of complaints or questions reported under clause (A) that were resolved to the satisfaction of the agency and the small businesses involved;

- (C) the total number of staff serving as coordinators under this section during the most recent state fiscal year;
 - (D) the agency's costs in complying with this section during the most recent state fiscal year; and
 - (E) the projected budget required by the agency to comply with this section during the current state fiscal year; and
- (3) deliver the report to the legislative council in an electronic format under [IC 5-14-6](#) and to the small business ombudsman designated under [IC 5-28-17-6](#).

As added by P.L.239-2005, SEC.2. Amended by P.L. 100-2006, SEC.2; P.L. 123-2006, SEC.8; P.L.110-2010, SEC.3; P.L.133-2012, SEC.7; P.L.187-2014, SEC.10; P.L.237-2017, SEC.9; P.L.249-2023, SEC.28.

IC 4-22-2-28.2 Notice of rule violation by small businesses; immunity from liability in administrative action; corrective action required; confidentiality of information

Sec. 28.2. (a) This section applies to a violation described in subsection (c) that occurs after June 30, 2005. However, in the case of a violation of a rule adopted under [IC 13-14-9](#) by the department of environmental management or the board (as defined in [IC 13-13-8-1](#)), the procedures set forth in [IC 13-30-4-3](#) and [IC 13-30-7](#) apply instead of this section.

(b) As used in this section, "small business" has the meaning set forth in section 28.1(a) of this chapter.

(c) Except as provided in subsection (d), a small business that voluntarily provides notice to an agency of the small business's actual or potential violation of a rule adopted by the agency under this chapter is immune from civil or criminal liability resulting from an agency action relating to the violation if the small business does the following:

- (1) Provides written notice of the violation to the agency not later than forty-five (45) days after the small business knew or should have known that the violation occurred.
- (2) Corrects the violation within a time agreed to by the agency and the small business. However, the small business shall be given at least ninety (90) days after the date of the notice described in subdivision (1) to correct the violation. The small business may correct the violation at any time before the expiration of the period agreed to under this subdivision.
- (3) Cooperates with any reasonable request by the agency in any investigation initiated in response to the notice.

(d) A small business is not immune from civil or criminal liability relating to a violation of which the small business provides notice under subsection (c) if any of the following apply:

- (1) The violation resulted in serious harm or in imminent and substantial endangerment to the public health, safety, or welfare.
- (2) The violation resulted in a substantial economic benefit that afforded the small business a clear advantage over the small business's competitors.
- (3) The small business has a pattern of continuous or repeated violations of the rule at issue or any other rules of the agency.

(e) Information that a small business provides under this section, including actions and documents that identify or describe the small business, to an agency in providing notice of the small business's actual or potential violation of a rule adopted by the agency is confidential, unless a clear and immediate danger to the public health, safety, or welfare or to the environment exists. Information described in this subsection may not be made available for use by the agency for purposes other than the purposes of this section without the consent of the small business.

(f) Voluntary notice of an actual or a potential violation of a rule that is provided by a small business under subsection (c) is not admissible as evidence in a proceeding, other than an agency proceeding, to prove liability for the rule violation or the effects of the rule violation. *As added by P.L.239-2005, SEC.3. Amended by P.L.133-2012, SEC.8; P.L.249-2023, SEC.29.*

IC 4-22-2-29 Adoption of rules; adoption of revised version of proposed rule

Sec. 29. (a) As used in this section, "small business ombudsman" refers to the small business ombudsman designated under [IC 5-28-17-6](#).

(b) After an agency has complied with sections 26, 27, and 28 of this chapter, the agency may:

- (1) adopt a rule that is identical to a proposed rule published in the Indiana Register under section 23 or (as applicable) 24 of this chapter;
- (2) subject to subsection (c), adopt a rule that consolidates part or all of two (2) or more proposed rules published in the Indiana Register under section 23 or (as applicable) 24 of this chapter and considered under section 27 of this chapter;
- (3) subject to subsection (c), adopt part of one (1) or more proposed rules described in subdivision (2) in two (2) or more separate adoption actions; or
- (4) subject to subsection (c), adopt a revised version of a proposed rule published under section 23 or (as applicable) 24 of this chapter and include provisions that did not appear in the published version, including any provisions recommended by the small business ombudsman under [IC 4-22-2.1-6\(a\)](#), if applicable.

(c) Subject to [IC 13-14-9-4.5](#) (if applicable), an agency may not adopt a rule that substantially differs from the version or versions of the proposed rule or rules published in the Indiana Register under section 23 or 24 of this chapter, or [IC 13-14-9-14](#) (as applicable), unless it is a logical outgrowth of any proposed rule as supported by any written and public hearing comments submitted:

- (1) during the public comment period; or
- (2) by the small business ombudsman under [IC 4-22-2.1-6\(a\)](#), if applicable.

As added by P.L.31-1985, SEC.18. Amended by P.L.12-1993, SEC.2; P.L.188-2005, SEC.3; P.L.109-2015, SEC.13; P.L.237-2017, SEC.10; P.L.249-2023, SEC.30.

IC 4-22-2-30 Repealed

As added by P.L.31-1985, SEC.19. Repealed by P.L.44-1995, SEC.8.

IC 4-22-2-31 Submission of rules to attorney general for approval

Sec. 31. After an agency has complied with section 29 of this chapter, or adopted the rule in conformity with [IC 13-14-9](#), as applicable, the agency shall submit its rule to the attorney general for approval. The agency shall submit the following to the attorney general:

- (1) The rule in the form required by section 20 of this chapter.
- (2) The documents required by section 21 of this chapter.
- (3) A written or an electronic mail authorization to proceed issued by the publisher under sections 23 and 24 of this chapter or [IC 13-14-9-4](#), [IC 13-14-9-5](#), or [IC 13-14-9-14](#), as applicable.
- (4) Any other documents specified by the attorney general.

The attorney general may require the agency to submit any supporting documentation that the attorney general considers necessary for the attorney general's review under section 32 of this chapter. The agency may submit any additional supporting documentation the agency considers necessary.

As added by P.L.31-1985, SEC.20. Amended by P.L.34-1993, SEC.3; P.L.1-1996, SEC.30; P.L.215-2005, SEC.5; P.L.123-2006, SEC.9; P.L.249-2023, SEC.31; P.L.93-2024, SEC.14.

IC 4-22-2-32 Review of rule by attorney general; approval or disapproval

Sec. 32. (a) The attorney general shall review each rule submitted under section 31 of this chapter for legality.

(b) In the review, the attorney general shall determine whether the rule adopted by the agency complies with the requirements under section 29 of this chapter and (if applicable) [IC 13-14-9](#). The attorney general shall consider the following:

(1) The extent to which all persons affected by the adopted rule should have understood from the published rule or rules that their interests would be affected.

(2) The extent to which the subject matter of the adopted rule or the issues determined in the adopted rule are different from the subject matter or issues that were involved in the published rule or rules.

(3) The extent to which the effects of the adopted rule differ from the effects that would have occurred if the published rule or rules had been adopted instead.

In the review, the attorney general shall consider whether the adopted rule may constitute the taking of property without just compensation to an owner.

(c) Except as provided in subsections (d) and (h), the attorney general shall disapprove a rule under this section only if it:

(1) has been adopted without statutory authority;

(2) has been adopted without complying with this chapter;

(3) does not comply with requirements under section 29 of this chapter; or

(4) violates another law.

Otherwise, the attorney general shall approve the rule without making a specific finding of fact concerning the subjects.

(d) If an agency submits a rule to the attorney general without complying with section 20(a)(2) of this chapter, the attorney general may:

(1) disapprove the rule; or

(2) return the rule to the agency without disapproving the rule.

(e) If the attorney general returns a rule under subsection (d)(2), the agency may bring the rule into compliance with section 20(a)(2) of this chapter and resubmit the rule to the attorney general without readopting the rule.

(f) If the attorney general determines in the course of the review conducted under subsection (b) that a rule may constitute a taking of property, the attorney general shall advise the following:

(1) The governor.

(2) The agency head.

Advice given under this subsection shall be regarded as confidential attorney-client communication.

(g) The attorney general has forty-five (45) days from the date that an agency:

(1) submits a rule under section 31 of this chapter; or

(2) resubmits a rule under subsection (e);

to approve or disapprove the rule. If the attorney general neither approves nor disapproves the rule, the rule is deemed approved, and the agency may submit it to the governor for approval under section 33 of this chapter without the approval of the attorney general.

(h) For rules adopted under [IC 13-14-9](#), the attorney general:

(1) shall determine whether the rule adopted by the agency under [IC 13-14-9](#) meets the appropriate substantial similarity or logical outgrowth standard under section 29(c) of this chapter; and

(2) may disapprove a rule under this section only if the rule:

(A) has been adopted without statutory authority;

(B) has been adopted without complying with this chapter or [IC 13-14-9](#);

(C) does not meet the appropriate substantial similarity or logical outgrowth standard under section 29(c) of this chapter; or

(D) violates another law.

As added by P.L.31-1985, SEC.21. Amended by P.L.36-1989, SEC.1; P.L.34-1993, SEC.4; P.L.12-1993, SEC.3; P.L.1-1996, SEC.31; P.L.1-2006, SEC.72; P.L.249-2023, SEC.32.

IC 4-22-2-33 Submission of rules to governor for approval

Sec. 33. (a) After a rule has been approved or deemed approved under section 32 of this chapter, the agency shall submit the rule to the governor for approval. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter.

(b) The agency shall submit to the governor the copies of the rule and other documents specified in section 31 of this chapter.

As added by P.L.31-1985, SEC.22. Amended by P.L.215-2005, SEC.6.

IC 4-22-2-34 Approval or disapproval of rule by governor

Sec. 34. (a) The governor may approve or disapprove a rule submitted under section 33 of this chapter with or without cause.

(b) The governor has fifteen (15) days from the date that an agency submits a rule under section 33 of this chapter to approve or disapprove the rule. However, the governor may take thirty (30) days to approve or disapprove the rule if the governor files a statement with the publisher within the first fifteen (15) days after an agency submits the rule that states that the governor intends to take an additional fifteen (15) days to approve or disapprove the rule. If the governor neither approves nor disapproves the rule within the allowed period, the rule is deemed approved, and the agency may submit the rule to the publisher without the approval of the governor.

As added by P.L.31-1985, SEC.23. Amended by P.L.123-2006, SEC.10.

IC 4-22-2-35 Submission of rule to publisher for filing

Sec. 35. (a) When a rule has been approved or deemed approved by the governor within the period allowed by section 25 of this chapter, the agency shall immediately submit the rule to the publisher for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter.

(b) The agency shall submit to the publisher the copies of the rule and other documents specified in section 31 of this chapter.

(c) Subject to section 39 of this chapter, the publisher shall:

(1) accept the rule for filing; and

(2) electronically record the date and time the rule is accepted.

As added by P.L.31-1985, SEC.24. Amended by P.L.215-2005, SEC.7; P.L.123-2006, SEC.11.

IC 4-22-2-36 Effective date of rules

Sec. 36. A rule that has been accepted for filing under section 35 of this chapter takes effect on the latest of the following dates:

- (1) The effective date of the statute delegating authority to the agency to adopt the rule.
- (2) The date that is thirty (30) days from the date and time that the rule was accepted for filing under section 35 of this chapter.
- (3) The effective date stated by the agency in the rule.
- (4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

As added by P.L.31-1985, SEC.25.

IC 4-22-2-37 Repealed

As added by P.L.31-1985, SEC.26. Amended by P.L.11-1987, SEC.7; P.L.36-1987, SEC.1; P.L.37-1989, SEC.1; P.L.338-1989(ss), SEC.1; P.L.341-1989(ss), SEC.4. Repealed by P.L.1-1990, SEC.35.

IC 4-22-2-37.1 Provisional rules; submission to the governor and publisher; assignment of document control number; effective date; amended provisional rule; objection

Sec. 37.1. (a) The following do not apply to a rule adopted under this section:

- (1) Sections 23 through 27 of this chapter or [IC 13-14-9](#) (as applicable).
- (2) Sections 28 through 36 of this chapter.

The amendments to this section made in the 2023 regular session of the general assembly apply to provisional rules that are accepted for filing by the publisher of the Indiana Register after June 30, 2023, regardless of whether the adopting agency initiated official action to adopt the rule by the name of emergency rule or provisional rule before July 1, 2023. An action taken before July 1, 2023, in conformity with this section (as effective after June 30, 2023) is validated to the same extent as if the action was taken after June 30, 2023.

(b) An agency may adopt a rule on a subject for which the agency has rulemaking authority using the procedures in this section if the governor finds that the agency proposing to adopt the rule has demonstrated to the satisfaction of the governor that use of provisional rulemaking procedures under this section is necessary to avoid:

- (1) an imminent and a substantial peril to public health, safety, or welfare;
- (2) an imminent and a material loss of federal funds for an agency program;
- (3) an imminent and a material deficit;
- (4) an imminent and a substantial violation of a state or federal law or the terms of a federal agreement or program;
- (5) injury to the business or interests of the people or any public utility of Indiana as determined under [IC 8-1-2-113](#);
- (6) an imminent and a substantial peril to:
 - (A) wildlife; or
 - (B) domestic animal; health, safety, or welfare; or
- (7) the spread of invasive species, pests, or diseases affecting plants.

To obtain a determination from the governor, an agency must submit to the governor the text of the proposed provisional rule, the regulatory analysis required under section 22.7 of this chapter, a statement justifying the need for provisional rulemaking procedures, and any additional information required by the governor in the form and in the manner required by the governor.

(c) The governor may not approve provisional rulemaking for any part of a proposed provisional rule that:

(1) adds or amends language to increase or expand application of a fee, fine, or civil penalty or a schedule of fees, fines, or civil penalties; or
(2) is expected to exceed the threshold set forth in section 22.7(c)(6) of this chapter; prior to the budget committee's review of the proposed provisional rule. A notice of determination by the governor shall include findings that explain the basis for the determination. The notice of determination shall be provided to the agency in an electronic format. Approval of a request shall be treated as a determination that the rule meets the criteria in subsection (b) and this subsection.

(d) After the governor approves provisional rulemaking procedures for a rule but before the agency adopts the provisional rule, the agency shall obtain a document control number from the publisher. The publisher shall determine the documents and the format of the documents that must be submitted to the publisher to obtain a document control number. The agency must submit at least the following:

- (1) The full text of the proposed provisional rule in the form required by section 20 of this chapter.
- (2) The regulatory analysis submitted to the governor under subsection (b).
- (3) A statement justifying the need for provisional rulemaking.
- (4) The approval of the governor to use provisional rulemaking procedures required by law.
- (5) The documents required by section 21 of this chapter.
- (6) If the proposed provisional rule adds or amends language to increase or expand the application of a fee, fine, or civil penalty, or a schedule of fees, fines, or civil penalties, the agenda of the budget committee meeting at which the rule was scheduled for review.
- (7) If the proposed provisional rule is expected to exceed the threshold set forth in section 22.7(c)(6) of this chapter, the agenda of the budget committee meeting at which the rule was scheduled for review.

An agency may not adopt a proposed provisional rule until after the publisher notifies the agency that the publisher has complied with subsection (e). At least ten (10) regular business days must elapse after the publisher has complied with subsection (e) before the department of natural resources, the natural resources commission, the department of environmental management, or a board that has rulemaking authority under [IC 13](#) adopts a provisional rule.

(e) Upon receipt of documents described in subsection (d), the publisher shall distribute the full text of the proposed provisional rule to legislators and legislative committees in the manner and the form specified by the legislative council or the personnel subcommittee of the legislative council acting for the legislative council. After distribution has occurred, the publisher shall notify the agency of the date that distribution under this subsection has occurred.

(f) After the document control number has been assigned and the agency adopts the provisional rule, the agency shall submit the following to the publisher for filing:

- (1) The text of the adopted provisional rule. The agency shall submit the provisional rule in the form required by section 20 of this chapter.
- (2) A signature page that indicates that the agency has adopted the provisional rule in conformity with all procedures required by law.
- (3) The documents required by section 21 of this chapter.

The publisher shall determine the format of the provisional rule and other documents to be submitted under this subsection. The substantive text of the adopted provisional rule must be substantially similar to the text of the proposed provisional rule submitted to the governor. A provisional rule may suspend but not repeal a rule approved by the governor under section 34 of this chapter.

(g) Subject to subsections (d) and (f) and section 39 of this chapter, the publisher shall:

- (1) accept the provisional rule for filing;
- (2) electronically record the date and time that the provisional rule is accepted; and
- (3) publish the text of the:
 - (A) adopted provisional rule;
 - (B) regulatory analysis (excluding appendices containing data, studies, or analyses referenced in the regulatory analysis); and
 - (C) governor's approval in the Indiana Register.

(h) A provisional rule adopted by an agency under this section takes effect on the latest of the following dates:

- (1) The effective date of the statute delegating authority to the agency to adopt the provisional rule.
- (2) The date and time that the provisional rule is accepted for filing under subsection (g).
- (3) The effective date stated by the adopting agency in the provisional rule.
- (4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the provisional rule.
- (5) The statutory effective date for a provisional rule set forth in law.

(i) An agency may amend a provisional rule with another provisional rule by following the procedures in this section for the amended provisional rule. However, unless otherwise provided by [IC 4-22-2.3](#), a provisional rule and all amendments of a provisional rule by another provisional rule expire not later than one hundred eighty (180) days after the initial provisional rule is accepted for filing under subsection (g). Unless otherwise provided by [IC 4-22-2.3-2](#), the subject of the provisional rule, including all amendments to the provisional rule, may not be subsequently extended under this section or section 37.2 of this chapter. If the governor determines that the circumstance that is the basis for using the procedures under this section ceases to exist, the governor may terminate the provisional rule before the lapse of one hundred eighty (180) days. The termination is effective when filed with the publisher. The publisher shall publish the termination notice in the Indiana Register.

(j) Subject to subsection (k), the attorney general or the governor may file an objection to a provisional rule that is adopted under this section not later than forty-five (45) days after the date that a provisional rule or amendment to a provisional rule is accepted for filing under subsection (g). The objection must cite the document control number for the affected provisional rule and state the basis for the objection. When filed with the publisher, the objection has the effect of invalidating the provisional rule or amendment to a provisional rule. The publisher shall publish the objection in the Indiana Register.

(k) The attorney general may file a written objection to a provisional rule under subsection (j) only if the attorney general determines that the provisional rule has been adopted:

- (1) without statutory authority; or
- (2) without complying with this section.

A notice of objection to a provisional rule by the attorney general must include findings that explain the basis for the determination. The notice of objection shall be provided to the agency in an electronic format.

As added by P.L. 1-1990, SEC.36. Amended by P.L.24-1990, SEC.1; P.L.27-1991, SEC.1; P.L.2-1991, SEC.22; P.L.28-1991, SEC.1; P.L.29-1991, SEC.1; P.L.26-1991, SEC.1; P.L.2-1992, SEC.38; P.L.24-1992, SEC.1; P.L.2-1993, SEC.36; P.L.3-1993, SEC.239; P.L.34-1993, SEC.5; P.L.35-1993, SEC.1; P.L.277-1993(ss), SEC.125; P.L.1-1994, SEC.10; P.L.16-1994, SEC.1; P.L.15-1994, SEC.1; P.L.2-1995, SEC.5; P.L.1-1995, SEC.37; P.L.45-1995, SEC.1; P.L.47-1995, SEC.1; P.L.46-1995, SEC.1; P.L.2-1996, SEC.212; P.L.1-1996, SEC.32; P.L.17-1996, SEC.4; P.L.2-1997, SEC.12; P.L.27-

1997, SEC.1; P.L.79-1998, SEC.4; P.L.273-1999, SEC.160; P.L.204-2001, SEC.6; P.L.287-2001, SEC.1; P.L.283-2001, SEC.1; P.L.1-2002, SEC.10; P.L.120-2002, SEC.1; P.L.1-2003, SEC.9; P.L.235-2003, SEC.1; P.L.255-2003, SEC.1; P.L.141-2003, SEC.1; P.L.1-2004, SEC.1; P.L.23-2004, SEC.1; P.L.4-2005, SEC.21; P.L.179-2005, SEC.1; P.L.235-2005, SEC.61; P.L.47-2006, SEC.2; P.L.1-2006, SEC.73; P.L.91-2006, SEC.2; P.L.123-2006, SEC.12; P.L.1-2007, SEC.17; P.L.111-2007, SEC.1; P.L.204-2007, SEC.2; P.L.233-2007, SEC.1; P.L.218-2007, SEC.1; P.L.8-2008, SEC.1; P.L.2-2008, SEC.17; P.L.3-2008, SEC.9; P.L.90-2008, SEC.1; P.L.131-2009, SEC.1; P.L.160-2009, SEC.1; P.L.177-2009, SEC.1; P.L.1-2010, SEC.8; P.L.35-2010, SEC.2; P.L.113-2010, SEC.9; P.L.11-2011, SEC.1; P.L.42-2011, SEC.2; P.L.119-2011, SEC.1; P.L.175-2011, SEC.1; P.L.229-2011, SEC.58; P.L.25-2012, SEC.1; P.L.48-2012, SEC.2; P.L.78-2012, SEC.1; P.L.160-2012, SEC.6; P.L.77-2012, SEC.1; P.L.133-2012, SEC.9; P.L.140-2013, SEC.1; P.L.249-2023, SEC.33; P.L.93-2024, SEC.15.

IC 4-22-2-37.2 Interim rules; submission to the governor and publisher; notice; amended interim rule; objection

Sec. 37.2. (a) The following do not apply to a rule adopted under this section:

- (1) Sections 23 through 27 of this chapter or [IC 13-14-9](#) (as applicable).
- (2) Sections 28 through 36 of this chapter.

This section as added by the 2023 regular session of the general assembly applies to interim rules that are accepted for filing by the publisher of the Indiana Register after June 30, 2023, regardless of whether the adopting agency initiated official action to adopt the interim rule before July 1, 2023. An action taken before July 1, 2023, in conformity with this section (as effective after June 30, 2023) is validated to the same extent as if the action was taken after June 30, 2023.

(b) An agency may only adopt a rule on a subject for which the agency has rulemaking authority using the procedures in this section if the governor finds that the agency proposing to adopt the rule has demonstrated to the satisfaction of the governor that use of interim rulemaking procedures under this section is necessary to implement:

- (1) a new state or federal law or program, rule of another state agency, federal regulation, or federal grant or loan agreement, or (if used by the agency to carry out the agency's responsibilities) a building, an equipment, a firefighting, a safety, or a professional code adopted by a nationally recognized organization;
- (2) a change in a state or federal law or program, rule of another state agency, federal regulation, federal grant or loan agreement, or (if used by the agency to carry out the agency's responsibilities) a building, an equipment, a firefighting, a safety, or a professional code adopted by a nationally recognized organization; or
- (3) a category of rule authorized under [IC 4-22-2.3](#) to be adopted as an interim rule; before the time that a final rule approved by the governor under section 34 of this chapter could reasonably take effect.

(c) To obtain a determination from the governor, an agency must submit to the governor the text of the proposed interim rule, a statement justifying the need for interim rulemaking procedures, and any additional information required by the governor in the form and in the manner required by the governor. The governor may not approve interim rulemaking for any part of a proposed interim rule that:

- (1) adds or amends language to increase or expand application of a fee, fine, or civil penalty or a schedule of fees, fines, or civil penalties; or
- (2) is expected to exceed the threshold set forth in section 22.7(c)(6) of this chapter;

prior to the budget committee's review of the proposed interim rule. A notice of determination by the governor shall include findings that explain the basis for the determination. The notice of determination shall be provided to the agency in an electronic format. Approval of a request shall be treated as a determination that the rule meets the criteria in this subsection.

(d) To publish a notice of interim rulemaking in the Indiana Register, the agency must submit the following to the publisher:

- (1) The full text of the agency's proposed interim rule in the form required by section 20 of this chapter.
- (2) The regulatory analysis submitted to the governor under subsection (c).
- (3) A statement justifying the need for interim rulemaking.
- (4) The approval of the governor to use interim rulemaking procedures for the rule.
- (5) If the proposed interim rule adds or amends language to increase or expand application of a fee, fine, or civil penalty or a schedule of fees, fines, or civil penalties, the agenda of the budget committee meeting at which the rule was scheduled for review.
- (6) The documents required by section 21 of this chapter.
- (7) If the proposed interim rule is expected to exceed the threshold set forth in section 22.7(c)(6) of this chapter, the agenda of the budget committee meeting at which the rule was scheduled for review.

The publisher shall review materials submitted under this section and determine the date that the publisher intends to include the material in the Indiana Register. After establishing the intended publication date, the publisher shall provide a written or an electronic mail authorization to proceed to the agency.

(e) The agency shall include the following in the notice of the public comment period:

- (1) A general description of the subject matter of the proposed interim rule, including the document control number.
- (2) The full text of the agency's proposed interim rule in the form required by section 20 of this chapter (excluding the text of a matter incorporated by reference under section 21 of this chapter).
- (3) The regulatory analysis submitted to the governor under subsection (c) (excluding appendices containing data, studies, or analyses referenced in the regulatory analysis).
- (4) A statement justifying any requirement or cost that is:
 - (A) imposed on a regulated entity under the interim rule; and
 - (B) not expressly required by the statute authorizing the agency to adopt rules or any other state or federal law.

The statement required under this subdivision must include a reference to any data, studies, or analyses relied upon by the agency in determining that the imposition of the requirement or cost is necessary.

- (5) Information concerning where, when, and how a person may inspect and copy any data, studies, or analyses referenced under subdivision (4).
- (6) Information concerning where, when, and how a person may inspect any documents incorporated by reference into the proposed interim rule under section 21 of this chapter.
- (7) A date that is thirty (30) days after the notice is published in the Indiana Register by which written comments are due and a statement explaining that any person may submit written comments concerning the proposed interim rule during the public comment period and instructions on when, where, and how the person may submit written comments.

However, inadequacy or insufficiency of the subject matter description under subdivision (1) or a statement of justification under subdivision (4) in a notice does not invalidate a rulemaking

action. An agency may continue the public comment period by publishing a subsequent notice in the Indiana Register extending the public comment period.

(f) Before adopting the interim rule, the agency shall prepare a written response to comments received by the agency, including the reasons for rejecting any recommendations made in the comments.

(g) After an agency has completed the public comment period and complied with subsection (f), the agency may:

(1) adopt a rule that is identical to a proposed interim rule published in the Indiana Register under this section; or

(2) adopt a revised version of a proposed interim rule published under this section and include provisions that did not appear in the initially published proposed version.

An agency may not adopt an interim rule that substantially differs from the version of the proposed interim rule published in the Indiana Register under this section, unless it is a logical outgrowth of any proposed interim rule as supported by any written comments submitted during the public comment period.

(h) After the agency adopts the interim rule, the agency shall submit the following to the publisher for filing:

(1) The text of the adopted interim rule. The agency shall submit the full text of the interim rule in the form required by section 20 of this chapter.

(2) A summary of the comments received by the agency during the public comment period and the agency's response to the comments.

(3) A signature page that indicates that the agency has adopted the interim rule in conformity with all procedures required by law.

(4) The documents required by section 21 of this chapter.

The publisher shall determine the format of the interim rule and other documents to be submitted under this subsection. An interim rule may suspend but not repeal a rule approved by the governor under section 34 of this chapter.

(i) Subject to subsection (h) and section 39 of this chapter, the publisher shall:

(1) accept the interim rule for filing;

(2) electronically record the date and time that the interim rule is accepted; and

(3) publish the text of the:

(A) adopted interim rule;

(B) regulatory analysis (excluding appendices containing data, studies, or analyses referenced in the regulatory analysis); and

(C) governor's approval in the Indiana Register.

(j) An interim rule adopted by an agency under this section takes effect on the latest of the following dates:

(1) The effective date of the statute delegating authority to the agency to adopt the interim rule.

(2) The date and time that the interim rule is accepted for filing under subsection (i).

(3) The effective date stated by the adopting agency in the interim rule.

(4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the interim rule.

(5) The statutory effective date for an interim rule set forth in law.

(k) An agency may amend an interim rule with another interim rule by following the procedures in this section for adoption of an interim rule. Except as provided in [IC 4-22-2.3](#), an interim rule and all subsequent rules on the same subject adopted under section 37.1 of this chapter or this section expire not later than four hundred twenty-five (425) days after the initial interim rule is accepted for filing under subsection (i).

(l) Subject to subsection (m), the attorney general or the governor may file an objection to an interim rule that is adopted under this section not later than forty-five (45) days after the date that an interim rule or amendment to an interim rule is accepted for filing under subsection (i). The objection must cite the document control number for the affected interim rule and state the basis for the objection. When filed with the publisher, the objection has the effect of invalidating the interim rule or amendment to an interim rule. The publisher shall publish the objection in the Indiana Register.

(m) The attorney general may file a written objection to an interim rule under subsection (l) only if the attorney general determines that the interim rule has been adopted:

(1) without statutory authority; or

(2) without complying with this section.

A notice of objection to an interim rule by the attorney general must include findings that explain the basis for the determination. The notice of objection shall be provided to the agency in an electronic format.

As added by P.L.249-2023, SEC.34. Amended by P.L.93-2024, SEC.16.

IC 4-22-2-38 Certain nonsubstantive rules; adoption; submission to publisher; document control number; effective date; objections

Sec. 38. (a) This section applies to a rulemaking action resulting in any of the following rules:

(1) A rule that brings another rule into conformity with section 20 of this chapter.

(2) A rule that amends another rule to replace an inaccurate reference to a statute, rule, regulation, other text, governmental entity, or location with an accurate reference, when the inaccuracy is the result of the rearrangement of a federal or state statute, rule, or regulation under a different citation number, a federal or state transfer of functions from one (1) governmental entity to another, a change in the name of a federal or state governmental entity, or a change in the address of an entity.

(3) A rule correcting any other typographical, clerical, or spelling error in another rule.

(b) Sections 23 through 37.2 of this chapter do not apply to rules described in subsection (a).

(c) Notwithstanding any other statute, an agency may adopt a rule described by subsection (a) without complying with any statutory notice, hearing, adoption, or approval requirement. In addition, the governor may adopt a rule described in subsection (a) for an agency without the agency's consent or action.

(d) A rule described in subsection (a) shall be submitted to the publisher for the assignment of a document control number. The agency (or the governor, for the agency) shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(e) After a document control number is assigned, the agency (or the governor, for the agency) shall submit the rule to the publisher for filing. The agency (or the governor, for the agency) shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the format of the rule and other documents to be submitted under this subsection.

(f) Subject to section 39 of this chapter, the publisher shall:

(1) accept the rule for filing; and

(2) electronically record the date and time that it is accepted.

(g) Subject to subsection (h), a rule described in subsection (a) takes effect on the latest of the following dates:

(1) The date that the rule being corrected by a rule adopted under this section becomes effective.

(2) The date that is forty-five (45) days from the date and time that the rule adopted under this section is accepted for filing under subsection (f).

(h) The governor or the attorney general may file an objection to a rule that is adopted under this section before the date that is forty-five (45) days from the date and time that the rule is accepted for filing under subsection (f). When filed with the publisher, the objection has the effect of invalidating the rule.

As added by P.L.31-1985, SEC.27. Amended by P.L.1-1991, SEC.16; P.L.123-2006, SEC.13; P.L.249-2023, SEC.35; P.L.93-2024, SEC.17.

IC 4-22-2-39 Acceptance of rule for filing by publisher

Sec. 39. (a) When an agency submits a rule for filing under section 35, 37.1, 37.2, or 38 of this chapter, the publisher may accept the rule for filing only if the following conditions are met:

(1) The following documents are submitted to allow the publisher to comply with [IC 4-22-7-5](#):

(A) One (1) electronic copy of the rule.

(B) One (1) copy of any matters incorporated by reference under section 21 of this chapter in the format specified by the publisher.

(C) One (1) copy of any supporting documentation submitted under section 31 of this chapter in the format specified by the publisher.

(2) Each submitted copy includes a reference to the document control number assigned to the rule by the publisher.

(3) Each submitted copy indicates that the agency has conducted its rulemaking action in conformity with all procedures required by law. However, if section 31 of this chapter applies to the rule, the publisher shall rely on the approval of the attorney general as the basis for determining that the agency has complied with all procedures required before the date of the approval.

(b) If a rule includes a statement that the rule is not effective until:

(1) an agency has complied with requirements established by the federal or state government;

(2) a specific period of time has elapsed; or

(3) a date has occurred;

the agency has complied with subsection (a)(3) even if the described event or time has not occurred before the publisher reviews the rule under this section.

(c) The publisher shall take no more than three (3) business days to complete the review of a rule under this section.

As added by P.L.31-1985, SEC.28. Amended by P.L.19-1986, SEC.1; P.L.1-1991, SEC.17; P.L.215-2005, SEC.8; P.L.123-2006, SEC.14; P.L.249-2023, SEC.36.

IC 4-22-2-40 Recall of rule; readoption

Sec. 40. (a) At any time before a rule is accepted for filing by the publisher under section 35, 37.1, 37.2, or 38 of this chapter, the agency that adopted the rule may recall it. A rule may be recalled regardless of whether:

(1) the rule has been disapproved by the attorney general under section 32 of this chapter; or

(2) the rule has been disapproved by the governor under section 34 of this chapter.

(b) [IC 13-14-9](#) and sections 23 through 38 of this chapter do not apply to a recall action under this section. However, the agency shall distribute a notice of its recall action to the publisher for publication in the Indiana Register. [IC 13-14-9](#) and sections 23 and 26 of this chapter do not apply to a readoption action under subsection (c).

(c) After an agency recalls a rule, the agency may reconsider its adoption action and adopt an identical rule or a revised rule. However, if [IC 13-14-9](#) or sections 23 through 36 of this chapter apply to the recalled rule, the readopted rule must comply with the requirements under section 29 of this chapter or [IC 13-14-9-9](#) (as applicable).

(d) The recall of a rule under this section voids any approval given after the rule was adopted and before the rule was recalled.

(e) If a rule is:

(1) subject to sections 31 and 33 of this chapter;

(2) recalled under subsection (a); and

(3) readopted under subsection (c);

the agency shall resubmit the readopted version of the recalled rule to the attorney general and the governor for approval. The attorney general and the governor have the full statutory period to approve or disapprove the readopted rule. The agency shall resubmit the readopted version of a recalled rule to the office of management and budget with sufficient information for the office of management and budget to evaluate whether the initial regulatory analysis submitted to the office of management and budget under section 22.8 of this chapter needs to be revised. If the impact of the readopted rule is substantially different from the recalled rule, the agency shall submit the revised regulatory analysis to the publisher for publication in the Indiana Register with the document control number assigned by the publisher to the rule. The agency also shall comply with any other applicable approval requirement provided by statute.

(f) The readopted version of a recalled rule is effective only after the agency has complied with section 35, 37.1, 37.2, or 38 of this chapter.

As added by P.L.31-1985, SEC.29. Amended by P.L.1-1991, SEC.18; P.L.12-1993, SEC.4; P.L.123-2006, SEC.15; P.L.291-2013, SEC.7; P.L.53-2014, SEC.60; P.L.249-2023, SEC.37.

IC 4-22-2-41 Withdrawal of rule

Sec. 41. (a) At any time before a rule is accepted by the publisher for filing under section 35, 37.1, 37.2, or 38 of this chapter, the agency that adopted the rule may withdraw it.

(b) [IC 13-14-9](#) and sections 23 through 40 of this chapter do not apply to a withdrawal action. However, the withdrawing agency shall distribute a notice of the withdrawal to the publisher for publication in the Indiana Register.

(c) The withdrawal of a rule under this section terminates the rulemaking action, and the withdrawn rule may become effective only through another rulemaking action initiated under this chapter.

As added by P.L.31-1985, SEC.30. Amended by P.L.1-1991, SEC.19; P.L.123-2006, SEC.16; P.L.249-2023, SEC.38.

IC 4-22-2-42 Establishment of publishing format

Sec. 42. The publisher, with the assistance of the code revision committee, shall establish a format, a numbering system, standards, and techniques for agencies to use whenever they draft and prepare rules under this chapter.

As added by P.L.31-1985, SEC.31. Amended by P.L.42-2024, SEC.35.

IC 4-22-2-43 Rules interpreting, implementing, or supplementing this chapter

Sec. 43. (a) Subject to section 42 of this chapter, the attorney general may adopt rules under this chapter to interpret or implement this chapter.

(b) An agency may adopt rules under this chapter to supplement the procedures in this chapter for its own rulemaking actions.

As added by P.L.31-1985, SEC.32.

IC 4-22-2-44 Failure to comply with provisions of this chapter; exception

Sec. 44. Except as provided in section 44.3 of this chapter, a rulemaking action that does not conform with this chapter is invalid, and a rule that is the subject of a noncomplying rulemaking action does not have the effect of law until it is adopted in conformity with this chapter. However, the failure of an agency to comply with section 20(a)(2) of this chapter does not invalidate the rulemaking action.

As added by P.L.31-1985, SEC.33. Amended by P.L.36-1989, SEC.2; P.L.1-2006, SEC.74; P.L.220-2011, SEC.46.

IC 4-22-2-44.3 Exceptions to section 44 of chapter

Sec. 44.3. (a) Notwithstanding the addition of section 44 of this chapter by P.L.31-1985, a rule that is in effect on August 31, 1985, is not invalidated by the passage of P.L.31-1985.

(b) Notwithstanding the addition of section 44 of this chapter by P.L.31-1985, a rule that is the subject of a rulemaking action before September 1, 1985, and:

(1) is not accepted for filing by the secretary of state before September 1, 1985; or

(2) is accepted for filing by the secretary of state before September 1, 1985, but is not effective before September 1, 1985;

is effective if it is adopted in conformity with the law in effect on August 31, 1985, or with this chapter, as in effect on the date of adoption of the rule.

(c) The format, numbering system, standards, and techniques that were developed by the legislative council for the drafting and preparation of rules before September 1, 1985, continue to apply to the drafting and preparation of rules until changed under P.L.31-1985.

As added by P.L.220-2011, SEC.47.

IC 4-22-2-45 Invalidity of rule; assertion; limitation

Sec. 45. A:

(1) claim; or

(2) defense;

that asserts that a rule is invalid on procedural grounds may not be asserted if the claim or defense is based on rulemaking procedures that were followed or should have been followed by a board described in [IC 13-14-9-1](#) or the department in adopting a rule under this chapter unless the claim or defense that asserts the procedural defect is filed not more than two (2) years after the date the rule becomes effective. However, a claim may be filed or a defense raised at any time for an alleged procedural defect that is alleged to have caused substantial harm to the due process rights of an individual.

As added by P.L.34-1993, SEC.6. Amended by P.L.1-1996, SEC.33.

IC 4-22-2-46 Repealed

As added by P.L.44-1995, SEC.7. Amended by P.L.17-1996, SEC.6; P.L.291-2013, SEC.8.

Repealed by P.L.53-2014, SEC.61.

**Indiana Department of Homeland Security
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**Appendix #4.1-4
Title 22, Article 14, Chapter 2, Section 4
Power of the department and the state fire marshal**

IC 22-14-2-4 Powers of the department and the state fire marshal

Sec. 4. (a) The department may:

- (1) enter and inspect any property, at a reasonable hour;
- (2) issue and enforce administrative orders under [IC 22-12-7](#) and apply for judicial orders under [IC 22-12-7-13](#);
- (3) direct a fire department to assist the department;
- (4) cooperate with law enforcement officers; and
- (5) provide hazardous materials and counterterrorism:
 - (A) training;
 - (B) support; and
 - (C) response assistance.

(b) Notwithstanding any other law, changes made to this section during the 2025 regular session of the general assembly do not affect ongoing investigations initiated by the state fire marshal before July 1, 2025.

As added by P.L.245-1987, SEC.3. Amended by P.L.63-2003, SEC.1; P.L.1-2006, SEC.364; P.L.187-2021, SEC.82; P.L.238-2025, SEC.67.

**Indiana Department of Homeland Security
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**Appendix #4.1-5
42 Indiana Administrative Code 1-5
Indiana State Code of Ethics**

42 IAC 1-5-1 - Gifts; travel expenses; waivers

Sec. 1.

(a) A state employee or special state appointee, or the spouse or unemancipated child of a state employee or special state appointee, shall not knowingly solicit, accept, or receive any:

- (1) gift;
- (2) favor;
- (3) service;
- (4) entertainment;
- (5) food;
- (6) drink;
- (7) travel expenses; or
- (8) registration fees;

from a person who has a business relationship with the employee's or special state appointee's agency or is seeking to influence an action by the employee or special state appointee in his or her official capacity.

(b) The following shall not be subject to this rule:

- (1) Gifts, favors, services, entertainment, food, drink, travel expenses, or registration fees from public agencies or public institutions.
- (2) Food or drink consumed at a public meeting to which at least twenty-five (25) individuals are invited. A meeting will be considered public if:
 - (A) the event is a reception or other gathering for public officials that is not arranged to solicit government procurement of goods or services;
 - (B) the employee is giving a speech or participating in a presentation in the employee's official capacity; or
 - (C) the meeting has a formal educational program that the employee is attending to assist him or her in performing official duties.
- (3) Mementos or souvenirs of nominal value.
- (4) Food or drink consumed by an employee during negotiations or other activities related to an Indiana economic development corporation economic development project.
- (5) Gifts, favors, services, entertainment, food, or drinks from relatives, or a person with whom the employee or special state appointee has an ongoing social relationship, so long as:
 - (A) the gifts or other items of value are not deducted as a business expense; and
 - (B) the gift giver is not seeking to influence an action by an employee or special state appointee in that person's official capacity.
- (6) Political contributions subject to IC 3-9-2 that are reported in accordance with applicable law.
- (7) Nominal refreshments offered to a state employee or a special state appointee conducting official state business while the employee or special state appointee is at a workplace of a person who:
 - (A) has a business relationship; or
 - (B) seeks to influence official action;with the employee's or special state appointee's agency.
- (8) Discount and other promotional programs approved and made available to state employees and special state appointees through the state personnel department or the Indiana department of administration.

(c) An employee's or special state appointee's state officer or appointing authority may waive application of subsection (a) of this rule in individual cases when consistent with the public interest. The waiver shall:

- (1) be in writing; and
- (2) identify the following:
 - (A) The employee or special state appointee.
 - (B) The nature and value of the gift.
 - (C) The donor of the gift.
 - (D) Why acceptance of the gift is consistent with the public interest.
- (d) Written waivers must be filed with the commission within thirty (30) days of receipt of the gift. The commission may review the written waivers. An appointing authority or state officer may designate authority to the agency's ethics officer to waive application of this rule on behalf of the appointing authority or state officer. The designation shall be in writing and filed with the commission.
- (e) If a person wishes to reimburse the state for any part or all of the expenses incurred by the state for appearances of a state officer, employee, or special state appointee or their official representatives on behalf of the state, the person shall remit to the treasurer of state any such amounts. The treasurer of the state shall quietus the funds into the general fund.

42 IAC 1-5-2 - Donor restrictions

Sec. 2.

A person who has a business relationship with an employee's or a special state appointee's agency shall not provide any:

- (1) gifts;
- (2) favors;
- (3) services;
- (4) entertainment;
- (5) food;
- (6) drink;
- (7) travel expenses; or
- (8) registration fees;

to such employee or special state appointee if the employee or special state appointee would not be permitted to accept the gift, favor, service, entertainment, food, drink, travel expenses, or registration fees under this rule.

42 IAC 1-5-3 - Honoraria

Sec. 3.

An employee shall not personally accept an honorarium for any activity that may be considered part of the state employee's official duties. However, a state employee may accept an honorarium on behalf of the state. The employee accepting the honorarium shall remit to the treasurer of state any amount received. The treasurer of state shall quietus such funds into the general fund. An employee may personally accept an honorarium for activities not done in connection with the employee's official duties and that are prepared on the employee's own time and without the use of state resources. However, in no case may an employee accept an honorarium from a person who has a business relationship or seeks to influence an official action with the employee's agency.

42 IAC 1-5-4 - Political activity

Sec. 4.

(a) A state employee or special state appointee shall not engage in political activity including solicitation of political contributions from:

- (1) another employee or special state appointee; or
- (2) any other person;

when on duty or acting in an official capacity.

(b) This section does not prohibit a state employee or special state appointee from engaging in such activity when not on duty.

(c) A state employee or special state appointee shall not solicit political contributions at any time from:

(1) persons whom the employee or special state appointee knows to have a business relationship with the employee's or the special state appointee's agency; or

(2) state employees or special state appointees directly supervised by the employee or the special state appointee.

(d) The appointing authority of an agency and all employees or special state appointees with purchasing or procurement authority on behalf of the state shall not solicit political contributions on behalf of any candidate for public office, unless that individual is a candidate for public office himself or herself.

42 IAC 1-5-5 - Outside employment

Sec. 5.

Outside employment restrictions are set forth in IC 4-2-6-5.5.

42 IAC 1-5-6 - Conflicts of interest; decisions and voting

Sec. 6.

Decision and voting restrictions are set forth in IC 4-2-6-9.

42 IAC 1-5-7 - Conflicts of interest; contracts

Sec. 7.

Contracting restrictions are set forth in IC 4-2-6-10.5.

42 IAC 1-5-8 - Additional compensation

Sec. 8.

A state officer, employee, or special state appointee shall not solicit or accept compensation for the performance of official duties other than provided for by law.

42 IAC 1-5-9 - Bribery

Sec. 9.

A state officer, employee, or special state appointee shall not pay or offer to pay any compensation for the performance of a state officer's, employee's, or special state appointee's official duties except as permitted by law.

42 IAC 1-5-10 - Benefiting from confidential information

Sec. 10.

A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

42 IAC 1-5-11 - Divulging confidential information

Sec. 11.

A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by law.

42 IAC 1-5-12 - Use of state property

Sec. 12.

A state officer, employee, or special state appointee shall not make use of state materials, funds, property, personnel, facilities, or equipment for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation.

42 IAC 1-5-13 - Ghost employment

Sec. 13.

A state officer, employee, or special state appointee shall not engage in, or direct others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

42 IAC 1-5-14 - Postemployment restrictions

Sec. 14.

Postemployment restrictions are set forth in IC 4-2-6-11.

42 IAC 1-5-15 - Nepotism

Sec. 15.

Nepotism restrictions are set forth in IC 4-2-6-16.

42 IAC 1-5-16 - Communications by state officers

Sec. 16.

Restrictions on certain communications by state officers are set forth in IC 4-2-6-15.

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**Appendix #4.1-6
Title 4, Article 6, Chapter 3, Section 2
Direction of prosecutions brought in the name of the state**

IC 4-6-3-2 Direction of prosecutions brought in the name of the state

Sec. 2. (a) The attorney general shall have charge of and direct the prosecution of all civil actions that are brought in the name of the state of Indiana or any state agency.

(b) In no instance under this section shall the state or a state agency be required to file a bond.

(c) This section does not affect the authority of prosecuting attorneys to prosecute civil actions.

(d) This section does not affect the authority of the inspector general to prosecute a civil action under [IC 4-2-7-6](#) for the recovery of any of the following:

(1) Funds misappropriated, diverted, missing, or unlawfully gained.

(2) A civil penalty imposed by the state ethics commission under [IC 4-2-6-12](#).

(e) The attorney general may bring an action to collect unpaid registration fees owed by a commercial dog broker or a commercial dog breeder under [IC 15-21](#).

As added by Acts 1982, P.L.20, SEC.2. Amended by P.L.222-2005, SEC.15; P.L.111-2009, SEC.1; P.L.126-2012, SEC.7; P.L.136-2012, SEC.2.

**Indiana Department of Homeland Security
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**Appendix #4.1-7
Title 4, Article 6, Chapter 2, Section 1
Prosecuting and defending suits by or against state and state officers**

IC 4-6-2-1 Prosecuting and defending suits by or against state and state officers

Sec. 1. (a) The attorney general shall prosecute and defend all suits instituted by or against the state of Indiana, the prosecution and defense of which is not otherwise provided for by law, whenever the attorney general has been given ten (10) days' notice of the pendency of the suit by the clerk of the court in which the suit is pending, or whenever the governor or a majority of the officers of state require the attorney general in writing, with reasonable notice, to prosecute or defend a suit. The attorney general shall represent the state in all criminal cases in the Supreme Court, and shall defend all suits brought against the state officers in their official relations, except suits brought against them by the state; and the attorney general shall be required to attend to the interests of the state in all suits, actions, or claims in which the state is or may become interested in the Supreme Court of this state.

(b) The attorney general may not defend a member (as defined in [IC 2-2.1-4-5](#)) in an action for legislative bolting brought under [IC 2-2.1-4](#).

Formerly: Acts 1889, c.71, s.4; Acts 1921, c.85, s.2. As amended by P.L.229-2011, SEC.43; P.L.215-2016, SEC.34.

**Indiana Department of Homeland Security
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**Appendix #4.1-8
Title 13, Article 29, Chapter 1
Midwest Interstate Compact on Low-Level Radioactive Waste**

IC 13-29-1 Chapter 1. Midwest Interstate Compact on Low-Level Radioactive Waste

[13-29-1-1](#) Policy and purpose

[13-29-1-2](#) Definitions

[13-29-1-3](#) The commission

[13-29-1-4](#) Regional management plan

[13-29-1-5](#) Rights and obligations of party states

[13-29-1-6](#) Development, operation, and closing of compact facilities

[13-29-1-7](#) Other laws and regulations

[13-29-1-8](#) Eligible parties, withdrawal, revocation, suspension of access, entry into force, and termination

[13-29-1-9](#) Penalties and enforcement

[13-29-1-10](#) Severability and construction

[13-29-1-11](#) Commission members; appointment; tenure

[13-29-1-12](#) Commission members; per diems and expenses

[13-29-1-13](#) Rules

[13-29-1-14](#) Violations; offenses; penalties

IC 13-29-1-1 Policy and purpose

Sec. 1.

ARTICLE I. POLICY AND PURPOSE

There is created the Midwest Interstate Low-Level Radioactive Waste Compact.

The states party to this compact recognize that the Congress of the United States, by enacting the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. 2021b to 42 U.S.C. 2021j), has provided for and encouraged the development of low-level radioactive waste compacts as a tool for disposing of such waste. The party states acknowledge that the Congress declared that each state is responsible for providing for the availability of capacity either within or outside the state for the disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of certain defense activities of the federal government or federal research and development activities. The party states also recognize that the disposal of low-level radioactive waste is handled most efficiently on a regional basis; and, that the safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to dispose of such waste be properly provided.

a. It is the policy of the party states to enter into a regional low-level radioactive waste disposal compact for the purpose of:

1. Providing the instrument and framework for a cooperative effort;
2. Providing sufficient facilities for the proper disposal of low-level radioactive waste generated in the region;
3. Protecting the health and safety of the citizens of the region;
4. Limiting the number of facilities required to effectively and efficiently dispose of low-level radioactive waste generated in the region;
5. Encouraging source reduction and the environmentally sound treatment of waste that is generated to minimize the amount of waste to be disposed of;
6. Ensuring that the costs, expenses, liabilities, and obligations of low-level radioactive waste disposal are paid by generators and other persons who use compact facilities to dispose of their waste;
7. Ensuring that the obligations of low-level radioactive waste disposal that are the responsibility of the party states are shared equitably among them;
8. Ensuring that the party states that comply with the terms of this compact and fulfill their obligations under it share equitably in the benefits of the successful disposal of low-level radioactive waste; and
9. Ensuring the environmentally sound, economical, and secure disposal of low-level radioactive wastes.

b. Implicit in the Congressional consent to this compact is the expectation by the Congress and the party states that the appropriate federal agencies will actively assist the Compact Commission and the individual party states to this compact by:

1. expeditious enforcement of federal rules, regulations and laws;
2. imposition of sanctions against those found to be in violation of federal rules, regulations and laws; and
3. timely inspection of their licensees to determine their compliance with these rules, regulations and laws.

[Pre-1996 Recodification Citation: 13-5-9-1.]

As added by P.L. 1-1996, SEC. 19. Amended by P.L. 131-1996, SEC. 2.

IC 13-29-1-2Definitions

Sec. 2.

ARTICLE II. DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

a. "care" means the continued observation of a facility after closing for the purposes of detecting a need for maintenance, ensuring environmental safety, and determining compliance with applicable licensure and regulatory requirements and including the correction of problems which are detected as a result of that observation.

b. "close", "closed", or "closing" means that the compact facility with respect to which any of those terms is used has ceased to accept waste for disposal. "Permanently closed" means that the compact facility with respect to which the term is used has ceased to accept waste because it has operated for twenty years or a longer period of time as authorized by Article VI(i) of this compact, its capacity has been reached, the Commission has authorized it to close pursuant to Article III(h)(7) of this compact, the host state of such facility has withdrawn from the compact or had its membership revoked, or this compact has been dissolved.

c. "commission" means the Midwest Interstate Low-Level Radioactive Waste Commission.

d. "compact facility" means a waste disposal facility that is located within the region and that is established by a party state pursuant to the designation of that state as a host state by the Commission.

e. "development" includes the characterization of potential sites for a waste disposal facility, siting of such a facility, licensing of such a facility, and other actions taken by a host state prior to the commencement of construction of such a facility to fulfill its obligations as a host state.

f. "disposal," with regard to low-level radioactive waste, means the permanent isolation of that waste in accordance with the requirements established by the United States Nuclear Regulatory Commission or the licensing agreement state.

g. "disposal plan" means the plan adopted by the Commission for the disposal of waste within the region.

h. "facility" means a parcel of land or site, together with the structures, equipment and improvements on or appurtenant to the land or site, which is or has been used for the disposal of low-level radioactive waste, which is being developed for that purpose, or upon which the construction of improvements or installation of equipment is occurring for that purpose.

i. "final decision" means a final action of the Commission determining the legal rights, duties, or privileges of any person. "Final decision" does not include preliminary, procedural, or intermediate actions by the Commission, actions regulating the internal administration of the Commission, or actions of the Commission to enter into or refrain from entering into contracts or agreements with vendors to provide goods or services to the Commission.

j. "generator" means a person who first produces low-level radioactive waste, including, without limitation, any person who does so in the course of or incident to manufacturing, power generation, processing, waste treatment, waste storage, medical diagnosis and treatment, research, or other industrial or commercial activity. If the person who first produced an item or quantity of waste cannot be identified, "generator" means the person first possessing the waste who can be identified.

k. "host state" means any state which is designated by the Commission to host a compact facility or has hosted a compact facility.

l. "long-term care" means those activities taken by a host state after a compact facility is permanently closed to ensure the protection of air, land, and water resources and the health and safety of all people who may be affected by the facility.

m. "low-level radioactive waste" or "waste" means radioactive waste that is not classified as high-level radioactive waste and that is class A, B, or C low-level radioactive waste as defined in 10 CFR 61.55, as that section existed on January 26, 1983. "Low-level radioactive waste" or "waste" does not include any such radioactive waste that is owned or generated by the United States Department of Energy; by the United States Navy as a result of the decommissioning of its vessels; or as a result of any research, development, testing, or production of any atomic weapon.

n. "operates", "operational", or "operating" means that the compact facility with respect to which any of those terms is used accepts waste for disposal.

o. "party state" means any eligible state that enacts this compact into law, pays any eligibility fee established by the Commission, and has not withdrawn from this compact or had its membership in this compact revoked, provided that a state that has withdrawn from this compact or had its membership revoked again becomes a party state if it is readmitted to membership in this compact pursuant to Article VIII(a) of this compact. "Party state" includes any host state. "Party state" also includes any statutorily created administrative departments, agencies, or instrumentalities of a party state, but does not include municipal corporations, regional or local units of government, or other political subdivisions of a party state that are responsible for governmental activities on less than a statewide basis.

p. "person" means any individual, corporation, association, business enterprise, or other legal entity either public or private and any legal successor, representative, agent, or agency of that individual, corporation, association, business enterprise, or other legal entity. "Person" also includes the United States, states, political subdivisions of states, and any department, agency, or instrumentality of the United States or a state.

q. "region" means the area of the party states.

r. "site" means the geographic location of a facility.

s. "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any other territorial possession of the United States.

t. "storage" means the temporary holding of waste.

u. "treatment" means any method, technique or process, including storage for radioactive decay, designed to change the physical, chemical or biological characteristics or composition of any waste in order to render the waste safer for transport or management, amenable to recovery, convertible to another usable material or reduced in volume.

v. "waste management", "manage waste", "management of waste", "management", or "managed" means the storage, treatment, or disposal of waste.

[Pre-1996 Recodification Citation: 13-5-9-2.]

As added by P.L. 1-1996, SEC. 19. Amended by P.L. 131-1996, SEC. 3.

IC 13-29-1-3The commission

Sec. 3.

ARTICLE III. THE COMMISSION

a. There is created the Midwest Interstate Low-Level Radioactive Waste Commission. The Commission consists of one voting member from each party state. The Governor of each party state shall notify the Commission in writing of its member and any alternates. An alternate may act on behalf of the member only in that member's absence. The method for selection and the expenses of each Commission member shall be the responsibility of the member's respective state.

b. Each Commission member is entitled to one vote. Except as otherwise specifically provided in this compact, an action of the Commission is binding if a majority of the total membership casts its vote in the affirmative. A party state may direct its member or alternate member of the Commission how to vote or not vote on matters before the Commission.

c. The Commission shall elect annually from among its members a chairperson. The Commission shall adopt and publish, in convenient form, bylaws and policies which are not inconsistent with this compact, including procedures for the use of binding arbitration under Article VI(o) of this compact and procedures which substantially conform with the provisions of the Federal Administrative Procedure Act (5 U.S.C. ss. 500 to 559) in regard to notice, conduct and recording of meetings; access by the public to records; provision of information to the public; conduct of adjudicatory hearings; and issuance of decisions.

d. The Commission shall meet at least once annually and shall also meet upon the call of the chairperson or any other Commission member.

e. All meetings of the Commission shall be open to the public with reasonable advance notice. The Commission may, by majority vote, close a meeting to the public for the purpose of considering sensitive personnel or legal strategy matters. However, all Commission actions and decisions shall be made in open meetings and appropriately recorded.

f. The Commission may establish advisory committees for the purpose of advising the Commission on any matters pertaining to waste management.

g. The office of the Commission shall be in a party state. The Commission may appoint or contract for and compensate such limited staff necessary to carry out its duties and functions. The staff shall have the responsibilities and authority delegated to it by the Commission in its bylaws. The staff shall serve at the Commission's pleasure with the exception that staff hired as the result of securing federal funds shall be hired and governed under applicable federal statutes and regulations. In selecting any staff, the Commission shall assure that the staff has adequate experience and formal training to carry out the functions assigned to it by the Commission.

h. The Commission may do any or all of the following:

1. Appear as an intervenor or party in interest before any court of law or any federal, state or local agency, board or commission in any matter related to waste management. In order to represent its views, the Commission may arrange for any expert testimony, reports, evidence or other participation.

2. Review any emergency closing of a compact facility, determine the appropriateness of that closing, and take whatever lawful actions are necessary to ensure that the interests of the region are protected.

3. Take any action which is appropriate and necessary to perform its duties and functions as provided in this compact.

4. Approve the disposal of naturally occurring and accelerator produced radioactive material at a compact facility. The Commission shall not approve the acceptance of such material without first making an explicit determination of the effect of the new waste stream on the compact facility's maximum capacity. Such approval requires the affirmative vote of a majority of the Commission, including the affirmative vote of the member from the host state of the compact facility that would accept the material for disposal. Any such host state may, at any time, rescind its vote granting the approval and, thereafter, additional naturally occurring and accelerator produced radioactive material shall not be disposed of at a compact facility unless the disposal is again approved. All provisions of this compact apply to the disposal of naturally occurring and accelerator produced radioactive material that has been approved for disposal at a compact waste facility pursuant to Article III(h)(4) of this compact.

5. Enter into contracts in order to perform its duties and functions as provided in this compact.

6. When approved by the Commission, with the member from each host state in which an affected compact facility is operating or being developed or constructed voting in the affirmative, enter into agreements to do any of the following:

a. Import for disposal within the region, waste generated outside the region.

b. Export for disposal outside the region, waste generated inside the region.

c. Dispose of waste generated within the region at a facility within the region that is not a compact facility.

7. Authorize a host state to permanently close a compact facility located within its borders earlier than otherwise would be required by Article VI(i) of this compact. Such a closing requires the affirmative vote of a majority of the Commission, including the affirmative vote of the member from the state in which the affected compact facility is located.

i. The Commission shall do all of the following:

1. Submit an annual report to, and otherwise communicate with, the governors and the appropriate officers of the legislative bodies of the party states regarding the activities of the Commission.

2. Adopt and amend, by a two-thirds vote of the membership, in accordance with the procedures and criteria developed pursuant to Article IV of this compact a regional disposal plan which designates host states for the establishment of needed compact facilities.

3. Adopt an annual budget.

4. Establish and implement a procedure for determining the capacity of a compact facility. The capacity of a compact facility shall be established as soon as reasonably practical after the host state of the facility is designated and shall not be changed thereafter without the consent of the host state. The capacity of a compact facility shall be based on the projected volume, radioactive

characteristics, or both, of the waste to be disposed of at the facility during the period set forth in Article VI(i) of this compact.

5. Provide a host state with funds necessary to pay reasonable development expenses incurred by the host state after it is designated to host a compact facility.

6. Establish and implement procedures for making payments from the remedial action fund provided for in Article III(p) of this compact.

7. Establish and implement procedures to investigate any complaint joined in by two or more party states regarding another party state's performance of its obligations under this compact.

8. Adopt policies promoting source reduction and the environmentally sound treatment of waste in order to minimize the amount of waste to be disposed of at compact facilities.

9. Establish and implement procedures for obtaining information from generators regarding the volume and characteristics of waste projected to be disposed of at compact facilities and regarding generator activities with respect to source reduction, recycling, and treatment of waste.

10. Prepare annual reports regarding the volume and characteristics of waste projected to be disposed of at compact facilities.

j. Funding for the Commission shall be provided as follows:

1. When no compact facility is operating, the Commission may assess fees to be collected from generators of waste in the region. The fees shall be reasonable and equitable. The Commission shall establish and implement procedures for assessing and collecting the fees. The procedures may allow the assessing of fees against less than all generators of waste in the region; provided that if fees are assessed against less than all generators of waste in the region, generators paying the fees shall be reimbursed the amount of the fees, with reasonable interest, out of the revenues of operating compact facilities.

2. When a compact facility is operating, funding for the Commission shall be provided through a surcharge collected by the host state as part of the fee system provided for in Article VI(j) of this compact. The surcharge to be collected by the host state shall be determined by the Commission and shall be reasonable and equitable.

3. In the aggregate, the fees or surcharges, as the case may be, shall be no more than is necessary to:

a. cover the annual budget of the Commission;

b. provide a host state with the funds necessary to pay reasonable development expenses incurred by the host state after it is designated to host a compact facility;

c. provide moneys for deposit in the remedial action fund established pursuant to Article III(p) of this compact; and

d. provide moneys to be added to an inadequately funded long-term care fund as provided in Article VI(o) of this compact.

k. Financial statements of the Commission shall be prepared according to generally accepted accounting principles. The Commission shall contract with an independent certified public accountant to annually audit its financial statements and to submit an audit report to the

Commission. The audit report shall be made a part of the annual report of the Commission required by Article III of this compact.

l. The Commission may accept for any of its purposes and functions and may utilize and dispose of any donations, grants of money, equipment, supplies, materials and services from any state or the United States (or any subdivision or agency thereof) or interstate agency, or from any institution, person, firm, or corporation. The nature, amount and condition, if any, attendant upon any donation or grant accepted or received by the Commission together with the identity of the donor, grantor or lender, shall be detailed in the annual report of the Commission.

m. The Commission is a legal entity separate and distinct from the party states. Members of the Commission and its employees are not personally liable for actions taken by them in their official capacity. The Commission is not liable or otherwise responsible for any costs, expenses, or liabilities resulting from the development, construction, operation, regulation, closing, or long-term care of any compact facility or any noncompact facility made available to the region by any contract or agreement entered into by the Commission under Article III(h)(6) of this compact. Nothing in Article III(m) of this compact relieves the Commission of its obligations under Article III of this compact or under contracts to which it is a party. Any liabilities of the Commission are not liabilities of the party states.

n. Final decisions of the Commission shall be made, and shall be subject to judicial review, in accordance with all of the following conditions:

1. Every final decision shall be made at an open meeting of the Commission. Before making a final decision, the Commission shall provide an opportunity for public comment on the matter to be decided. Each final decision shall be reduced to writing and shall set forth the Commission's reasons for making the decision.

2. Before making a final decision, the Commission may conduct an adjudicatory hearing on the proposed decision.

3. Judicial review of a final decision shall be initiated by filing a petition in the United States district court for the district in which the person seeking the review resides or in which the Commission's office is located not later than sixty days after issuance of the Commission's written decision. Concurrently with filing the petition for review with the court, the petitioner shall serve a copy of the petition on the Commission. Within five days after receiving a copy of the petition, the Commission shall mail a copy of it to each party state and to all other persons who have notified the Commission of their desire to receive copies of such petitions. Any failure of the Commission to so mail copies of the petition does not affect the jurisdiction of the reviewing court. Except as otherwise provided in Article III(n)(3) of this compact, standing to obtain judicial review of final decisions of the Commission and the form and scope of the review are subject to and governed by 5 U.S.C.A. 706.

4. If a party state seeks judicial review of a final decision of the Commission that does any of the following, the facts shall be subject to trial de novo by the reviewing court unless trial de novo of the facts is affirmatively waived in writing by the party state:

a. Imposes financial penalties on a party state.

b. Suspends the right of a party state to have waste generated within its borders disposed of at a compact facility or at a noncompact facility made available to the region by an agreement entered into by the Commission under Article III(h)(6) of this compact.

c. Terminates the designation of a party state as a host state.

d. Revokes the membership of a party state in this compact.

e. Establishes the amounts of money that a party state that has withdrawn from this compact or had its membership in this compact revoked is required to pay under Article VIII(e) of this compact.

Any such trial de novo of the facts shall be governed by the federal Rules of Civil Procedure and the federal Rules of Evidence.

5. Preliminary, procedural, or intermediate actions by the Commission that precede a final decision are subject to review only in conjunction with review of the final decision.

6. Except as provided in Article III(n)(5) of this compact, actions of the Commission that are not final decisions are not subject to judicial review.

o. Unless approved by a majority of the Commission, with the member from each host state in which an affected compact facility is operating or is being developed or constructed voting in the affirmative, no person shall do any of the following:

1. Import waste generated outside the region for management within the region.

2. Export waste generated within the region for disposal outside the region.

3. Manage waste generated outside the region at a facility within the region.

4. Dispose of waste generated within the region at a facility within the region that is not a compact facility.

p. The Commission shall establish a remedial action fund to pay the costs of reasonable remedial actions taken by a party state if an event results from the development, construction, operation, closing, or long-term care of a compact facility that poses a threat to human health, safety, or welfare or to the environment. The amount of the remedial action fund shall be adequate to pay the costs of all reasonably foreseeable remedial actions. A party state shall notify the Commission as soon as reasonably practical after the occurrence of any event that may require the party state to take a remedial action. The failure of a party state to so notify the Commission does not limit the rights of the party state under Article III(p) of this compact.

If the moneys in the remedial action fund are inadequate to pay the costs of reasonable remedial actions, the amount of the deficiency is a liability with respect to which generators shall provide indemnification under Article VII(g) of this compact. Generators who provide the required indemnification have the rights of contribution provided in Article VII(g) of this compact. Article III(p) of this compact applies to any remedial action taken by a party state regardless of whether the party state takes the remedial action on its own initiative or because it is required to do so by a court or regulatory agency of competent jurisdiction.

q. If the Commission makes payment from the remedial action fund provided for in Article III(p) of this compact, the Commission is entitled to obtain reimbursement under applicable rules of law from any person who is responsible for the event giving rise to the remedial action. Such

reimbursement may be obtained from a party state only if the event giving rise to the remedial action resulted from the activities of that party state as a generator of waste.

r. If this compact is dissolved, all moneys held by the Commission shall be used first to pay for any ongoing or reasonably anticipated remedial actions. Any remaining moneys shall be distributed in a fair and equitable manner to those party states that have operating or closed compact facilities within their borders and shall be added to the long-term care funds maintained by those party states.

[Pre-1996 Recodification Citation: 13-5-9-3.]

As added by P.L. 1-1996, SEC. 19. Amended by P.L. 131-1996, SEC. 4.

IC 13-29-1-4Regional management plan

Sec. 4.

ARTICLE IV. REGIONAL DISPOSAL PLAN

The Commission shall adopt and periodically update a regional disposal plan designed to ensure the safe and efficient disposal of waste generated within the region. In adopting a regional waste disposal plan, the Commission shall do all of the following:

a. Adopt procedures for determining, consistent with considerations for public health and safety, the type and number of compact facilities which are presently necessary and which are projected to be necessary to dispose of waste generated within the region.

b. Develop and adopt procedures and criteria for identifying a party state as a host state for a compact facility. In developing these criteria, the Commission shall consider all of the following:

1. The health, safety, and welfare of the citizens of the party states.
2. The existence of compact facilities within each party state.
3. The minimization of waste transportation.
4. The volumes and types of wastes projected to be generated within each party state.
5. The environmental impacts on the air, land and water resources of the party states.
6. The economic impacts on the party states.

c. Conduct such hearings, and obtain such reports, studies, evidence and testimony required by its approved procedures prior to identifying a party state as a host state for a needed compact facility.

d. Prepare a draft disposal plan and any update thereof, including procedures, criteria, and host states, which shall be made available in a convenient form to the public for comment. Upon the request of a party state, the Commission shall conduct a public hearing in that state prior to the adoption or update of the disposal plan. The disposal plan and any update thereof shall include the Commission's response to public and party state comment.

[Pre-1996 Recodification Citation: 13-5-9-4.]

As added by P.L. 1-1996, SEC. 19. Amended by P.L. 131-1996, SEC.5.

IC 13-29-1-5Rights and obligations of party states

Sec. 5.

ARTICLE V. RIGHTS AND OBLIGATIONS

OF PARTY STATES

a. Each party state shall act in good faith in the performance of acts and courses of conduct which are intended to ensure the provision of facilities for regional availability and usage in a manner consistent with this compact.

b. Except for waste attributable to radioactive material or waste imported into the region in order to render the material or waste amenable to transportation, storage, disposal, or recovery, or in order to convert the waste or material to another usable material, or to reduce it in volume or otherwise treat it, each party state has the right to have all wastes generated within its borders disposed of at compact facilities subject to the payment of all fees established by the host state under Article VI(j) of this compact and to the provisions contained in Articles VI(l), VI(s), VIII(d), IX(d), and X of this compact. All party states have an equal right of access to any facility made available to the region by any agreement entered into by the Commission pursuant to Article III(h)(6) of this compact, subject to the provisions of Articles VI(l), VI(s), VIII(d), and X of this compact.

c. If a party state's right to have waste generated within its borders disposed of at compact facilities, or at any noncompact facility made available to the region by an agreement entered into by the Commission under Article III(h)(6) of this compact, is suspended, no waste generated within its borders by any person shall be disposed of at any such facility during the period of the suspension.

d. To the extent permitted by federal law, each party state may enforce any applicable federal and state laws, regulations and rules pertaining to the packaging and transportation of waste generated within or passing through its borders. Nothing in this section shall be construed to require a party state to enter into any agreement with the U.S. Nuclear Regulatory Commission.

e. Each party state shall provide to the Commission any data and information the Commission requires to implement its responsibilities. Each party state shall establish the capability to obtain any data and information required by the Commission.

f. If, notwithstanding the sovereign immunity provision in Article VII(f)(1) and the indemnification provided for in Articles III(p), VI(o), and VII(g) of this compact, a party state incurs a cost as a result of an inadequate remedial action fund or an exhausted long-term care fund, or incurs a liability as a result of an action described in Article VII(f)(1) and not described in Article VII(f)(2) of this compact, the cost or liability shall be the pro rata obligation of each party state and each state that has withdrawn from this compact or had its membership in this compact revoked. The Commission shall determine each state's pro rata obligation in a fair and equitable manner based on the amount of waste from each such state that has been or is projected to be disposed of at the compact facility with respect to which the cost or liability to be shared was incurred. No state shall be obligated to pay the pro rata obligation of any other state.

The pro rata obligations provided for in Article V(f) of this compact do not result in the creation of state debt. Rather, the pro rata obligations are contractual obligations that shall be enforced by only the commission or an affected party state.

g. If the party states make payment pursuant to Article V(f) of this compact, the surcharge or fee provided for in Article III(j) of this compact shall be used to collect the funds necessary to reimburse the party states for those payments. The Commission shall determine the time period over which reimbursement shall take place.

[Pre-1996 Recodification Citation: 13-5-9-5.]

As added by P.L. 1-1996, SEC. 19. Amended by P.L. 131-1996, SEC. 6.

IC 13-29-1-6Development, operation, and closing of compact facilities

Sec. 6.

ARTICLE VI. DEVELOPMENT, OPERATION, AND CLOSING OF COMPACT FACILITIES

a. Any party state may volunteer to become a host state, and the Commission may designate that state as a host state.

b. If not all compact facilities required by the regional disposal plan are developed pursuant to Article VI(a) of this compact, the Commission may designate a host state.

c. After a state is designated a host state by the Commission, it is responsible for the timely development and operation of the compact facility it is designated to host. The development and operation of the compact facility shall not conflict with applicable federal and host state laws, rules, and regulations, provided that the laws, rules, and regulations of a host state and its political subdivisions shall not prevent, nor shall they be applied so as to prevent, the host state's discharge of the obligation set forth in Article VI(c) of this compact. The obligation set forth in Article VI(c) of this compact is contingent upon the discharge by the Commission of its obligation set forth in Article III(i)(5) of this compact.

d. If a party state designated as a host state fails to discharge the obligations imposed upon it by Article VI(c) of this compact, its host state designation may be terminated by a two-thirds vote of the Commission with the member from the host state of any then operating compact facility voting in the affirmative. A party state whose host state designation has been terminated has failed to fulfill its obligations as a host state and is subject to the provisions of Article VIII(d) of this compact.

e. Any party state designated as a host state may request the Commission to relieve that state of the responsibility to serve as a host state. Except as set forth in Article VI(d) of this compact, the Commission may relieve a party state of its responsibility only upon a showing by the requesting party state that, based upon criteria established by the Commission that are consistent with any applicable federal criteria, no feasible potential compact facility site exists within its borders.

A party state relieved of its host state responsibility shall repay to the Commission any funds provided to that state by the Commission for the development of a compact facility, and also shall pay to the Commission the amount the Commission determines is necessary to ensure that the

Commission and the other party states do not incur financial loss as a result of the state being relieved of its host state responsibility. Any funds so paid to the Commission with respect to the financial loss of the other party states shall be distributed forthwith by the Commission to the party states that would otherwise incur the loss. In addition, until the state relieved of its responsibility is again designated as a host state and a compact facility located in that state begins operating, it shall annually pay to the Commission, for deposit in the remedial action fund, an amount the Commission determines is fair and equitable in light of the fact the state has been relieved of the responsibility to host a compact facility, but continues to enjoy the benefits of being a member of this compact.

f. The host state shall select the technology for the compact facility. If requested by the Commission, information regarding the technology selected by the host state shall be submitted to the Commission for its review. The Commission may require the host state to make changes in the technology selected by the host state if the Commission demonstrates that the changes do not decrease the protection of air, land, and water resources and the health and safety of all people who may be affected by the facility. If requested by the host state, any Commission decision requiring the host state to make changes in the technology shall be preceded by an adjudicatory hearing in which the Commission shall have the burden of proof.

g. A host state may assign to a private contractor the responsibility, in whole or in part, to develop, construct, operate, close, or provide long-term care for a compact facility. Assignment of such responsibility by a host state to a private contractor does not relieve the host state of any responsibility imposed upon it by this compact. A host state may secure indemnification from the contractor for any costs, liabilities, and expenses incurred by the host state resulting from the development, construction, operation, closing, or long-term care of a compact facility.

h. To the extent permitted by federal and state law, a host state shall regulate and license any facility within its borders and ensure the long-term care of that facility.

i. A host state shall accept waste for disposal for a period of twenty years from the date the compact facility in the host state becomes operational, or until its capacity has been reached, whichever occurs first. At any time before the compact facility closes, the host state and the Commission may enter into an agreement to extend the period during which the host state is required to accept such waste or to increase the capacity of the compact facility. Except as specifically authorized by Article VI(l)(4) of this compact, the twenty year period shall not be extended, and the capacity of the facility shall not be increased, without the consent of the affected host state and the Commission.

j. A host state shall establish a system of fees to be collected from the users of any compact facility within its borders. The fee system, and the costs paid through the system, shall be reasonable and equitable. The fee system shall be subject to the Commission's approval. The fee system shall provide the host state with sufficient revenue to pay costs associated with the compact facility including, but not limited to, operation, closing, long-term care, debt service, legal costs, local impact assistance, and local financial incentives. The fee system also shall be used to collect the surcharge provided in Article III(j)(2) of this compact. The fee system shall include incentives for source reduction and shall be based on the hazard of the waste as well as the volume.

k. A host state shall ensure that a compact facility located within its borders that is permanently closed is properly cared for so as to ensure protection of air, land, and water resources and the health and safety of all people who may be affected by the facility.

l. The development of subsequent compact facilities shall be as follows:

1. No compact facility shall begin operating until the Commission designates the host state of the next compact facility.

2. The following actions shall be taken by the state designated to host the next compact facility within the specified number of years after the compact facility it is intended to replace begins operation:

a. Within three years, enact legislation providing for the development of the next compact facility.

b. Within seven years, initiate site characterization investigations and tests to determine licensing suitability for the next compact facility.

c. Within eleven years, submit a license application for the next compact facility that the responsible licensing authority deems complete.

If a host state fails to take any of these actions within the specified time, all waste generated by any person within that state shall be denied access to the then operating compact facility, and to any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to Article III(h)(6) of this compact, until the action is taken. Denial of access may be rescinded by the Commission, with the member from the host state of the then operating compact facility voting in the affirmative. A host state that fails to take any of these actions within the specified time has failed to fulfill its obligations as a host state and is subject to the provisions of Articles VI(d) and VIII(d) of this compact.

3. Within fourteen years after any compact facility begins operating, the state designated to host the next compact facility shall have obtained a license from the responsible licensing authority to construct and operate the compact facility the state has been designated to host. If the license is not obtained within the specified time, all waste generated by any person within the state designated to host the next compact facility shall be denied access to the then operating compact facility, and to any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to Article III(h)(6) of this compact, until the license is obtained. The state designated to host the next compact facility shall have failed in its obligations as a host state and shall be subject to Articles VI(d) and VIII(d) of this compact. In addition, at the sole option of the host state of the then operating compact facility, all waste generated by any person within any party state that has not fully discharged its obligations under Article VI(i) of this compact shall be denied access to the then operating compact facility, and to any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to Article III(h)(6) of this compact, until the license is obtained. Denial of access may be rescinded by the Commission, with the member from the host state of the then operating compact facility voting in the affirmative.

4. If twenty years after a compact facility begins operating, the next compact facility is not ready to begin operating, the state designated to host the next compact facility shall have failed in its obligation as a host state and shall be subject to Articles VI(d) and VIII(d) of this compact. If at the time the capacity of the then operating compact facility has been reached, or twenty years after the facility began operating, whichever occurs first, the next compact facility is not ready to begin

operating, the host state of the then operating compact facility, without the consent of any other party state or the Commission, may continue to operate the facility until a compact facility in the next host state is ready to begin operating. During any such period of continued operation of a compact facility, all waste generated by any person within the state designated to host the next compact facility shall be denied access to the then operating compact facility and to any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to Article III(h)(6) of this compact. In addition, during such period, at the sole option of the host state of the then operating compact facility, all waste generated by any person within any party state that has not fully discharged its obligations under Article VI(i) of this compact shall be denied access to the then operating compact facility and to any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to Article III(h)(6) of this compact. Denial of access may be rescinded by the commission, with the member from the host state of the then operating compact facility voting in the affirmative. The provisions of Article VI(l)(4) of this compact shall not apply if their application is inconsistent with an agreement between the host state of the then operating compact facility and the Commission as authorized in Article VI(i) of this compact, or inconsistent with Article VI(p) or (q) of this compact.

5. During any period that access is denied for waste disposal pursuant to Article VI(l)(2), (3), or (4) of this compact, the party state designated to host the next compact disposal facility shall pay to the host state of the then operating compact facility an amount the Commission determines is reasonably necessary to ensure that the host state, or any agency or political subdivision thereof, does not incur financial loss as a result of the denial of access.

6. The Commission may modify any of the requirements contained in Articles VI(l)(2) and (3) of this compact if it finds that circumstances have changed so that the requirements are unworkable or unnecessarily rigid or no longer serve to ensure the timely development of a compact facility. The Commission may adopt such a finding by a two-thirds vote, with the member from the host state of the then operating compact facility voting in the affirmative.

m. This compact shall not prevent an emergency closing of a compact facility by a host state to protect air, land and water resources and the health and safety of all people who may be affected by the facility. A host state that has an emergency closing of a compact facility shall notify the Commission in writing within three working days of its action and shall, within thirty (30) working days of its action, demonstrate justification for the closing.

n. A party state that has fully discharged its obligations under Article VI(i) of this compact shall not again be designated a host state of a compact facility without its consent until each party state has been designated to host a compact facility and has fully discharged its obligations under Article VI(i) of this compact or has been relieved under Article VI(e) of this compact of its responsibility to serve as a host state.

o. Each host state of a compact facility shall establish a long-term care fund to pay for monitoring, security, maintenance, and repair of the facility after it is permanently closed. The expenses of administering the long-term care fund shall be paid out of the fund. The fee system established by the host state that establishes a long-term care fund shall be used to collect moneys in amounts that are adequate to pay for all long-term care of the compact facility. The moneys shall be deposited into the long-term care fund. Except where the matter is resolved through arbitration, the amount to be collected through the fee system for deposit into the fund shall be determined through an agreement between the Commission and the host state establishing the fund. Not less than three years, nor more than five years, before the compact

facility it is designated to host is scheduled to begin operating, the host state shall propose to the Commission the amount to be collected through the fee system for deposit into the fund. If, one hundred eighty days after such proposal is made to the Commission, the host state and the Commission have not agreed, either the Commission or the host state may require the matter to be decided through binding arbitration. The method of administration of the fund shall be determined by the host state establishing the long-term care fund, provided that moneys in the fund shall be used only for the purposes set forth in Article VI(o) of this compact and shall be invested in accordance with the standards applicable to trustees under the laws of the host state establishing the fund. If, after a compact facility is closed, the Commission determines the long-term care fund established with respect to that facility is not adequate to pay for all long-term care for that facility, the Commission shall collect and pay over to the host state of the closed facility, for deposit into the long-term care fund, an amount determined by the Commission to be necessary to make the amount in the fund adequate to pay for all long-term care of the facility. If a long-term care fund is exhausted and long-term care expenses for the facility with respect to which the fund was created have been reasonably incurred by the host state of the facility, those expenses are a liability with respect to which generators shall provide indemnification as provided in Article VII(g) of this compact. Generators that provide indemnification shall have contribution rights as provided in Article VII(g) of this compact.

p. A host state that withdraws from the compact or has its membership revoked shall immediately and permanently close any compact facility located within its borders, except that the Commission and a host state may enter into an agreement under which the host state may continue to operate, as a noncompact facility, a facility within its borders that, before the host state withdrew or had its membership revoked, was a compact facility.

q. If this compact is dissolved, the host state of any then operating compact facility shall immediately and permanently close the facility, provided that a host state may continue to operate a compact facility or resume operating a previously closed compact facility, as a noncompact facility, subject to all of the following requirements:

1. The host state shall pay to the other party states the portion of the funds provided to that state by the Commission for the development, construction, operation, closing, or long-term care of a compact facility that is fair and equitable, taking into consideration the period of time the compact facility located in that state was in operation and the amount of waste disposed of at the facility, provided that a host state that has fully discharged its obligations under Article VI(i) of this compact shall not be required to make such payment.

2. The host state shall physically segregate waste disposed of at the facility after this compact is dissolved from waste disposed of at the facility before this compact is dissolved.

3. The host state shall indemnify and hold harmless the other party states from all costs, liabilities, and expenses, including reasonable attorneys' fees and expenses, caused by operating the facility after this compact is dissolved, provided that this indemnification and hold harmless obligation shall not apply to costs, liabilities, and expenses resulting from the activities of a host state as a generator of waste.

4. Moneys in the long-term care fund established by the host state that are attributable to the operation of the facility before this compact is dissolved, and investment earnings thereon, shall be used only to pay the cost of monitoring, securing, maintaining, or repairing that portion of the facility used for the disposal of waste before this compact is dissolved. Such moneys and

investment earnings, and any moneys added to the long-term care fund through a distribution authorized by Article III(r) of this compact, also may be used to pay the cost of any remedial action made necessary by an event resulting from the disposal of waste at the facility before this compact is dissolved.

r. Financial statements of a compact facility shall be prepared according to generally accepted accounting principles. The Commission may require the financial statements to be audited on an annual basis by a firm of certified public accountants selected and paid by the Commission.

s. Waste may be accepted for disposal at a compact facility only if the generator of the waste has signed, and there is on file with the Commission, an agreement to provide indemnification to a party state, or employee of that state, for all of the following:

1. Any cost of a remedial action described in Article III(p) of this compact that, due to inadequacy of the remedial action fund, is not paid as set forth in that provision.

2. Any expense for long-term care described in Article VI(o) of this compact that, due to exhaustion of the long-term care fund, is not paid as set forth in that provision.

3. Any liability for damages to persons, property, or the environment incurred by a party state, or employee of that state while acting within the scope of employment, resulting from the development, construction, operation, regulation, closing, or long-term care of a compact facility, or any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to Article III(h)(6) of this compact, or any other matter arising from this compact. The agreement also shall require generators to indemnify the party state or employee against all reasonable attorney's fees and expenses incurred in defending any action for such damages. This indemnification shall not extend to liability based on any of the following:

a. The activities of the party states as generators of waste.

b. The obligations of the party states to each other and the Commission imposed by this compact or other contracts related to the disposal of waste under this compact.

c. Activities of a host state or employees thereof that are grossly negligent or willful and wanton.

The agreement shall provide that the indemnification obligation of generators shall be joint and several, except that the indemnification obligation of the party states with respect to their activities as generators of waste shall not be joint and several, but instead shall be prorated according to the amount of waste that each state had disposed of at the compact facility giving rise to the liability. Such proration shall be calculated as of the date of the event giving rise to the liability. The agreement shall be in a form approved by the Commission with the member from the host state of any then operating compact facility voting in the affirmative. Among generators there shall be rights of contribution based on equitable principles, and generators shall have rights of contribution against any other person responsible for such damages under common law, statute, rule, or regulation, provided that a party state that through its own activities did not generate any waste disposed of at the compact facility giving rise to the liability, an employee of such a party state, and the Commission shall have no such contribution obligation. The Commission may waive the requirement that the party state sign and file such an indemnification agreement as a condition to being able to dispose of waste generated as a result of the party state's activities. Such a waiver shall not relieve a party state of the indemnification obligation imposed by Article VII(g) of this compact.

[Pre-1996 Recodification Citation: 13-5-9-6.]

As added by P.L. 1-1996, SEC. 19. Amended by P.L. 131-1996, SEC. 7.

IC 13-29-1-7 Other laws and regulations

Sec. 7.

ARTICLE VII. OTHER LAWS AND REGULATIONS

a. Nothing in this compact:

1. Abrogates or limits the applicability of any act of the Congress or diminishes or otherwise impairs the jurisdiction of any federal agency expressly conferred thereon by the Congress;
2. Prevents the enforcement of any other law of a party state which is not inconsistent with this compact;
3. Prohibits any generator from storing or treating, on its own premises, waste generated by it within the region;
4. Affects any administrative or judicial proceeding pending on the effective date of this compact;
5. Alters the relations between and the respective internal responsibility of the government of a party state and its subdivisions;
6. Affects the generation, treatment, storage or disposal of waste generated by the atomic energy defense activities of the Secretary of the U.S. Department of Energy or successor agencies or federal research and development activities as described in 42 U.S.C. 2021;
7. Affects the rights and powers of any party state or its political subdivisions, to the extent not inconsistent with this compact, to regulate and license any facility or the transportation of waste within its borders;
8. Requires a party state to enter into any agreement with the U.S. Nuclear Regulatory Commission;
or
9. Limits, expands, or otherwise affects the authority of a state to regulate low-level radioactive waste classified by any agency of the United States government as "below regulatory concern" or otherwise exempt from federal regulation.

b. If a court of the United States finally determines that a law of a party state conflicts with this compact, this compact shall prevail to the extent of the conflict. The Commission shall not commence an action seeking such a judicial determination unless commencement of the action is approved by a two-thirds vote of the membership of the Commission.

c. Except as authorized by this compact, no law, rule or regulation of a party state or of any of its subdivisions or instrumentalities may be applied in a manner which discriminates against the generators of another party state.

d. Except as provided in Articles III(m) and VII(f) of this compact, no provision of this compact shall be construed to eliminate or reduce in any way the liability or responsibility, whether arising under common law, statute, rule, or regulation, of any person for penalties, fines, or damages to

persons, property, or the environment resulting from the development, construction, operation, closing, or long-term care of a compact facility, or any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to Article III(h)(6) of this compact, or any other matter arising from this compact. The provisions of this compact shall not alter otherwise applicable laws relating to compensation of employees for workplace injuries.

e. Except as provided in 28 U.S.C. 1251(a), the district courts of the United States have exclusive jurisdiction to decide cases arising under this compact. Article VII(e) of this compact does not apply to proceedings within the jurisdiction of state or federal regulatory agencies nor to judicial review of proceedings before state or federal regulatory agencies. Article VII(e) of this compact shall not be construed to diminish other laws of the United States conferring jurisdiction on the courts of the United States.

f. For the purposes of activities pursuant to this compact, the sovereign immunity of party states and employees of party states shall be as follows:

1. A party state or employee thereof, while acting within the scope of employment, shall not be subject to suit or held liable for damages to persons, property, or the environment resulting from the development, construction, operation, regulation, closing, or long-term care of a compact facility, or any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to Article III(h)(6) of this compact. This applies whether the claimed liability of the party state or employee is based on common law, statute, rule, or regulation.

2. The sovereign immunity granted in Article VII(f)(1) of this compact does not apply to any of the following:

a. Actions based upon the activities of the party states as generators of waste. With regard to those actions, the sovereign immunity of the party states shall not be affected by this compact.

b. Actions based on the obligations of the party states to each other and the Commission imposed by this compact, or other contracts related to the disposal of waste under this compact. With regard to those actions, the party states shall have no sovereign immunity.

c. Actions against a host state, or employee thereof, when the host state or employee acted in a grossly negligent or willful and wanton manner.

g. If in any action described in Article VII(f)(1) and not described in Article VII(f)(2) of this compact, it is determined that, notwithstanding Article VII(f)(1) of this compact, a party state, or employee of that state who acted within the scope of employment, is liable for damages or has liability for other matters arising under this compact as described in Article VI(s)(3) of this compact, the generators who caused waste to be placed at the compact facility with respect to which the liability was incurred shall indemnify the party state or employee against that liability. Those generators also shall indemnify the party state or employee against all reasonable attorney's fees and expenses incurred in defending against any such action. The indemnification obligation of generators under Article VII(g) of this compact shall be joint and several, except that the indemnification obligation of party states with respect to their activities as generators of waste shall not be joint and several, but instead shall be prorated according to the amount of waste each state has disposed of at the compact facility giving rise to the liability. Among generators, there shall be rights of contribution based upon equitable principles, and generators shall have rights of contribution against any other person responsible for such damages under common law, statute, rule, or regulation. A party state that through its own activities did not generate any waste disposed

of at the compact facility giving rise to the liability, an employee of such a party state, and the Commission shall have no contribution obligation under Article VII(g) of this compact. Article VII(g) of this compact shall not be construed as a waiver of the sovereign immunity provided for in Article VII(f)(1) of this compact.

h. The sovereign immunity of a party state provided for in Article VII(f)(1) of this compact shall not be extended to any private contractor assigned responsibilities as authorized in Article VI(g) of this compact.

[Pre-1996 Recodification Citation: 13-5-9-7.]

As added by P.L. 1-1996, SEC. 19. Amended by P.L. 131-1996, SEC. 8.

IC 13-29-1-8 Eligible parties, withdrawal, revocation, suspension of access, entry into force, and termination

Sec. 8.

ARTICLE VIII. ELIGIBLE PARTIES, WITHDRAWAL, REVOCATION, SUSPENSION OF ACCESS, ENTRY INTO FORCE, AND TERMINATION

a. Any state may petition the Commission to be eligible for membership in the compact. The Commission may establish appropriate eligibility requirements. These requirements may include, but are not limited to, an eligibility fee or designation as a host state. A petitioning state becomes eligible for membership in the compact upon the approval of the Commission, including the affirmative vote of the member from each host state in which a compact facility is operating or being developed or constructed. Any state becoming eligible upon the approval of the Commission becomes a member of the compact when the state enacts this compact into law and pays the eligibility fee established by the commission.

b. The Commission is formed upon the appointment of Commission members and the tender of the membership fee payable to the Commission by three party states. The Governor of the first state to enact this compact shall convene the initial meeting of the Commission. The Commission shall cause legislation to be introduced in the Congress which grants the consent of the Congress to this compact, and shall take action necessary to organize the Commission and implement the provision of this compact.

c. A party state that has fully discharged its obligations under Article VI(i) of this compact or has been relieved under Article VI(e) of this compact of its responsibilities to serve as a host state may withdraw from this compact by repealing the authorizing legislation and by receiving the unanimous consent of the Commission. Withdrawal takes effect on the date specified in the Commission resolution consenting to withdrawal. All legal rights of the withdrawn state established under this compact, including, but not limited to, the right to have waste generated within its borders disposed of at compact facilities, cease upon the effective date of withdrawal, but any legal obligations of that party state under this compact, including, but not limited to, those set forth in Article VIII(e) of this compact continue until they are fulfilled.

d. Any party state that fails to comply with the terms of this compact or fails to fulfill its obligations may have reasonable financial penalties imposed against it, the right to have waste generated within its borders disposed of at compact facilities, or any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to Article III(h)(6) of this compact suspended, or its membership in the compact revoked by a two-thirds vote of the Commission, provided that the membership of the party state designated to host the next compact facility shall not be revoked unless the member from the host state of any then operating compact facility votes in the affirmative. Revocation takes effect on the date specified in the resolution revoking the party state's membership. All legal rights of the revoked party state established under this compact, including, but not limited to, the right to have waste generated within its borders disposed of at compact facilities, cease upon the effective date of revocation, but any legal obligations of that party state under this compact, including, but not limited to, those set forth in Article VIII(e) of this compact, continue until they are fulfilled. The chairperson of the Commission shall transmit written notice of a revocation of a party state's membership in the compact, suspension of a party state's waste disposal rights, or imposition of financial penalties immediately following the vote of the Commission to the governor of the affected party state, governors of all the other party states, and the Congress of the United States.

e. A party state that withdraws from this compact or has its membership in the compact revoked before it has fully discharged its obligations under Article VI of this compact forthwith shall repay to the Commission the portion of the funds provided to that state by the Commission for the development, construction, operation, closing, or long-term care of a compact facility that the Commission determines is fair and equitable, taking into consideration the period of time the compact facility located in that host state was in operation and the amount of waste disposed of at the facility. If at any time after a compact facility begins operating, a party state withdraws from the compact or has its membership revoked, the withdrawing or revoked party state shall be obligated forthwith to pay to the Commission the amount the Commission determines would have been paid under the fee system established by the host state of the facility to dispose of at the facility the estimated volume of waste generated in the withdrawing or revoked party state that would have been disposed of at the facility from the time of withdrawal or revocation until the time the facility is closed. Any funds so paid to the Commission shall be distributed by the Commission to the persons who would have been entitled to receive the funds had they originally been paid to dispose of waste at the facility. Any person receiving such funds from the Commission shall apply the funds to the purposes to which they would have been applied had they originally been paid to dispose of waste at the compact facility. In addition, a withdrawing or revoked party state forthwith shall pay to the Commission an amount the Commission determines to be necessary to cover all other costs and damages incurred by the Commission and the remaining party states as a result of the withdrawal or revocation. The intention of Article VIII(e) of this compact is to eliminate any decrease in revenue resulting from withdrawal of a party state or revocation of a party state's membership, to eliminate financial harm to the remaining party states, and to create an incentive for party states to continue as members of the compact and to fulfill their obligations. Article VIII(e) of this compact shall be construed and applied so as to effectuate this intention.

f. Any party state whose right to have waste generated within its borders disposed of at compact facilities is suspended by the Commission shall pay to the host state of the compact facility to which access has been suspended the amount the Commission determines is reasonably necessary to ensure that the host state, or any political subdivision thereof, does not incur financial loss as a result of the suspension of access.

g. This compact becomes effective upon enactment by at least three eligible states and consent to this compact by the Congress. The consent given to this compact by the Congress shall extend to any future admittance of new party states and to the power of the commission to regulate the shipment and disposal of waste and disposal of naturally occurring and accelerator-produced radioactive material pursuant to this compact. Amendments to this compact are effective when enacted by all party states and, if necessary, consented to by the Congress. To the extent required by Section (4)(D) of the Low-Level Radioactive Waste Policy Amendments Act of 1985, every five years after this compact has taken effect, the Congress by law may withdraw its consent.

h. The withdrawal of a party state from this compact, the suspension of waste disposal rights, the termination of a party state's designation as a host state, or the revocation of a state's membership in this compact does not affect the applicability of this compact to the remaining party states.

i. This compact may be dissolved and the obligations arising under this compact may be terminated only as follows:

1. Through unanimous agreement of all party states expressed in duly enacted legislation; or
2. Through withdrawal of consent to this compact by the Congress under Article I, Section 10 of the United States Constitution, in which case dissolution shall take place one hundred twenty days after the effective date of the withdrawal of consent.

Unless explicitly abrogated by the state legislation dissolving this compact, or if dissolution results from withdrawal of congressional consent, the limitations on the investment and use of long-term care funds in Articles VI(o) and VI(q)(4) of this compact, the contractual obligations in Article V(f) of this compact, the indemnification obligations and contribution rights in Articles VI(o), VI(s), and VII(g) of this compact, and the operation rights and indemnification and hold harmless obligations in Article VI(q) of this compact shall remain in force notwithstanding dissolution of this compact.

[Pre-1996 Recodification Citation: 13-5-9-8.]

As added by P.L. 1-1996, SEC. 19. Amended by P.L. 131-1996, SEC. 9.

IC 13-29-1-9 Penalties and enforcement

Sec. 9.

ARTICLE IX. PENALTIES AND ENFORCEMENT

a. Each party state shall prescribe and enforce penalties against any person who is not an official of another state for violation of any provision of this compact.

b. The parties to this compact intend that the courts of the United States shall specifically enforce the obligations, including the obligations of party states and revoked or withdrawn party states, established by this compact.

c. The Commission, an affected party state, or both may obtain injunctive relief, recover damages, or both to prevent or remedy violations of this compact.

d. Each party state acknowledges that the transport into a host state of waste packaged or transported in violation of applicable laws, rules, and regulations may result in the imposition of sanctions by the host state which may include reasonable financial penalties assessed against any

generator, transporter, or collector responsible for the violation, or suspension or revocation of access to the compact facility in the host state by any generator, transporter, or collector responsible for the violation.

e. Each party state has the right to seek legal recourse against any party state which acts in violation of this compact.

f. This compact shall not be construed to create any cause of action for any person other than a party state or the Commission. Nothing in Article IX(f) of this compact shall limit the right of judicial review set forth in Article III(n)(3) of this compact or the rights of contribution set forth in Articles III(p), VI(o), VI(s), and VII(g) of this compact.

[Pre-1996 Recodification Citation: 13-5-9-9.]

As added by P.L. 1-1996, SEC. 19. Amended by P.L. 131-1996, SEC. 10.

IC 13-29-1-10 Severability and construction

Sec. 10.

ARTICLE X. SEVERABILITY AND CONSTRUCTION

The provisions of this compact shall be severable and if any provision of this compact is finally determined by a court of competent jurisdiction to be contrary to the Constitution of any participating state or of the United States or the application thereof to any person or circumstance is held invalid, the validity of the remainder of this compact to that person or circumstance and the applicability of the entire compact to any other person or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. If any provision of this compact imposing a financial obligation upon a party state, or a state that has withdrawn from this compact or had its membership in this compact revoked, is finally determined by a court of competent jurisdiction to be unenforceable due to the state's constitutional limitations on its ability to pay the obligation, then that state shall use its best efforts to obtain an appropriation to pay the obligation, and, if the state is a party state, its right to have waste generated within its borders disposed of at compact facilities, or any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to Article III(h)(6) of this compact, shall be suspended until the appropriation is obtained.

[Pre-1996 Recodification Citation: 13-5-9-10.]

As added by P.L. 1-1996, SEC. 19. Amended by P.L. 131-1996, SEC. 11.

IC 13-29-1-11 Commission members; appointment; tenure

Sec. 11. (a) The governor shall appoint a person to serve as the Commission member representing Indiana. The Commission member appointed by the governor serves a four (4) year term, at the pleasure of the governor.

(b) If the Commission member representing the state of Indiana:

- (1) dies;
- (2) resigns; or
- (3) is removed from office;

before the expiration of the member's term, the governor shall appoint a new Commission member to serve the remainder of the unexpired term.

(c) The governor may appoint an alternate to act on behalf of the Commission member when the Commission member is absent.

[Pre-1996 Recodification Citation: 13-5-9-11.]

As added by P.L. 1-1996, SEC. 19.

IC 13-29-1-12 Commission members; per diems and expenses

Sec. 12. (a) A Commission member or alternate appointed by the governor under section 11 of this chapter is entitled to the following:

- (1) The minimum salary per diem as provided in [IC 4-10-11-2.1\(b\)](#) while performing duties under this chapter.
- (2) Reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(b) Per diems and expenses under this section shall be paid from money appropriated to the department of environmental management.

[Pre-1996 Recodification Citation: 13-5-9-12.]

As added by P.L. 1-1996, SEC. 19.

IC 13-29-1-13 Rules

Sec. 13. The board shall adopt under [IC 4-22-2](#) and [IC 13-14-9](#) the rules necessary to implement this chapter.

[Pre-1996 Recodification Citation: 13-5-9-13.]

As added by P.L. 1-1996, SEC. 19. Amended by P.L. 133-2012, SEC. 157.

IC 13-29-1-14 Violations; offenses; penalties

Sec. 14. A person who knowingly or intentionally commits any of the violations listed in section 3(o) of this chapter commits a Level 6 felony. However, notwithstanding [IC 35-50-2-7\(a\)](#), a person who is convicted of a Level 6 felony under this section may, in addition to the term of imprisonment established under [IC 35-50-2-7\(a\)](#), be fined not more than fifty thousand dollars (\$50,000) for each day of violation.

[Pre-1996 Recodification Citation: 13-5-9-14.]

As added by P.L. 1-1996, SEC. 19. Amended by P.L. 131-1996, SEC. 12; P.L. 158-2013, SEC. 195.

IC 13-29-1.1 Chapter 1.1. Fees

[13-29-1.1-1](#) Application of chapter

[13-29-1.1-2](#) Assessment of fee

IC 13-29-1.1-1 Application of chapter

Sec. 1. This chapter does not apply to attorney's fees.

As added by P.L. 131-1996, SEC. 1.

IC 13-29-1.1-2 Assessment of fee

Sec. 2. Only the midwest interstate low-level radioactive waste commission or the host state (as defined in [IC 13-11-2-103](#)) may assess a fee allowed under [IC 13-29-1](#).

As added by P.L. 131-1996, SEC. 1.