

ARTICLE 5. RAILROADS

Rule 1. Tariffs and Rates

105 IAC 5-1-1 Policy

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 1. Public Law 96-448, "The Staggers Rail Act of 1980", requires the states which wish to retain jurisdiction to bring their standards and procedures for regulating railroad rates, classifications, rules and practices into conformity with the Interstate Commerce Act. It is the intent of Congress that railroad companies receive adequate revenues through regulatory encouragement of modal competition, rate flexibility, and relaxed rate reasonableness standards.

Mindful of this commission's obligations to safeguard the public's interests, it shall henceforth be the policy of the public service commission of Indiana to regulate railroad matters in a manner consistent with the standards and procedures set forth by Congress in the Interstate Commerce Act. (*Indiana Department of Transportation; 105 IAC 5-1-1; filed May 18, 1983, 2:18 p.m.: 6 IR 1200; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-1) to Indiana Department of Transportation (105 IAC 5-1-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-2 Standards and procedures

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 2. The Staggers Act requires the states to adopt uniform standards and procedures for regulating railroad rates, rules and practices which are in accord with the provisions of the Act. This and the following administrative rules constitute Indiana's revised approach to railroad regulation. The standards and procedures included in 170 IAC 3-1.1-3 through 3-1.1-56 [sections 3 through 51 of this rule] supersede any previous rules or regulations to the extent that the previous rules or regulations might be in conflict with them.

Indiana shall not exercise jurisdiction over general rate increases, inflation-based rate increases, and fuel adjustment surcharges. Further, Indiana shall not require prejustification of rate increases. These points are treated in 170 IAC 3-1.1-6 through 3-1.1-16 and 170 IAC 3-1.1-21 through 3-1.1-37 [sections 6 through 16 of this rule and sections 21 through 37 of this rule].

The timing for rail rate changes shall be 10 days and 20 days for decreases and increases, respectively. These points are covered in 170 IAC 3-1.1-3 through 3-1.1-5 [sections 3 through 5 of this rule].

Indiana shall complete investigation and suspension cases within five months, although a three month extension may be applied for in each case. Indiana shall not suspend rates on its own motion, and shall not suspend a proposed rate change unless a protestant shows that he is substantially likely to prevail on the merits of his case; that without suspension the proposed rate will cause him substantial injury; and that an investigation with a refund and trust account provision will afford him insufficient protection. Indiana shall handle refund requirements in accordance with the provisions of 49 U.S.C. Sec. 10707. These points are treated in 170 IAC 3-1.1-6 through 3-1.1-16 [sections 6 through 16 of this rule].

In approaching the issue of rate reasonableness, Indiana shall first consider, within 90 days, whether or not the traffic in question is subject to market dominance. Standards for market dominance determinations are treated in 170 IAC 3-1.1-17 through 3-1.1-20 [sections 17 through 20 of this rule]. A finding that no market dominance exists shall be conclusive evidence that a rate is reasonable. Should market dominance be found, a reasonableness determination shall be made based on the principle of railroad revenue adequacy, an evaluation of the ratio of revenue to variable cost for the traffic involved, the revenue contribution of the traffic to the railroad's revenue base, and national energy and transportation goals. These procedures are treated in 170 IAC 3-1.1-6 through 3-1.1-16 [sections 6 through 16 of this rule].

Railroad rates may be altered in accordance with the zone of rate flexibility provisions of 49 U.S.C. Sec. 10707a. These provisions are incorporated in 170 IAC 3-1.1-6 through 3-1.1-16 and 170 IAC 3-1.1-21 through 3-1.1-37 [sections 6 through 16 of this rule and sections 21 through 37 of this rule].

To encourage shipper and railroad planning, Indiana shall regulate intrastate contract rates in accordance with 49 U.S.C. Sec. 10713. These points are treated in 170 IAC 3-1.1-38 through 3-1.1-50.1 [sections 38 through 50 of this rule].

Indiana adopts the applicable provisions of 49 U.S.C. Sec. 10741 on discrimination. Indiana shall not make a finding of discrimination if differences in rates, classification, rules and practices result from differences in service provided.

Discrimination shall not be found to apply to the following sections of 49 U.S.C.:

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- (1) Sec. 10713—Contract rates, other than as provided for in subsection (d)(2)(B);
- (2) Sec. 10705a—Surcharges or cancellations;
- (3) Sec. 10728—Separate rates for distinct rail services;
- (4) Rail rates applicable to different routes; or
- (5) Sec. 10751—Business entertainment expenses.

Indiana may undertake an exemption proceeding either on its own motion or upon petition from any interested party. An exemption granted for a class of interstate traffic shall automatically apply in Indiana. Each exemption initiative shall be considered individually, in accordance with the provisions of 170 IAC 3-1.1-56 [section 51 of this rule].

Indiana shall regulate two special classes of rates, limited liability rates and rates on recyclable materials, in a manner consistent with federal law, specifically 49 U.S.C. Sec. 10730, and 49 U.S.C. Sec. 10731, respectively. Recyclable materials shall be transported at a revenue to variable cost ratio of no more than that allowed by the Staggers Act as amended from time to time. Railroads are free to publish rates under which the liability of the carrier is limited to a value established by the written declaration of the shipper or by written agreement between the shipper and railroad. These points are treated in 170 IAC 3-1.1-6 through 3-1.1-16 [sections 6 through 16 of this rule].

To further clarify the regulatory approach which Indiana will employ, the public service commission of Indiana hereby adopts the following sections of the Interstate Commerce Act as amended by Staggers Rail Act of 1980.

- Section 10505 – Exemption
- Section 10701a – Standards for rates for rail carriers
- Section 10704(a)(2)(4) – Adequate revenues
- Section 10705 – Authority: through routes, joint classifications, rates and divisions
- Section 10705a – Joint rate surcharges and cancellations
- Section 10706 – Rate agreements; exemption from antitrust laws
- Section 10707 – Investigation and suspension of rates
- Section 10707a – Zone of rail carrier rate flexibility
- Section 10709 – Determination of market dominance
- Section 10712 – Inflation-based rate increases
- Section 10713 – Contracts
- Section 10726 – Long and short haul transportation
- Section 10730 – Rates and liability based on value
- Section 10731e – Transportation of recyclable materials
- Section 10741 – Rate discrimination
- Section 10751 – Business entertainment expenses
- Section 10762 – General tariff requirements

(Indiana Department of Transportation; 105 IAC 5-1-2; filed May 18, 1983, 2:18 p.m.: 6 IR 1200; filed Feb 27, 1985, 9:24 a.m.: 8 IR 767; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-2) to Indiana Department of Transportation (105 IAC 5-1-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-3 Railroad tariffs; filing notice

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 3. The notice period for filing railroad tariffs with the public service commission of Indiana which contain new or changed rates, classifications, rules practices or other provisions shall be as follows:

(a) The tariff shall be on file with this commission at least 30 days prior to its effective date for rates or provisions published in connection with new service or changes resulting in increased rates or decreased value of service.

(b) The tariff shall be on file with this commission at least 10 days prior to its effective date for changes resulting in decreased rates or increased value of service, or changes resulting in neither increases nor reductions.

(c) The tariff shall be on file with this commission at least 45 days prior to its effective date for joint rate surcharges and cancellations filed pursuant to the provisions of 49 U.S.C. Sec. 10705a.

(d) A railroad or its publishing agent may file an application pursuant to IC 8-3-1-8, to depart from the provisions of 170 IAC 3-1.1 [this rule].

(e) Railroad contracts shall be filed with this commission pursuant to the provisions of 170 IAC 3-1.1-38 through 3-1.1-50.1 [sections 38 through 50 of this rule]. (*Indiana Department of Transportation; 105 IAC 5-1-3; filed May 18, 1983, 2:18 p.m.: 6 IR 1202; filed Feb 27, 1985, 9:24 a.m.: 8 IR 769; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-3) to Indiana Department of Transportation (105 IAC 5-1-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-4 Content of notice

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 4. Each rate publication filed with the commission shall be in the form prescribed by the commission and shall contain such information as the commission may require, including, but not limited to:

(1) A tariff containing all relevant and material provisions relating to the rate and its application. The tariff shall comply with the interstate commerce commission's rules for filing and construction of tariffs.

(2) A statement of the effect which the rate shall have on the carrier's gross revenue (increase, decrease, no change).

(*Indiana Department of Transportation; 105 IAC 5-1-4; filed May 18, 1983, 2:18 p.m.: 6 IR 1202; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-4) to Indiana Department of Transportation (105 IAC 5-1-4) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-5 Defect in notice; consequence

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 5. No rate shall be considered published under the provisions of the Staggers Act unless notice has been given in compliance with this section. However, if a tariff is filed and becomes effective, despite some defect, the rates, charges, fares, classifications, rules, etc., in that tariff are in effect and will be applied until cancelled or amended or until they are stricken from the files by the Indiana public service commission. (*Indiana Department of Transportation; 105 IAC 5-1-5; filed May 18, 1983, 2:18 p.m.: 6 IR 1202; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-5) to Indiana Department of Transportation (105 IAC 5-1-5) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-6 Commencement of proceedings

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 6. When a new individual or joint rate (except general rate increases, inflation-based increases, or fuel adjustment surcharges filed under the provisions of 49 U.S.C. Sec. 11501(b)(6) over which the public service commission of Indiana has no jurisdiction) or an individual or joint classification, rule, or practice related to a rate is filed with the public service commission of

Indiana by a rail carrier the commission may:

- (1) upon its own initiative, commence an investigation proceeding, or
- (2) upon protest of an interested party commence an investigation proceeding, or
- (3) upon protest of an interested party commence an investigation and suspension proceeding

to determine whether the proposed rate, classification, rule or practice is discriminatory, unreasonable, or in any other way violates applicable law.

Rates based on limited carrier liability may be published and filed with the commission, without prior approval, pursuant to 49 U.S.C. Sec. 10730. However, such rates will be subject to protest on grounds such as unreasonableness or nonconformance with the tariff publication requirements found in 49 CFR 1300.4(i)(11).

The commission shall give reasonable notice to interested parties before beginning a proceeding. However, the commission may begin the proceeding without allowing an interested party to file an answer. (*Indiana Department of Transportation; 105 IAC 5-1-6; filed May 18, 1983, 2:18 p.m.: 6 IR 1202; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-6) to Indiana Department of Transportation (105 IAC 5-1-6) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-7 Duration of suspension period

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 7. The commission shall complete a proceeding commenced under 170 IAC 3-1.1-6 [section 6 of this rule] within five months from the effective date of the proposed rate, classification, rule or practice except that if the commission reports to the interstate commerce commission that it cannot make a final decision within that time and explains the reason for the delay, it may then take an additional three months to complete the proceeding and make a final decision.

If the commission does not render a final decision within the applicable time period the rate, classification, rule or practice shall become effective immediately or, if already in effect, shall remain in effect.

However, if a railroad makes a tariff filing to adjust an intrastate rate, rule or practice under 49 U.S.C. Sec. 11501(d) to that of similar traffic moving in interstate commerce, and the commission investigates or suspends such tariff filing, the carrier may apply to the interstate commerce commission to review the matter if the public service commission of Indiana has not acted with finality by the 120th day after the tariff was filed. If the carrier elects not to refer the matter to the interstate commerce commission the public service commission [sic., of] Indiana may decide the issue within five months, as provided for in this subsection. (*Indiana Department of Transportation; 105 IAC 5-1-7; filed May 18, 1983, 2:18 p.m.: 6 IR 1203; filed Feb 27, 1985, 9:24 a.m.: 8 IR 769; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-7) to Indiana Department of Transportation (105 IAC 5-1-7) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-8 Grounds for suspension

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 8. The commission may not suspend a proposed rate, classification, rule, or practice unless it appears from the specific facts shown by the verified statement of a person that:

- (1) it is substantially likely that the protestants will prevail on the merits;
- (2) without suspension, the proposed rate change will cause substantial injury to the protestant or the party represented by the protestants; and
- (3) because of the peculiar economic circumstances of the protestant, the provisions of 170 IAC 3-1.1-13 [section 13 of this rule] do not protect the protestant.

(*Indiana Department of Transportation; 105 IAC 5-1-8; filed May 18, 1983, 2:18 p.m.: 6 IR 1203; filed Feb 27, 1985, 9:24 a.m.: 8 IR 769; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-8) to Indiana Department of Transportation (105 IAC 5-1-8) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-9 Market dominance

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 9. (a) When the new individual or joint rate is alleged to be unreasonably high, the commission, within 90 days after the start of a proceeding under this administrative rule, shall determine whether or not the railroad proposing the rate has market dominance over the transportation to which the rate applies.

(b) If the commission finds that:

(1) The railroad proposing the rate has market dominance over the transportation to which the rate applies, it shall then proceed to determine whether or not the proposed rate exceeds a maximum reasonable level for that transportation.

(2) The railroad proposing the rate does not have market dominance over the transportation to which the rate applies, it shall not make a determination on the issue of reasonableness.

(c) A finding by the commission that the proposed rate has a revenue-variable cost percentage which is equal to or greater than the percentages found in 49 U.S.C. Sec. 10709(d)(2) does not establish a presumption that:

(1) the railroad has or does not have market dominance over such transportation, or

(2) the proposed rate exceeds or does not exceed a reasonable maximum level.

(d) Evidentiary guidelines for the determination of whether or not the railroad has market dominance over the transportation to which the rate applies shall be found in 170 IAC 3-1.1-17 through 3-1.1-20 [sections 17 through 20 of this rule]. (*Indiana Department of Transportation; 105 IAC 5-1-9; filed May 18, 1983, 2:18 p.m.: 6 IR 1203; filed Feb 27, 1985, 9:24 a.m.: 8 IR 769; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-9) to Indiana Department of Transportation (105 IAC 5-1-9) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-10 Reasonableness of rate; evaluation

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 10. (a) Except for nonferrous recyclables, the commission shall evaluate the reasonableness of a rate only after market dominance has been established. In determining whether a rate is reasonable, the commission shall consider, among other factors, evidence of the following:

(1) the amount of traffic which is transported at revenues which do not contribute to going concern value and efforts made to minimize such traffic;

(2) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and

(3) the carrier's mix of rail traffic to determine whether the shippers of one commodity are paying an unreasonable share of the carrier's overall revenues.

(b) Pursuant to the interstate commerce commission's decision in Ex Parte 394, a rate on nonferrous recyclable material is presumed to be unreasonable when it is set at a revenue to variable cost ratio greater than that allowed by the Staggers Act as amended from time to time. (*Indiana Department of Transportation; 105 IAC 5-1-10; filed May 18, 1983, 2:18 p.m.: 6 IR 1203; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-10) to Indiana Department of Transportation (105 IAC 5-1-10) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-11 Burden of proof

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 11. (a) General—The burden shall be on the protestant to prove the matters described in 170 IAC 3-1.1-8 [section 8 of this rule].

(b) Market Dominance:

(1) Jurisdiction—The respondent railroad shall bear the burden of showing that the commission lacks jurisdiction to review the proposed rate because the rate produces a revenue-variable cost percentage that is less than the percentages found in 49 U.S.C. Sec. 10709(d)(2). The railroad may meet its burden of proof by showing the revenue-variable cost percentage for that

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transportation to which the rate applies is less than the threshold percentage cited in 49 U.S.C. Sec. 10707(d)(2). The protestant may rebut the railroad's evidence with a showing that the revenue-variable cost percentage is equal to or greater than the threshold percentage in 49 U.S.C. Sec. 10709(d)(2).

(2) Intramodal and intermodal competition—The protestant shall bear the burden of demonstrating that there exists no effective intramodal or intermodal competition for the transportation to which the rate applied. Respondent railroad may rebut the protestant's showing with evidence that effective intramodal or intermodal competition exists.

(3) Product and geographic competition—If intramodal and intermodal competition is shown not to exist, the respondent railroad shall have the burden of proving that either product or geographic competition for the involved transportation does exist. The protestant shall then have the burden of proving that such competition is not effective.

(c) Reasonableness:

(1) Rate increases:

(A) Protestant's burden of proof—A party protesting a rate increase shall bear the burden of demonstrating its unreasonableness if such rate:

(i) is authorized under 49 U.S.C. Sec. 10707a; and

(ii) results in a revenue-variable cost percentage for the transportation to which the rate applied that is less than the lesser of the percentages described in clauses (i) and (ii) of 49 U.S.C. Sec. 10707a(e)(2)(A).

(B) Respondent's burden of proof—The respondent railroad shall bear the burden of demonstrating the reasonableness of a rate increase if such rate:

(i) is greater than that authorized under 49 U.S.C. Sec. 10707a, or

(ii) results in a revenue-variable cost percentage for the transportation to which the rate applied that is equal to or greater than the lesser of the percentage described in clauses (i) and (ii) of the 49 U.S.C. Sec. 10707a(e)(2)(A); and

(iii) it is subjected to an investigation by the commission under 49 U.S.C. Sec. 10707.

(2) Rate decreases—A party protesting a rate decrease shall bear the burden of demonstrating that the rate does not contribute to the going concern value of the railroad, and is therefore unreasonably low.

(Indiana Department of Transportation; 105 IAC 5-1-11; filed May 18, 1983, 2:18 p.m.: 6 IR 1204; filed Feb 27, 1985, 9:24 a.m.: 8 IR 770; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-11) to Indiana Department of Transportation (105 IAC 5-1-11) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-12 Rate flexibility

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 12. (a) A rail carrier may raise any rate pursuant to the limitations described in 49 U.S.C. Sec. 10707a. Base rates increased by the quarterly rail cost adjustment factor will not be investigated or suspended. In addition, a railroad may increase any rate by 6% per annum (to a maximum of 18%) over the four year period following enactment of the Staggers Act. Thereafter, railroads not earning adequate revenues, as defined by the interstate commerce commission, may raise rates 4% per year. Neither the 6% or 4% increase shall be suspended. If the increase results in a revenue to variable cost ratio that equals or exceeds 190%, the commission may investigate the rate either on its own motion or on complaint of an interested party.

(b) In determining whether or not to investigate the rate this commission shall consider:

(1) the amount of traffic which the railroad transports at revenues which do not contribute to going concern value and efforts made to minimize such traffic;

(2) the amount of traffic which contributes only marginally to fixed costs and the extent to which rates on such traffic can be changed to maximize the revenues from such traffic;

(3) the impact of the challenged rate on national energy goals;

(4) state and national transportation policy; and

(5) the revenue adequacy goals incorporated in the interstate commerce act.

(Indiana Department of Transportation; 105 IAC 5-1-12; filed May 18, 1983, 2:18 p.m.: 6 IR 1204; filed Feb 27, 1985, 9:24 a.m.: 8 IR 771; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-12) to Indiana Department of Transportation (105 IAC 5-1-12) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-13 Suspension actions; monetary adjustments

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 13. (a) Rate Increases With No Suspensions—In the event the commission does not suspend but investigates a proposed rate increase under 170 IAC 3-1.1-8 [section 8 of this rule], the commission shall require the rail carrier to account for all amounts received under the increase until the commission completes its proceedings under 170 IAC 3-1.1-7 [section 7 of this rule]. The accounting shall specify by whom and for whom the amounts are paid. When the commission takes final action, it shall require the carrier to refund to the person for whom the amounts were paid that part of the increased rate found to be unreasonable, plus interest at a rate equal to the average yield (on the date that the “Statement of Monetary Adjustment” is filed) of marketable securities of the United States government having a duration of 90 days.

(b) Rate Increases With Suspension—If a rate is suspended under 170 IAC 3-1.1-8 [section 8 of this rule] and any portion of such rate is later found to be reasonable the carrier shall collect from each person using the transportation to which the rate applies the difference between the original rate and the portion of the suspended rate found to be reasonable for any services performed during the period of suspension, plus interest at a rate equal to the average yield (on the date that the “Statement of Monetary Adjustment” is filed) of marketable securities of the United States government having a duration of 90 days.

(c) Rate Decreases With Suspension—In the event the commission suspends a proposed rate decrease under 170 IAC 3-1.1-8 [section 8 of this rule] which is later found to be reasonable, the rail carrier must refund any part of the decrease found to be reasonable if the carrier makes the refund available to each shipper who participated in the rate, in accordance with the relative amount of such shipper's traffic transported at such rate. (*Indiana Department of Transportation; 105 IAC 5-1-13; filed May 18, 1983, 2:18 p.m.: 6 IR 1205; filed Feb 27, 1985, 9:24 a.m.: 8 IR 771; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-13) to Indiana Department of Transportation (105 IAC 5-1-13) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-14 Filing procedures

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 14. This section shall apply in connection with the filing of a protest against a proposed rail rate, classification, rule or practice and the reply thereto:

(1) Liberal construction. This section shall be liberally construed to secure just, speedy and inexpensive determination of the issues presented.

(2) Definitions. (A) “Proceeding”—An investigation by the commission into the propriety of a proposed rail rate.

(B) “Protestant”—A person opposed to any tariff or schedule becoming effective.

(C) “Respondent”—The railroad and/or their agent against whom the protest is filed or any other person designated by the commission to participate in the proceeding.

(D) “Party”—Shall include the “protestant” and “respondent” or others permitted or directed by the commission to participate in the proceeding.

(E) “Pleading”—A protest, reply to protest, a motion or any other written comment relating to the proceeding.

(F) “Person”—Shall include individuals as well as corporations, companies, associations, firms, partnerships, co-partnerships, societies, joint stock companies, or a trustee, receiver, assignee, or personal representative of another individual.

(3) Communications. (A) The protest, reply and any other pleadings relating to the proceeding will not be considered unless made in writing and filed with the commission.

(B) The protest, reply, “Statement of Monetary Adjustment” and other pleadings shall be addressed to:

Public Service Commission of Indiana
Transportation Department
901 State Office Building
Indianapolis, Indiana 46204

(C) The protest, reply or other pleadings relating to the proceeding must be received for filing at the commission's office within the time limits, if any, for such filing. The date of receipt at the commission and not the date of deposit in the mail is determinative.

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(D) If, after examination, the commission finds that the protest, reply, "Statement of Monetary Adjustment" or other pleadings relative to the proceeding are not in substantial compliance with the provisions of this section:

- (i) the commission may decline to accept the documents and may return them unfiled, or
- (ii) the commission may accept the documents for filing and advise the party tendering it of the deficiencies and require that they be corrected.

(4) Signature and verification. (A) The protest, reply or other pleadings relating to the proceeding shall be signed in ink and the signer's address shall be stated.

(B) The facts alleged in a protest, reply or other pleadings shall be verified by the person on whose behalf it is filed. If a protest, reply or other pleading is filed on behalf of a corporation or other organization, it shall be verified by an officer of such corporation or organization.

(5) Copies and service of documents. (A) Copies:

- (i) Protest—The original and two copies shall be filed with the commission and one copy shall be simultaneously served upon the publishing railroad or its publishing agent and upon other parties known by the protestant to be interested in the proceeding.
- (ii) Reply to protest—The original and two copies shall be filed with the commission and one copy shall be simultaneously served upon the protestant and upon the other parties named in the protest.
- (iii) Pleadings—The original and two copies shall be filed with the commission and one copy shall be simultaneously served upon all parties to the proceeding.

(B) Certificate of service—When a protest, reply or pleading is filed with the commission it shall include a certificate showing simultaneous service upon all parties to the proceeding.

Such service shall be made by delivery in person, or by first-class mail, certified mail, registered mail, or by express or equivalent parcel delivery service, properly addressed with charges prepaid, one copy to each party. Service upon the parties shall be by the same means of communication and class of service employed in making delivery to the commission. Provided, however, that when delivery is made to the commission in person, and it is not feasible to serve the other parties in person, service shall be made by first-class or express mail.

A certificate of service shall be in the following form:

I certify that I have this day served the foregoing document upon the following parties of record in this proceeding (here list the names and addresses of parties served) by (here state the precise manner of making service).

Dated at _____, this ____ day of _____, 19 ____.

(Signature)

(6) Content and timing. (A) Protest:

(i) Content:

(AA) Identification—The protested tariff should be identified by making reference to the name of the railroad or its publishing agent, to the public service commission of Indiana docket number, to the specific items or particular provisions protested and to the effective date of the protested publication. Reference should also be made to the tariff and specific provisions thereof that are proposed to be superseded.

(BB) Grounds for suspension—The protest shall incorporate sufficient facts to:

- (aa) meet the criteria for suspension as set forth in 170 IAC 3-1.1-8 [section 8 of this rule]; and
- (bb) to sustain the applicable burdens of proof as set forth in 170 IAC 3-1.1-11 [section 11 of this rule]. Further, the protest should include any additional information that would support suspension of the proposed rate.

(ii) Timing: A protest against and a request for suspension of a tariff filed by a railroad or its publishing agent shall be received by the commission at least:

- (AA) ten days prior to the effective date, when the proposed change is to become effective upon not less than 20 days notice;
- (BB) five days prior to the effective date, when the proposed change is to become effective upon not less than 10 days notice.

(B) Reply to protest:

(i) Content—The reply shall adequately identify the protested tariff. Further, it shall contain sufficient facts to rebut the allegations made in the protest and to sustain the applicable burdens of proof as set forth in 170 IAC 3-1.1-11 [section 11 of this rule].

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(ii) Timing—A reply to a protest must be received by the commission not later than:

(AA) the fourth working day prior to the effective date when the proposed change is to become effective upon not less than 20 days notice;

(BB) the second working day prior to the effective date when the proposed change is to become effective upon not less than 10 days notice.

(C) Emergency protests and replies: In emergencies, telegraphic protests and replies are acceptable provided that the provisions of subsection (3) and (5)(A)—only the telegram and the original signed verified copy need be filed with the commission—(6)(A) and (6)(B) are complied with. The telegrams shall include statements to the effect that they are copies of original protests or replies which have been signed, verified, and mailed to the commission. The telegrams shall also indicate the method of verification (e.g., by statements sworn to before a notary public). The telegrams shall also include a certification that copies either have been, or will be immediately, telegraphed to the proponent carriers or their publishing agents in the case of protests, or to the protestants in case of replies.

(D) Nonsuspension of investigation: Should a protestant desire to proceed further against a tariff which is not suspended or investigated or which has been suspended and the suspension vacated and the investigation discontinued, a separate later complaint should be filed.

(Indiana Department of Transportation; 105 IAC 5-1-14; filed May 18, 1983, 2:18 p.m.: 6 IR 1205; filed Feb 27, 1985, 9:24 a.m.: 8 IR 771; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-14) to Indiana Department of Transportation (105 IAC 5-1-14) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-15 Refund or collection; determination of commission

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 15. (a) Refund or collection. Except as otherwise provided in paragraph (b), when the commission finds, pursuant to 170 IAC 3-1.1-13 [*section 13 of this rule*], that a railroad shall make refunds on freight charges collected or that the railroad is entitled to collect additional freight charges, but the amount cannot be ascertained upon the record before it, the party entitled to the refund or the railroad entitled to collect additional monies, as the case may be, shall immediately prepare a statement showing details of the shipments involved in the proceedings, in accordance with the Statement of Monetary Adjustment. The statement shall not include any shipment not covered by the commission's findings.

If the shipments moved over more than one route, a separate statement shall be prepared for each route and separately numbered, except that shipments as to which the collecting carrier is in each instance the same may be listed in a single statement if grouped according to routes.

The party entitled to the refund shall submit its statement, together with the paid freight bills on the shipments, or true copies thereof, to the carrier which collected the charges, for verification and certification as to its accuracy.

If the railroads are entitled to additional monies, the carrier collecting the initial freight charges shall prepare the statement for and on behalf of the involved carriers.

All discrepancies, duplications, or other errors in the statements shall be adjusted by the parties and corrected agreed statements submitted to the commission.

The certificate shall be signed in ink by a general accounting officer of the carrier and shall cover all of the information shown in the statement.

If the carrier which collected the charges is not a respondent to the proceedings, its certificate shall be concurred in by like signature on behalf of a carrier named as a respondent in the proceeding.

Statements so prepared and certified shall be filed with the commission whereupon it shall consider entry of an order awarding refunds or collection of additional freight charges as the case may be.

(b) Petitions based on damages. Where 170 IAC 3-1.1 [*this rule*] provides for an award of damages for violations which involve tariff errors, tariff misconstruction, or the erroneous application of demurrage charges, and a carrier is willing to pay, or to waive collection of undercharges, petitions for appropriate authority should be filed by the carrier by submitting either a letter of intent to pay reparations, a letter of intent to pay reparation and waive undercharges, or a letter of intent to waive undercharges. Such petitions must be filed within the statutory period and will be deemed the equivalent of an informal complaint and an answer admitting the matters stated in the petition. These petitions shall contain, as a minimum, the following information:

(1) The name and addresses of the complainants seeking damages.

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- (2) The names of the defendants against which the claim is filed.
- (3) The amount of the claim.
- (4) The tariff authority for both the assailed and the sought rate.
- (5) The dates on which, or within which, the shipments moved and when necessary to show compliance with the statute or *[sic.]* limitations, the dates when the shipments were delivered or tendered for delivery.
- (6) The points of origin and destination of the shipments and the routes of movements.
- (7) The commodity.
- (8) An admission by the carrier that the assailed rate was unreasonable, and a showing, where appropriate, that it has been removed from the tariff.
- (9) A statement certifying that all defendants against which the claim is lodged concur in the intent to pay reparations or waive undercharges.
- (10) Evidence to show compliance with the statute of limitations.
- (11) A brief explanation of the circumstances causing the claim for damages and the precedent relied upon by the carrier in agreeing to honor it.

If a carrier is unable to file such petition within the statutory period and the claim is not already protected from the operation of the statute by informal complaint, a letter of registration setting forth the facts may be submitted by the carrier within the statutory period. This letter will also be deemed the equivalent of an informal complaint filed on behalf of the shipper or consignee and sufficient to stay the operation of the statute. However, an appropriate letter of intent must be filed within one year following receipt by the commission of the letter of registration.

(c) Waiver of monies due to railroad:

- (1) Communications—All communications shall be in writing and shall be addressed to:

Public Service Commission of Indiana
Transportation Department
901 State Office Building
Indianapolis, Indiana 46204

(2) Freight charges in excess of \$2,000.

(A) Petition to waive collection of insignificant amounts—If a railroad wishes to waive collection of amounts due pursuant to 170 IAC 3-1.1-13(b) *[section 13(b) of this rule]*, when such amounts are more than \$2,000, a petition for appropriate authority may be filed by the railroad, with the commission, in the form of a letter of intent to waive insignificant amounts. The petition should contain the following information:

- (i) The names and address of the customer for whom the railroad wishes to waive collection.
- (ii) The names and addresses of the railroads involved in the intended waiver and a statement certifying that all railroads concur in the action.
- (iii) The amount intended to be waived.
- (iv) The number of the investigation and suspension docket involved, the beginning and ending dates of the suspension period, and any other pertinent tariff information.
- (v) The points of origin and destination of the shipments and the routes of movement, if relevant.
- (vi) A brief statement of justification for the intended waiver, including the anticipated costs of billing, collecting and/or litigating if the waiver is not permitted.
- (vii) When certification is necessary pursuant to (ii) above, it should be in the following format:

The (name of the petitioning railroad) hereby certifies that it holds the written concurrence of all of the railroads named in this petition.

By its (petitioner's title)

Dated at _____, this ____ day of _____, 19 ____.

(petitioner's signature)

(B) Public notice—Petitions to waive collection of insignificant amounts will be available by the commission for public inspection on date of receipt, in the transportation department office.

(C) Contested petitions—Any interested person as defined in 170 IAC 3-1.1-14(2)(F) *[section 14(2)(F) of this rule]* may protest the waiver of monies due and such protest shall be filed with the commission within 30 days of the commission's receipt of the railroad's letter of intent to waive insignificant amounts. If the protest is not filed within the 30 day period,

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it will not be considered as being timely filed.

The protest shall be in the form of a letter of objection and shall identify the investigation and suspension docket number, shall clearly state the reasons for objection and shall certify according to 170 IAC 3-1.1-14(5)(B) [section 14(5)(B) of this rule] that a copy of the letter of objection has been served on all parties named in the letter of intent to waive insignificant amounts.

Replies to a letter of objection shall be filed no later than the 45th day after the commission's receipt of the letter of intent to waive insignificant amounts. If the reply to the protest is not filed within the 45 day period, it will not be considered as being timely filed.

If the letter of objection is timely filed, the commission will consider the letter of intent to waive insignificant amounts as being contested. The commission will notify all parties to the proceeding that the petition is contested and the railroad shall not be allowed to take any further action until the commission conducts a hearing on the matter, makes its findings and enters an appropriate order granting or denying the petition to waive monies due. Further, the filing of a letter of deposition with the commission will not be required.

(D) Uncontested petitions—A letter of intent to waive insignificant amounts which is not contested shall be considered an order of the commission authorizing the action contemplated in the petition 45 days after the commission's receipt of the petition.

Within 30 days after the expiration of the 45 day period, the railroad filing the petition shall file a letter of disposition informing the commission of the action taken, the date of the action and the amount of monies waived.

(3) Freight charges \$2,000 or less: If the amount to be waived is \$2,000 or less, no petition need be filed prior to waiver of monies due, provided that this exemption may be invoked by the railroad only once for any person as defined in 170 IAC 3-1.1-14(2)(F) [section 14(2)(F) of this rule] who uses the original rate during the suspension period.

However, a letter of disposition informing the commission of the investigation and suspension docket number, the action taken, the date of the action and the amount of monies due that were waived shall be submitted to the commission within 30 days of the waiver.

(Indiana Department of Transportation; 105 IAC 5-1-15; filed May 18, 1983, 2:18 p.m.: 6 IR 1207; errata, 6 IR 1455; filed Feb 27, 1985, 9:24 a.m.: 8 IR 773; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-15) to Indiana Department of Transportation (105 IAC 5-1-15) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-16 Monetary adjustments

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 16. The claim for seeking monetary adjustments shall be substantially in the following form:

Claim of _____ under decision of the public service commission of Indiana in Docket No. _____.

_____ Date of shipment
_____ Date of delivery or tender of delivery
_____ Date charges were paid
_____ Car initials
_____ Car number
_____ Origin
_____ Destination
_____ Route
_____ Commodity
_____ Weight
_____ Rate
_____ Amount
_____ Rate
_____ Amount

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_____ Refund (or monies due) on basis of commission's decision

_____ Charges paid by (1)

_____ Claimant hereby certifies that this statement includes claims only on shipments covered by the findings in the docket above described and contains no claim for refund (or monies due) previously filed with the commission by or on behalf of claimant or, so far as claimant knows, by or on behalf of any person, in any other proceedings, except as follows: (here indicate any exceptions, and explanations thereof).

_____ (Claimant)

By: _____

_____ (Address)

_____ (Date)

Total amount of refund (or monies due) \$ _____. The undersigned hereby certifies that this statement has been checked against the records of this company and found correct.

Date _____ concurred (2) in: _____ Company _____ Company. Defendant Collecting Carrier, Defendant (3) _____.

By _____, Auditor. By _____ Auditor.

- (1) Here insert name of person paying charges in the first instance, and state whether as consignor, consignee, or in other capacity.
- (2) For concurring certificate in case the collection carrier is not a defendant.
- (3) If not a defendant, strike out the word "defendant". (*Indiana Department of Transportation; 105 IAC 5-1-16; filed May 18, 1983, 2:18 p.m.: 6 IR 1209; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-16) to Indiana Department of Transportation (105 IAC 5-1-16) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-17 Intramodal competition

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 17. Intramodal competition refers to competition between two or more railroads transporting the same commodity between the same origin and destination. A shipper has rail alternatives when, for a given purpose, he can be served by more than one railroad or combination of different railroads. The degree to which these alternatives compete with one another depends on such factors as:

- (1) the number of rail alternatives;
- (2) the feasibility of each alternative as evidenced by:
 - (A) physical characteristics of the route associated with each alternative that are indicative of the feasibility of using that alternative for the traffic in question (e.g., circuitry, track conditions, etc.); and
 - (B) the direct access of both the shipper and the receiver to each of the rail alternatives as evidenced by individual rail sidings, neutral terminal companies or reciprocal switching; or if direct access is not available, then the feasibility of using local trucking to transport the commodity to or from terminals;
- (3) the transportation costs associated with each alternative (to determine if actual use of alternatives is due to excessive rates charged by the rail carrier in question);
- (4) collective ratemaking among the railroads in question as evidenced by rate bureau involvement; and
- (5) evidence of substantial rail-related investment or long-term supply contracts.

These factors should be considered in connection with the preparation and submission of evidence pertaining to the presence or absence of effective intramodal competition. This list is neither exhaustive nor mandatory but provides a general indication of the type of evidence that would be appropriate. (*Indiana Department of Transportation; 105 IAC 5-1-17; filed May 18, 1983, 2:18 p.m.: 6 IR 1209; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-17) to Indiana Department of Transportation (105 IAC 5-1-17) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-18 Intermodal competition

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

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Sec. 18. Intermodal competition refers to competition between rail carriers and other modes for the transportation of a particular product between the same origin and destination. Motor and water carriage are the main sources of intermodal competition for railroads.

(a) Water carriage—Water carriage is restricted to certain geographic areas and is generally used for commodities moving in bulk. The evidence required to demonstrate effective competition between rail and water alternatives is in many respects similar to that required for intramodal competition among rail carriers. Parties in a rate case should provide evidence along the following lines:

- (1) the number of alternatives involving different carriers;
- (2) the feasibility of each alternative as evidenced by:
 - (A) pertinent physical characteristics, for the product in question, of the transportation or routing associated with each alternative;
 - (B) the access of both the shipper and receiver to each alternative; and
- (3) the transportation costs of each alternative.

Again, these factors are not exhaustive.

(b) Motor carriage—Unlike rail or water alternatives, the availability of many motor carrier alternatives for transportation services between two points can, in most instances, be taken for granted. Therefore, the feasibility of using motor carriage as an alternative to rail may be viewed as depending exclusively on the nature of the product and the needs of the shipper or receiver. Effective competition from motor carriage may be deduced from the following types of evidence:

- (1) the amount of the product in question that is transported by motor carrier where rail alternatives are available;
- (2) the amount of the product that is transported by motor carrier under transportation circumstances (e.g., shipment size and distance) similar to rail;
- (3) physical characteristics of the product in question that may preclude transportation by motor carrier; and
- (4) the transportation costs of the rail and motor carrier alternatives.

Other types of evidence on the feasibility or nonfeasibility of motor carriage as an alternative to rail will also be considered. (*Indiana Department of Transportation; 105 IAC 5-1-18; filed May 18, 1983, 2:18 p.m.: 6 IR 1209; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-18) to Indiana Department of Transportation (105 IAC 5-1-18) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-19 Geographic competition

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 19. Geographic competition may be described as a restraint on rail pricing stemming from a shipper's or receiver's ability to get the product to which the rate applies from another source, or ship it to another destination. If shippers and receivers can do this, the railroad must compete with the railroad serving the alternate source or destination. Geographic competition among rail carriers is nontrivial for commodities in which transportation costs account for a substantial portion of the delivered price. To establish the potential for geographic competition, evidence should be submitted concerning the following:

- (1) the number of alternative geographical sources of supply or alternative destinations available to the shipper or receiver for the product in question;
- (2) the number of these alternative sources or destinations served by different carriers; and
- (3) that the product available from each source or required by each destination is the same.

Such evidence is sufficient only to indicate whether effective geographic competition is possible. To determine whether effective geographic competition actually exists, evidence showing the feasibility of each source or destination and the likelihood of competition should be presented. This evidence may be as follows:

- (1) the distance associated with each alternative source or destination;
- (2) relevant physical characteristics of the route associated with each alternative;
- (3) the access of the shipper or receiver to each transportation alternative;
- (4) the capacity of each source to supply the product in question or the capacity of each destination to absorb the product in question;
- (5) the transportation costs associated with each alternative;
- (6) collective ratemaking among the railroads in question as evidenced by rate bureaus; and
- (7) evidence of substantial rail-related investment or long-term supply contracts (more weight will be given these contracts

if made prior to October 1, 1980).

It is to be emphasized that these guidelines are not intended to encompass all pertinent evidence. (*Indiana Department of Transportation; 105 IAC 5-1-19; filed May 18, 1983, 2:18 p.m.: 6 IR 1210; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-19) to Indiana Department of Transportation (105 IAC 5-1-19) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-20 Product competition

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 20. Product competition occurs when a receiver or shipper can use a substitute(s) for the product covered by the rail rate. In that case, the railroad must compete with the railroad or other mode which carries that other product, and again, must keep its rate competitive if it wants the traffic. Evidence as to the existence of product competition should reflect the availability to the shipper or receiver of feasible substitutes and show that these substitutes can be obtained through the use of other carriers or modes without substantially greater cost, transportation or otherwise. To demonstrate whether a feasible substitute exists, the following types of evidence, among others, may be submitted:

- (1) use of a substitute product(s) by the receiver or shipper in question or by others with similar needs and under similar conditions;
- (2) the prices of the substitute product(s) relative to the product in question;
- (3) the efficiency of the substitute product(s) relative to the product in question; and
- (4) the explicit and implicit transportation costs of the substitute product(s) and the product in question.

The above factors are not intended to be exhaustive. (*Indiana Department of Transportation; 105 IAC 5-1-20; filed May 18, 1983, 2:18 p.m.: 6 IR 1210; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-20) to Indiana Department of Transportation (105 IAC 5-1-20) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-21 Formal complaints; general allegations

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 21. A formal complaint shall be so drawn as to fully and completely advise the parties defendant and the commission in what respects the provisions of the Act have been or are being violated or will be violated, and shall set forth briefly and in plain language the facts claimed to constitute such violations. If two or more sections or subsections of the Act or requirements established pursuant thereto are alleged to be violated, the facts claimed to constitute violation of one section, subsection, or requirement shall be stated separately from those claimed to constitute a violation of another section, subsection, or requirement whenever that can be done by reference or otherwise without undue repetition. (*Indiana Department of Transportation; 105 IAC 5-1-21; filed May 18, 1983, 2:18 p.m.: 6 IR 1211; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-21) to Indiana Department of Transportation (105 IAC 5-1-21) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-22 Formal complaints; damages sought

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 22. A formal complaint seeking damages, when permitted under the Act, shall be filed with the commission within the statutory period, and shall contain such data as will serve to identify with reasonable definiteness the shipments or transportation services in respect of which damages are sought. Such complaint shall state:

- (1) that complainant makes claim for damages;
- (2) the name of each individual seeking damages;
- (3) the names of defendants against which claim is made;
- (4) the commodities, the rate applied, the date when the charges were paid, by whom paid, and by whom borne;
- (5) the period of time within which or the specific dates upon which the shipments were made, and the dates when they were

delivered or tendered for delivery;

(6) the points of origin and destination, either specifically or, where they are numerous, by definite indication of a defined territorial or rate group of the points of origin and destination and, if known, the routes of movement; and

(7) the nature and amount of the injury sustained by each claimant.

If a complaint seeking the award of damages contains a claim on any shipment which has been the subject of a previous informal or formal complaint to the commission, reference to such complaint shall be given. (*Indiana Department of Transportation; 105 IAC 5-1-22; filed May 18, 1983, 2:18 p.m.: 6 IR 1211; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-22) to Indiana Department of Transportation (105 IAC 5-1-22) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-23 Formal complaints; general

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 23. The original of each formal complaint, amended or supplemental formal complaint, or cross-complaint, shall be accompanied by copies in sufficient number to enable the commission to serve one upon each defendant, including each receiver or trustee, and retain two copies in addition to the original. (*Indiana Department of Transportation; 105 IAC 5-1-23; filed May 18, 1983, 2:18 p.m.: 6 IR 1211; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-23) to Indiana Department of Transportation (105 IAC 5-1-23) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-24 Formal complaints; tariff or schedule references

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 24. The several rates, charges, schedules, classifications, regulations, or practices on which complaint is made shall be set out by specific reference to the tariffs or schedules in which they appear, whenever that is feasible. (*Indiana Department of Transportation; 105 IAC 5-1-24; filed May 18, 1983, 2:18 p.m.: 6 IR 1211; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-24) to Indiana Department of Transportation (105 IAC 5-1-24) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-25 Formal complaints; prayers for relief

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 25. (a) Generally—A formal complaint in which relief for the future is sought should contain a detailed statement of the relief desired. Relief in the alternative or of several different types may be demanded, but the issues raised in the formal complaint should not be broader than those to which complainant's evidence is to be directed at the hearing.

(b) Specific prayer for damages—Except under unusual circumstances, and for good cause shown, damages will not be awarded upon a complaint unless specifically prayed for. (*Indiana Department of Transportation; 105 IAC 5-1-25; filed May 18, 1983, 2:18 p.m.: 6 IR 1211; filed Feb 27, 1985, 9:24 a.m.: 8 IR 775; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-25) to Indiana Department of Transportation (105 IAC 5-1-25) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-26 Formal complaints; amended and supplemental

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 26. An amended or supplemental complaint may be tendered for filing by a complainant against a defendant or defendants named in the original complaint, stating a cause of action alleged to have occurred within the statutory period immediately preceding the date of such tender, in favor of complainant and against the defendant or defendants. (*Indiana Department of Transportation;*

105 IAC 5-1-26; filed May 18, 1983, 2:18 p.m.: 6 IR 1212; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-26) to Indiana Department of Transportation (105 IAC 5-1-26) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-27 Formal complaints; answers and cross complaints

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 27. (a) Generally—An answer may simultaneously be responsive to a formal complaint and to any amendment or supplement thereof. It shall be drawn so as to fully and completely advise the parties and the commission of the nature of the defense and shall admit or deny specifically and in detail each material allegation of the pleading answered. An answer may include a detailed statement of any counterproposal which a defendant may desire to submit. Unless the issue is such that separate answers are required, answer for all defendants may be filed on their behalf by one defendant in one document, in which event the answer must show clearly the names of all defendants joining therein, and their concurrence.

(b) Cross complaints—A cross complaint may be filed against other parties to the proceeding alleged to have violated the Staggers Act. Such cross-complaint must be filed by a defendant with its answer.

(c) Time for filing copies—Unless otherwise directed by the commission, an answer to a complaint shall be filed within 20 days after the day on which the complaint was served. The original and two copies of an answer shall be filed with the commission.

(d) When issue joined—If any defendant answers or fails to file and serve an answer within the period specified in paragraph (c) [subsection (c)], issue thereby is joined as to such defendant. (*Indiana Department of Transportation; 105 IAC 5-1-27; filed May 18, 1983, 2:18 p.m.: 6 IR 1212; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-27) to Indiana Department of Transportation (105 IAC 5-1-27) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-28 Formal complaints; satisfaction

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 28. If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the opposing parties shall be filed (original only need be filed), setting forth when and how the complaint has been satisfied. This action should be taken as expeditiously as possible. (*Indiana Department of Transportation; 105 IAC 5-1-28; filed May 18, 1983, 2:18 p.m.: 6 IR 1212; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-28) to Indiana Department of Transportation (105 IAC 5-1-28) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-29 Formal complaints; signature and verification

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 29. The complaint, answer and other pleadings relating to a complaint proceeding shall be signed in ink and the signer's address shall be stated.

The facts alleged in a complaint, answer or other pleadings shall be verified by the person on whose behalf it is filed. If a complaint, answer or other pleading is filed on behalf of a corporation or other organization, it shall be verified by an officer of such corporation or organization. (*Indiana Department of Transportation; 105 IAC 5-1-29; filed May 18, 1983, 2:18 p.m.: 6 IR 1212; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-29) to Indiana Department of Transportation (105 IAC 5-1-29) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-30 Formal complaints; certificate of service

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 30. Proof of service of any paper shall be by certificate of attorney, affidavit or acknowledgement. A certificate of service

shall be in the following form:

I certify that I have this day served the foregoing document upon the following parties of record in this proceeding (here list the names and addresses of those served) by (here state the precise manner of making service).

Dated at _____, this _____ day of _____, 19 _____.

(Signature)

(Indiana Department of Transportation; 105 IAC 5-1-30; filed May 18, 1983, 2:18 p.m.: 6 IR 1212; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-30) to Indiana Department of Transportation (105 IAC 5-1-30) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-31 Statements of claimed damages; commission findings

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 31. When the commission finds that damages are due, but that the amount cannot be ascertained upon the record before it, the complainant shall immediately prepare a statement showing details of the shipments on which damages are claimed, in accordance with 170 IAC 3-1.1-37 [section 37 of this rule].

The statement shall not include any shipment not covered by the commission's findings, or any shipment on which complaint was not filed with the commission within the statutory period.

The filing of a statement will not stop the running of the statute of limitations as to shipments not covered by complaint or supplemental complaint.

If the shipments moved over more than one route, a separate statement shall be prepared for each route, and separately numbered, except that shipments, as to which the collecting carrier is in each instance the same, may be listed in a single statement if grouped according to routes.

The statement, together with the paid freight bills on the shipments, or true copies thereof, shall then be forwarded to the carrier which collected the charges, for verification and certification as to its accuracy. All discrepancies, duplications, or other errors in the statements shall be adjusted by the parties and corrected agreed statements submitted to the commission.

The certificate shall be signed in ink by a general accounting officer of the carrier and shall cover all of the information shown in the statement. If the carrier which collected the charges is not a defendant in the case, its certificate shall be concurred in by like signature on behalf of a carrier defendant.

Statements so prepared and certified shall be filed with the commission whereupon it will consider entry of an order awarding damages. *(Indiana Department of Transportation; 105 IAC 5-1-31; filed May 18, 1983, 2:18 p.m.: 6 IR 1212; filed Feb 27, 1985, 9:24 a.m.: 8 IR 776; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-31) to Indiana Department of Transportation (105 IAC 5-1-31) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

105 IAC 5-1-32 Zone of rate flexibility

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 32. Base rates increased by the quarterly rail cost adjustment factor may not be found to exceed a reasonable maximum for the transportation involved. Complaints against rate increases effected under subsections (c) and (d) of 49 U.S.C. Sec. 10707(a) shall be considered pursuant to provisions of subsection (e) of said section. *(Indiana Department of Transportation; 105 IAC 5-1-32; filed May 18, 1983, 2:18 p.m.: 6 IR 1213; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-32) to Indiana Department of Transportation (105 IAC 5-1-32) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

105 IAC 5-1-33 Market dominance; rates established

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 33. The commission shall determine within 90 days of the start of a complaint proceeding whether the carrier has market

dominance over the transportation to which the rate applies. If the commission finds that the carrier has market dominance, it may then determine that rate to be unreasonable if it exceeds a reasonable maximum for that transportation. In making a determination of market dominance, the commission shall find that the rail carrier establishing the challenged rate does not have market dominance over the transportation to which the rate applied if the rail carrier proves that the rate charged results in a revenue-variable cost percentage which is less than that stated in 49 U.S.C. Sec. 10709(d)(2).

Evidentiary guidelines for the determination of whether or not the railroad shall market dominance over the transportation to which the rate applies shall be found in 170 IAC 3-1.1-17 through 3-1.1-20 [sections 17 through 20 of this rule].

If the commission determines that a rail carrier does not have market dominance over the transportation to which a particular rate applies, the rate established by such carrier for such transportation shall be reasonable. (*Indiana Department of Transportation; 105 IAC 5-1-33; filed May 18, 1983, 2:18 p.m.: 6 IR 1213; filed Feb 27, 1985, 9:24 a.m.: 8 IR 776; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-33) to Indiana Department of Transportation (105 IAC 5-1-33) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-34 Rail rates; reasonable minimum

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 34. Rail rates shall not be established below a reasonable minimum. Any rate for transportation by a rail carrier that does not contribute to the going concern value for such carrier is presumed to be not reasonable.

Rail rates which equal or exceed the variable cost of providing the transportation are conclusively presumed to contribute to the going concern value of that rail carrier, and are therefore presumed to to [sic.] be above a reasonable minimum.

In determining whether a rate is reasonable, the commission shall consider the policy that railroads earn adequate revenues as well as evidence of the following:

- (1) the amount of traffic which is transported at revenues which do not contribute to going concern value and efforts made to minimize [sic.] such traffic;
- (2) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and
- (3) the carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues.

(*Indiana Department of Transportation; 105 IAC 5-1-34; filed May 18, 1983, 2:18 p.m.: 6 IR 1213; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-34) to Indiana Department of Transportation (105 IAC 5-1-34) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-35 Reasonableness of existing rates; burden of proof

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 35. (a) Jurisdiction—The defendant railroad shall bear the burden of showing that the commission lacks jurisdiction to review a rate because the rate produces a revenue-variable cost percentage that is less than the percentages found in 49 U.S.C. Sec. 10709(d)(2). The railroad shall meet its burden of proof by showing the revenue-variable cost percentage for the transportation to which the rate applies is less than the threshold percentage cited in 49 U.S.C. Sec. 10709(d)(2). A complainant may rebut the railroad's evidence with a showing that the revenue-variable cost percentage is equal to or greater than the threshold percentage cited in 49 U.S.C. Sec. 10709(d)(2).

(b) Reasonableness of existing rates:

- (1) A party complaining that an existing rate is unreasonably high shall bear the burden of proving that such rate is not reasonable.
- (2) A party complaining that an existing rate is unreasonably low shall bear the burden of demonstrating that the rate does not contribute to the going concern value of the carrier, and is therefore unreasonably low.
- (3) Savings provisions—Any interested party may file a complaint alleging that an intrastate railraod [sic.] rate which was in effect on the effective date of the Staggers Act (October 1, 1980) is subject to market dominance under the provisions of 49 U.S.C. Sec. 10709 and is not reasonable under the provisions of 49 U.S.C. Sec. 10701(a). Such complaint must have been filed

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with the public service commission of Indiana within 180 days of the effective date of the Staggers Act, i.e., by March 30, 1981.

Any rate which is not challenged in a complaint filed by March 30, 1981, or which is challenged in such a complaint but (A) the rail carrier is found not to have market dominance over the transportation to which the rate applies, or (B) the rate is found to be reasonable, shall be deemed to be lawful and may not thereafter be challenged in the commission or in any court (excluding appeals from a decision of the commission).

These provisions shall not apply to any rate under which the volume of traffic transported during the twelve month period immediately preceding the effective date of the Staggers Act did not exceed 500 net tons and has increased tenfold within the three year period immediately preceding the bringing of a challenge to the reasonableness of such rate.

The complainant shall bear the burden of proving that a rate in effect on October 1, 1980, as described in this section, is unreasonable.

(Indiana Department of Transportation; 105 IAC 5-1-35; filed May 18, 1983, 2:18 p.m.: 6 IR 1214; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-35) to Indiana Department of Transportation (105 IAC 5-1-35) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-36 Rate adjustments; non-applicability

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 36. Complaints shall not be entertained by the commission to the extent that they challenge the reasonableness of the following rate adjustments:

- (1) general rate increases;
- (2) inflation-based rate increases; or
- (3) fuel adjustment surcharges.

(Indiana Department of Transportation; 105 IAC 5-1-36; filed May 18, 1983, 2:18 p.m.: 6 IR 1214; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-36) to Indiana Department of Transportation (105 IAC 5-1-36) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-37 Reparation statement

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 37. Claims for reparations shall be substantially in the following form:

Claims of _____ under decision of the public service commission of Indiana in Docket No. _____.

- _____ Date of shipment
- _____ Date of delivery or tender of delivery
- _____ Date charges were paid
- _____ Car initials
- _____ Car number
- _____ Origin
- _____ Destination
- _____ Route
- _____ Commodity
- _____ Weight
- _____ Rate
- _____ Amount
- _____ Rate
- _____ Amount
- _____ Reparation on basis of commission's decision
- _____ Charges paid by (1)

Claimant hereby certifies that this statement includes claims only on shipments covered by the findings in the docket above

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described and contains no claim for reparation previously filed with the commission by or on behalf of claimant or, so far as claimant knows, by or on behalf of any person, in any other proceedings, except as follows: (here indicate any exceptions, and explanations thereof).

(Claimant)

By: _____

(Address)

(Date)

Total amount of reparation \$ _____. The undersigned hereby certifies that this statement has been checked against the records of this company and found correct.

Date _____ concurred (2) in: _____ Company _____ Company. Defendant Collecting Carrier, Defendant (3) _____.

By _____, Auditor. By _____ Auditor.

(1) Here insert name of person paying charges in the first instance, and state whether as consignor, consignee, or in other capacity.

(2) For concurring certificate in case the collection carrier is not a defendant.

(3) If not a defendant, strike out the word "defendant". (*Indiana Department of Transportation; 105 IAC 5-1-37; filed May 18, 1983, 2:18 p.m.: 6 IR 1214; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-37) to Indiana Department of Transportation (105 IAC 5-1-37) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-38 Rail carrier contracts

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 38. (a) A contract subject *[sic.]* to this section is a written agreement, including any amendment, entered into by one or more rail carriers with one or more purchasers of rail services, to provide specified services under specified rates and conditions.

(b) A contract filed under this section shall:

(1) specify that the contract is made pursuant to 49 U.S.C. Sec. 10713. and;

(2) be signed by duly authorized parties.

(c) The term "amendment" includes written modifications signed by the parties.

(d) An amendment is treated as a new contract. An amendment is lawful only if it is filed and approved in the same manner as a contract. To the extent terms affecting the lawfulness of the underlying contract are changed, remedies are revived and review is again available. (*Indiana Department of Transportation; 105 IAC 5-1-38; filed May 18, 1983, 2:18 p.m.: 6 IR 1215; errata, 6 IR 1455; filed Feb 27, 1985, 9:24 a.m.: 8 IR 776; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-38) to Indiana Department of Transportation (105 IAC 5-1-38) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-39 Contract implementation date

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 39. Transportation or service performed under a contract or amendment may begin, without specific commission authorization on or after the date the contract and contract summary or contract amendment and supplement are filed and before commission approval *[sic.]* as defined at 170 IAC 3-1.1-40.1(F) *[section 40(f) of this rule]*, subject to the following conditions:

(a) The contract or contract amendment shall specifically state that the transportation or service may begin on the date of filing and that performance is subject to the conditions of this section. The contract summary or supplement shall separately reflect the date of commencement of service under this provision under 170 IAC 3-1.1-47.1(a)(4) *[section 48(a)(4) of this rule]*, "duration of the contract".

(b) If the rail equipment standards of 49 U.S.C. Sec. 10713(k) are exceeded, prior relief shall be obtained from the commission and shall be specifically identified in the contract summary.

(c) If the commission disapproves or rejects the contract or amendment, the appropriate noncontract tariffs or the contract

provisions otherwise in effect under previously approved contracts and amendments will be applicable.

(d) Before commission approval, the contract or amendment and transportation are subject to commission jurisdiction, 49 U.S.C. Sec. 10713, and applicable regulations.

(e) Transportation or service may not begin under a contract or an amendment to a contract before the filing date of either the contract or the amendment, respectively. (*Indiana Department of Transportation; 105 IAC 5-1-39; filed Feb 27, 1985, 9:24 a.m.: 8 IR 777; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-39) to Indiana Department of Transportation (105 IAC 5-1-39) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-40 Contracts; filing; complaints; review

Authority: IC 8-1-1-3

Affected: IC 8-3-1-1

Sec. 40. (a) Rail carriers providing transportation subject to the jurisdiction of the public service commission of Indiana shall file with the commission an original and one copy of the contract entered into with one or more purchasers of rail service. The contract shall be accompanied by three copies of a summary of the nonconfidential elements of the contract in the format specified in 170 IAC 3-1.1-44.1 through 170 IAC 3-1.1-49.1 [*sections 44 through 49 of this rule*]. A contract and contract summary (and amendments and supplements) may be rejected for noncompliance with applicable statutes and regulations.

(b) Grounds for review of contract. Within 30 days of the filing date of a contract, the commission may, on its own motion or on complaint, begin a proceeding to review it. Review can be based only on allegation of violations as described in (c) below [*subsection (c)*].

(c) Grounds for complaints. A contract may be reviewed by the commission on its own motion, or upon complaint, only on the following grounds:

(1) In the case of a contract other than a contract for the transportation of agricultural commodities (including forest products and paper), a complaint may be filed:

(A) by a shipper only on the grounds that the shipper individually will be harmed because the proposed contract unduly impairs the ability of the contracting carrier or carriers to meet common carrier obligations under IC 8-3-1-1, or

(B) by a port only on the grounds that the port individually will be harmed because the proposed contract will result in unreasonable discrimination against that port.

(2) In the case of a contract for the transportation of agricultural commodities (including forest products and paper), in addition to the grounds for a complaint described in subdivision (c)(1) [*subdivision (1)*], a complaint may be filed by a shipper on the grounds that the shipper individually will be harmed because:

(A) the rail carrier(s) unreasonably discriminated by refusing to enter into a contract with the shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue and the shipper was ready, willing and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract was offered; or

(B) the proposed contract constitutes a destructive competitive practice.

(3) "Unreasonable discrimination," as used in 170 IAC 3-1.1 [*this rule*], means, when applied to agricultural shippers, that the railroad has refused to enter into a contract with the shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and that the shipper was ready, willing, and able to enter into such contract at a time essentially contemporaneous with the period during which the contract at issue was offered, and when applied to a port, has the same meaning as the term under 49 U.S.C. Sec. 10741.

(4) The definition of "agricultural commodities," "forest products," and "paper" will be decided on a case-by-case basis.

(d) Filing and service of complaints [*sic.*]. (1) A complaint shall be filed with the Public Service Commission of Indiana, Transportation Department, 901 State Officer Building, Indianapolis, Indiana, by the 18th day after the filing of the contract.

(2) A reply shall be filed by the 23rd day after the filing of the contract.

(3) An original and seven copies of each complaint shall be filed with the commission.

(4) A copy of the complaint shall be served on each railroad participating in the contract and replies shall be served on complainant. Complaints shall be served by hand, express mail or other overnight delivery service.

(5) An appeal of a commission decision will be made in accordance with 170 IAC 1-1-1 through 170 IAC 1-1-22, subject to the following exception:

An appeal must be made at least two work days prior to the contract approval date as set out in (f) [*subsection (f)*].

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(e) Commission decision upon review of contract. Within 30 days after the date a proceeding is commenced to review a contract upon the grounds specified in (c) [subsection (c)], the commission shall decide whether the contract violates the provisions of 49 U.S.C. Sec. 10713. If the commission finds that the contract violates the provision of 49 U.S.C. Sec. 10713, it will:

(1) disapprove the contract; or

(2) in the case of agricultural contracts where the commission finds unreasonable discrimination by a carrier in accordance with subdivision (c)(3) [subsection (c)(3)], allow the carriers the option to:

(A) provide rates and services substantially similar to the contract is [sic.] issue, with such differences in terms and conditions as are justified by the evidence; or

(B) cancel the contract.

(f) Approval date of contract. (1) If the commission does not institute a proceeding to review the contract, it shall be approved on the 30th day after the filing of the contract. The contract shall be considered "expressly approved" by the commission.

(2) If the commission institutes a proceeding to review a contract, the contract is approved:

(A) on the date the commission approves the contract, if the date of approval is 30 or more days after the filing date of the contract;

(B) on the 30th day after the filing date of the contract if the commission denies the complaint against the contract prior to the 30th day after the filing date of the contract; or

(C) on the 60th day after the filing date of a contract, if the commission fails to disapprove the contract.

(g) Limitations of rights of a rail carrier to enter into future contracts. The commission may limit the right of a rail carrier to enter into future contracts if the commission determines that additional contracts would impair the ability of the rail carrier to fulfill its common carrier obligation under IC 8-3-1-1. The commission will handle these determinations on a case-by-case basis and may investigate either on its own initiative or upon the filing of a verified complaint by a shipper which demonstrates that it individually had been or will be harmed by a carrier's inability to fulfill its common carrier obligations as a result of existing contracts. (*Indiana Department of Transportation; 105 IAC 5-1-40; filed Feb 27, 1985, 9:24 a.m.: 8 IR 777; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-40) to Indiana Department of Transportation (105 IAC 5-1-40) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-41 Common carrier responsibilities

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 41. (a) The terms of a contract approved by the commission determine completely the duties and service obligations of the parties to the contract with respect of the services provided under the contract. The contract does not effect the parties' responsibilities for any services which are not included in the contract.

(b) Service under a contract approved by the commission is deemed a separate and distinct class of service and the equipment used to fulfill the contract shall not be subject to car service decisions under 49 U.S.C. Sec. 11123. (*Indiana Department of Transportation; 105 IAC 5-1-41; filed Feb 27, 1985, 9:24 a.m.: 8 IR 778; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-41) to Indiana Department of Transportation (105 IAC 5-1-41) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-42 Contract enforcement

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 42. (a) The exclusive remedy for an alleged breach of a contract approved by the commission shall be an action in an appropriate state court or United States District Court, unless the parties otherwise agree in the contract.

(b) The commission may not require a rail carrier to violate the terms of a contract that has been approved under 170 IAC 3-1.1-40.1(f) [section 40(f) of this rule], except to the extent necessary to comply with 49 U.S.C. Sec. 11128. (*Indiana Department of Transportation; 105 IAC 5-1-42; filed Feb 27, 1985, 9:24 a.m.: 8 IR 779; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-42) to Indiana Department of Transportation (105 IAC 5-1-42) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-43 Agricultural commodities contracts

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 43. (a) A rail carrier may enter into contracts for the transportation of agricultural commodities (including forest products but not including woodpulp, woodchips, pulpwood or paper) that involve the use of carrier owned or leased equipment not in excess of 40 percent of the total number of the carrier's owned or leased equipment, by major car type, except as provided in (b) [subsection (b)].

(b) In the case of a proposed contract between a Class I carrier and a shipper originating an average of 1,000 cars or more per year during the prior three year period by major car type on a particular carrier, not more than 40 percent of carrier owned or leased equipment used on the average during the prior three year period may be used for the contract without prior authorization by the commission.

(c) The commission may grant relief from the limitations of (a) and (b) [subsections (a) through (b)] if:

(1) a rail carrier or other party requests such relief; or the commission on its own initiative considers granting such relief; and

(2) the commission determines that making additional equipment available does not impair the rail carrier's ability to meet its common carrier obligations under 49 U.S.C. Sec. 11101.

(Indiana Department of Transportation; 105 IAC 5-1-43; filed Feb 27, 1985, 9:24 a.m.: 8 IR 779; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-43) to Indiana Department of Transportation (105 IAC 5-1-43) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-44 Form of contracts

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 44. (a) 170 IAC 3-1.1-44.1 through 170 IAC 3-1.1-50.1 [this section and sections 45 through 50 of this rule] govern the filing of contracts for railroad transportation services entered into by one or more rail carriers with one or more purchasers of rail service.

(b) Contracts for railroad transportation services and contract summaries shall be filed with the commission in accordance with the special tariff rules for contracts prescribed in these sections.

(c) All contracts and amendments shall be of a size not less than 8 by 10½ inches nor greater than 8½ by 14 inches; all contract summaries and supplements shall be a size not less than 8 by 10½ inches nor greater than 8½ by 11 inches, any amendment to a contract shall be the same size as the contract and any supplement to a summary shall be the same size as the summary, all shall be clear, legible, and on durable paper. *(Indiana Department of Transportation; 105 IAC 5-1-44; filed Feb 27, 1985, 9:24 a.m.: 8 IR 779; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-44) to Indiana Department of Transportation (105 IAC 5-1-44) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

105 IAC 5-1-45 Filing of contract and summary; availability

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 45. (a) A railroad or railroads entering into a contract for transportation services with one or more purchasers of rail service shall file with the commission the original and one copy of the contract and two copies of the contract summary with the Public Service Commission, Transportation Department, 901 State Office Building, Indianapolis, Indiana 46204.

(1) Contracts and contract summaries shall not be filed in the same packages with standard tariff filings.

(2) The confidential contract shall not be attached to the contract summary.

(3) The envelope or wrapper containing the contract and summary shall be marked "confidential, rail contract."

(4) A contract and summary shall be accompanied by a transmittal letter identifying the submitted documents, and the name and telephone number of a contact person.

(b)(1) The contract filed under 170 IAC 3-1.1-40.1 [section 40 of this rule] will not be available, for inspection by persons other than the parties to the contract and authorized commission personnel, except by petition demonstrating a likelihood of succeeding on the merits of the complaint and that the matter complained of could not be proven without access to additional contract

information. The commission's action in the *[sic.]* any contract disclosure matter including a petition filed under 170 IAC 3-1.1-40.1 *[section 40 of this rule]* is subject to the limitations imposed by 5 U.S.C. Sec. 552(b) and the Trade Secrets Act, 18 U.S.C. 1905.

(2) A contract and its summary filed under 49 U.S.C. Sec. 10713, may be labeled “nonconfidential” by the parties. Such a designation will permit the general public to inspect the entire contract.

(c) The contract summary filed under this section shall include the information specified in 170 IAC 3-1.1-47.1 *[section 47 of this rule]*. The contract summary shall be made available for inspection by the general public.

(d) The contract summary filed under this section shall not be required to be posted in any stations, but shall be made available from carriers participating in the contract upon reasonable request. (*Indiana Department of Transportation; 105 IAC 5-1-45; filed Feb 27, 1985, 9:24 a.m.: 8 IR 779; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-45) to Indiana Department of Transportation (105 IAC 5-1-45) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-46 Contract title page

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 46. (a) The title page of every contract and amendment shall contain only the following information:

(1) In the upper right corner, the contract number (see 170 IAC 3-1.1-47.1 *[section 47 of this rule]*).

(2) In the center of the page, the issuing carrier's name, followed by the word “CONTRACT” in large print.

(3) Amendments to contracts shall also show, in the upper right corner, the amendment number (see 170 IAC 3-1.1-47.1 *[section 47 of this rule]*).

(4) A solid one inch black border down the right side of the title page.

(5) Date of issue and date to be effective.

(b) The title page of every contract summary and supplement shall contain only the following information:

(1) In the upper right corner, the contract summary number (see 170 IAC 3-1.1-47.1 *[section 47 of this rule]*).

(2) In the center of the page, the issuing carrier's name, followed by the words “CONTRACT SUMMARY” in large print.

(3) Date of issue and date to be effective.

(4) In the center lower portion, the issuing individual's name and address.

(5) Supplements to contract summaries shall also show, in the upper right corner, the supplement number (see 170 IAC 3-1.1-47.1 *[section 47 of this rule]*).

(*Indiana Department of Transportation; 105 IAC 5-1-46; filed Feb 27, 1985, 9:24 a.m.: 8 IR 780; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-46) to Indiana Department of Transportation (105 IAC 5-1-46) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-47 Contract numbering system

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 47. (a) Each issuing carrier shall sequentially number the contract and contract summary it issues. The contract and contract summary identification number shall include the word “PSCI”, the industry standard alphabet code for the issuing railroad (limited to four letters), the letter “C,” and the sequential number, with each separated by a hyphen. The following example: the 357th contract filed by Milwaukee Road would have the following tariff identification number: “PSCI-MILW-C-0357.”

(b) Any amendment to a contract shall be reflected in a corresponding supplement to the contract summary. If the change in the contract is only a confidential matter, a statement to that effect will be made in the supplement.

(c) At the carrier's option, the carrier's tariff publishing officers may reserve blocks of numbers if tariffs are issued from different departments. An index to the blocks of reserved numbers shall be filed with the commission.

(d) Contract amendments and contract summary supplements shall be sequentially numbered. (*Indiana Department of Transportation; 105 IAC 5-1-47; filed Feb 27, 1985, 9:24 a.m.: 8 IR 780; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-47) to Indiana Department of Transportation (105 IAC 5-1-47) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-48 Contract summary contents

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 48. (a) Contract summaries for agricultural commodities, forest products or paper shall contain the following terms in the order named:

(1) Name(s) of the participating carrier(s). A list, alphabetically arranged, of the corporate names of all carriers that are parties to the contract plus their addresses for service of complaints.

(2) The commodity or commodities to be transported under the contract.

(3) The origin station(s) and destination station(s), including the specific port(s) (if applicable).

(4) The duration of the contract.

(5) Rail car data by number of dedicated cars, or, at the carrier's option, car days:

(A) By major type used to fulfill the contract or contract options:

(i) available and owned by the carriers listed in (a)(1) [subdivision (1)], with average number of bad-order cars identified;

(ii) available and leased by the carriers listed in (a)(1) above [subdivision (1)], and average number of bad-order cars identified;

(iii) (optional) on order (for ownership or lease) along with delivery dates; and

(iv) in the event a complaint is filed involving common carrier obligation and carrier furnished cars, the carrier(s) shall immediately submit to the commission and the complainant additional data on cars used to fulfill the challenged contract. Data shall include (by major car type used to fulfill the contract):

(AA) total bad car orders;

(BB) assigned car obligations; and

(CC) free running cars.

(B) In addition to (5)(A)(i) [clause (A)(i)] if agricultural commodities (including forest products and paper, but not including woodpulp, wood chips, pulpwood or paper), a certified statement by the participating rail carrier/carriers:

(i) that the cumulative equipment total of all contracts does not exceed 40 percent of the capacity of the rail carrier's owned and leased cars by applicable major car type; and

(ii) in the cases of an agricultural shipper which originated an average 1,000 cars or more per year during the prior three year period by major car type, that the equipment used does not exceed 40 percent of the rail carrier's owned or leased cars used on the average by that shipper during the previous three years.

(C) Rail car data need not be submitted if:

(i) the shipper furnishes the rail cars, unless the cars are leased from the carrier; or

(ii) the contract is restricted to certain services which do not entail car supply.

(6) Rates and charges. Identification of base rates or charges and movement type (e.g., single car, multiple car, unit train), the minimum annual volume, and a summary of escalation provisions.

(7) Special features. Identification of existence (but not the terms of amount) of special features such transit time commitments, guaranteed car supply, minimum percentage of traffic requirements, credit terms, discount, etc.

(b) Contract summaries for other commodities or services not involving a port shall contain the information required in (a)(1), (2), (4), and (5) [subsection (a)(1) through (a)(2) and (a)(4) through (a)(5)]. Subdivision (a)(7) [subsection (a)(7)], "special features", shall be applicable to the extent that service requirements are placed in the contract.

(c) Contract summaries for other commodities or services involving a port shall contain the information required in (a)(2), (4), (5), (6), and (7) [subsection (a)(2) and (a)(4) through (a)(7)]. In addition, the port shall be named and the tariff mileage (rounded to the nearest 50 miles) shall be disclosed (or at the contracting parties' option, the origin and destination shall be specified). The required information shall be disclosed for each movement involving multiple origins/destinations.

(d) Format. The contract summary and supplements shall enumerate and have each item completed. Where the item does not pertain to the contract or amendment, the term "Not Applicable" ("NA") shall be used. (*Indiana Department of Transportation; 105 IAC 5-1-48; filed Feb 27, 1985, 9:24 a.m.: 8 IR 781; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-48) to Indiana Department of Transportation (105 IAC 5-1-48) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-49 Contract summary availability

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 49. Copies of contract summaries shall be available from the transportation department of the public service commission. Copies of contract summaries shall also be available from carriers participating in the contract. (*Indiana Department of Transportation; 105 IAC 5-1-49; filed Feb 27, 1985, 9:24 a.m.: 8 IR 781; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-49) to Indiana Department of Transportation (105 IAC 5-1-49) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-50 Notice of filing

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 50. All filed contracts (and amendments) and contract summaries (and supplements) shall provide 30 days notice to the public as required by 49 U.S.C. Sec. 10713(c). (*Indiana Department of Transportation; 105 IAC 5-1-50; filed Feb 27, 1985, 9:24 a.m.: 8 IR 782; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-50) to Indiana Department of Transportation (105 IAC 5-1-50) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-1-51 Exemption proceedings

Authority: IC 8-1-1-3

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 51. Following an exemption decision by the interstate commerce commission, the public service commission of Indiana will automatically, without further order adopt the decision of the commission. (*Indiana Department of Transportation; 105 IAC 5-1-51; filed May 18, 1983, 2:18 p.m.: 6 IR 1219; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-51) to Indiana Department of Transportation (105 IAC 5-1-51) by P.L.112-1989, SECTION 5, effective July 1, 1989.

Rule 2. Abandonment of Railway Stations; Establishment of Interlocking Systems

105 IAC 5-2-1 Discontinuance of intrastate passenger train service

Authority: IC 8-1-1-3; IC 8-3-1-1

Affected: IC 8-1-1-8; IC 8-4-12-1; IC 8-4-13-1

Sec. 1. Before any railroad company engaged in intrastate commerce in the State of Indiana shall discontinue any passenger train, or trains, rendering intrastate service, such railroad company shall file its petition with the Commission requesting authority so to do. In such petition such company shall set out in detail the number and schedule of such train, or trains, the name of the cities and towns served in the State of Indiana, whether such trains transport mail, express, baggage and freight in addition to passengers, total amount of revenue received from the operation of such trains operating within the State of Indiana and the cost of such train operation for the previous calendar year, and such other facts as may be necessary to fully advise the Commission as to such passenger train service. Petitions filed under Rule 1 or 2 above set out will be docketed by the Commission and set for public hearings, and at least ten days notice thereof will be given by publication as required by law. (*Indiana Department of Transportation; 105 IAC 5-2-1; No. 17688: Abandonment of Railway Stations Rule 2; filed Jan 2, 1946, 10:00 a.m.: Rules and Regs. 1947, p. 1760; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-2-1) to Indiana Department of Transportation (105 IAC 5-2-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-2-2 Interlocking defined

Authority: IC 8-1-1-3; IC 8-3-1-1

Affected: IC 8-3-1-1

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Sec. 2. The term “interlocking” shall be defined as including manually or automatically controlled interlocking at railroad crossings, at grade or draw-bridges as provided by Federal Signal Act of 1937, and as it may be amended and the orders of the Interstate Commerce Commission made thereunder. (*Indiana Department of Transportation; 105 IAC 5-2-2; No. 17688: Abandonment of Railway Stations Rule 3; filed Jan 2, 1946, 10:00 a.m.: Rules and Regs. 1947, p. 1761; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-2-2) to Indiana Department of Transportation (105 IAC 5-2-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-2-3 Application for approval of interlocking devices

Authority: IC 8-1-1-3; IC 8-3-1-1

Affected: IC 8-3-1-1

Sec. 3. Any railroad submitting application specifications and blueprints to the Interstate Commerce Commission seeking approval of any interlocking plant matters requiring Interstate Commerce Commission approval, shall concurrently submit to this Commission a copy of such information for study and record. (*Indiana Department of Transportation; 105 IAC 5-2-3; No. 17688: Abandonment of Railway Stations Rule 4; filed Jan 2, 1946, 10:00 a.m.: Rules and Regs. 1947, p. 1761; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-2-3) to Indiana Department of Transportation (105 IAC 5-2-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-2-4 Order of approval of interlocking devices

Authority: IC 8-1-1-3; IC 8-3-1-1

Affected: IC 8-3-1-1

Sec. 4. If and when the Interstate Commerce Commission renders an order on an application as set out in rule 4 [section 3 of this rule], a copy of same shall be submitted to this Commission as a matter of record. (*Indiana Department of Transportation; 105 IAC 5-2-4; No. 17688: Abandonment of Railway Stations Rule 5; filed Jan 2, 1946, 10:00 a.m.: Rules and Regs. 1947, p. 1761; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-2-4) to Indiana Department of Transportation (105 IAC 5-2-4) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-2-5 Installation, inspection, maintenance and repair of devices; applicable federal standards

Authority: IC 8-1-1-3; IC 8-3-1-1

Affected: IC 8-3-1-1

Sec. 5. Rules, standards and instructions for installation, inspection and maintenance and repair of interlocking as promulgated and established by the Interstate Commerce Commission in accordance with paragraph C, Section 26, of the Interstate Commerce Commission Act, as amended August 26, 1937, and effective September 1, 1939, commonly known as the Signal Inspection Act, shall govern interlocking within the State of Indiana.

Such rules hereby adopted by reference are set out in an Interstate Commerce Commission pamphlet now on file in the office of the Secretary and the office of the Railroad Inspector's Department of the Public Service Commission of Indiana and are entitled:

“Rules, Standards, and Instructions for installation, inspection, maintenance, and repair of Automatic Block Signal Systems, interlocking centralized traffic control systems, automatic train stop and train control systems, automatic cab signal systems continuously controlled (without automatic train stop or train control), dragging equipment and slide detectors and other similar protective devices, other similar appliances, methods, and systems.” (*Indiana Department of Transportation; 105 IAC 5-2-5; No. 17688: Abandonment of Railway Stations Rule 6; filed Jan 2, 1946, 10:00 a.m.: Rules and Regs. 1947, p. 1761; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-2-5) to Indiana Department of Transportation (105 IAC 5-2-5) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-2-6 Notice of completion

Authority: IC 8-1-1-3; IC 8-3-1-1

Affected: IC 8-3-1-1

Sec. 6. This Commission shall be notified in writing when interlocking changes approved by the Interstate Commerce

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Commission shall have been completed and placed in service so that this Commission may at its convenience make such inspections as it deems necessary. (*Indiana Department of Transportation; 105 IAC 5-2-6; No. 17688: Abandonment of Railway Stations Rule 7; filed Jan 2, 1946, 10:00 a.m.: Rules and Regs. 1947, p. 1762; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-2-6) to Indiana Department of Transportation (105 IAC 5-2-6) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-2-7 Full stop not required

Authority: IC 8-1-1-3; IC 8-3-1-1
Affected: IC 8-3-1-1

Sec. 7. When the interlocking has been constructed and is maintained in compliance with Rule 6 [section 5 of this rule] of this order then and in that case, it is lawful for the engines and trains of such railroad, or railroads, to pass over such crossings and drawbridges without first coming to a full stop as prescribed by the Indiana statutes. (*Indiana Department of Transportation; 105 IAC 5-2-7; No. 17688: Abandonment of Railway Stations Rule 8; filed Jan 2, 1946, 10:00 a.m.: Rules and Regs. 1947, p. 1762; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-2-7) to Indiana Department of Transportation (105 IAC 5-2-7) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-2-8 Operation and maintenance removal

Authority: IC 8-1-1-3; IC 8-3-1-1
Affected: IC 8-3-1-1

Sec. 8. Railroad employees whose duties require it shall be furnished with a copy of the railroad company's rules and regulations for the guidance of employees in the operation and maintenance of interlocking; such rules shall include the use of hand signals when fixed signals become inoperative. (*Indiana Department of Transportation; 105 IAC 5-2-8; No. 17688: Abandonment of Railway Stations Rule 9; filed Jan 2, 1946, 10:00 a.m.: Rules and Regs. 1947, p. 1762; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-2-8) to Indiana Department of Transportation (105 IAC 5-2-8) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-2-9 Discontinuance of service; notice

Authority: IC 8-1-1-3; IC 8-3-1-1
Affected: IC 8-3-1-1

Sec. 9. When an interlocking is taken out of service train and engine movements through the plant must be made in accordance with precautions prescribed by statutes governing train movements over and across non-interlocking railroad grade crossings and drawbridges, and this Commission so notified of the change in operation when such change is in excess of a period of 48 hours. (*Indiana Department of Transportation; 105 IAC 5-2-9; No. 17688: Abandonment of Railway Stations Rule 10; filed Jan 2, 1946, 10:00 a.m.: Rules and Regs. 1947, p. 1762; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-2-9) to Indiana Department of Transportation (105 IAC 5-2-9) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-2-10 Inspection of devices

Authority: IC 8-1-1-3; IC 8-3-1-1
Affected: IC 8-3-1-1

Sec. 10. The Railroad Department of this Commission may make periodic inspections of any interlocking within the State of Indiana with the view of keeping the Commission fully and properly informed as to the condition of railroads and the manner in which they are operated with reference to the security and accommodation of the public. (*Indiana Department of Transportation; 105 IAC 5-2-10; No. 17688: Abandonment of Railway Stations Rule 11; filed Jan 2, 1946, 10:00 a.m.: Rules and Regs. 1947, p. 1762; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-2-10) to Indiana Department of Transportation (105 IAC 5-2-10) by P.L.112-1989, SECTION 5, effective July 1, 1989.

Rule 3. Reporting of Railroad Accidents**105 IAC 5-3-1 Reporting requirements**

Authority: IC 8-3-1-1; IC 8-23-2-6

Affected: IC 8-3-1-21; IC 8-9-1-4

Sec. 1. Whenever any railroad, railway company, or corporation operating in rail transportation and engaged in intrastate commerce within the state of Indiana suffers accident, as described in IC 8-3-1-21, the railroad division of the Indiana department of transportation shall be notified immediately, either by telegram or telephone. Providing that, should such accident occur other than during regular office hours of the department, i.e., 8:00 a.m. to 4:30 p.m., or on Saturday, Sunday, or holidays, such report will be made to the operation center of the Indiana state police department, Indianapolis, (telephone 317-232-8250) with the request that the investigator of the railroad division, then designated as the duty officer, be notified immediately. *(Indiana Department of Transportation; 105 IAC 5-3-1; No. 33722: Reporting of Railroad Accidents Rule 12, Sec I; filed Sep 11, 1978, 3:00 p.m.: 1 IR 638; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2218; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-3-1) to Indiana Department of Transportation (105 IAC 5-3-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

105 IAC 5-3-2 Accident defined

Authority: IC 8-3-1-1

Affected: IC 8-3-1-21; IC 8-9-1-4

Sec. 2. Accident in Section I [*section 1 of this rule*] is defined as serious injury or death to employee, passenger, trespasser, pedestrian, cyclist or motorist at any crossing; or derailment, collision (head-on or rear-end) or sideswipe of railroad cars and/or locomotives, regardless of type, that results in death or serious injury to the public; or damage to other than railroad property that would affect the safety or welfare of employees, passengers or the general public; or where explosives, chemicals, flammables or other hazardous or noxious lading is involved to the extent cars or locomotives are ruptured, afire or in any condition that would affect the safety or welfare of employees, passengers or the general public. *(Indiana Department of Transportation; 105 IAC 5-3-2; No. 33722: Reporting of Railroad Accidents Rule 12, Sec II; filed Sep 11, 1978, 3:00 p.m.: 1 IR 638; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-3-2) to Indiana Department of Transportation (105 IAC 5-3-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

105 IAC 5-3-3 Accidents not within definition of preceding section; reporting requirements

Authority: IC 8-3-1-1

Affected: IC 8-3-1-21; IC 8-9-1-4

Sec. 3. Accidents not covered in Section II [*section 2 of this rule*] in excess of \$1,750.00 (as outlined in D.O.T. Rules) and crossing accidents not covered in Section II [*section 2 of this rule*] are to be reported on monthly reports to be submitted within 30 days after close of reporting month. *(Indiana Department of Transportation; 105 IAC 5-3-3; No. 33722: Reporting of Railroad Accidents Rule 12, Sec III; filed Sep 11, 1978, 3:00 p.m.: 1 IR 638; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-3-3) to Indiana Department of Transportation (105 IAC 5-3-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

105 IAC 5-3-4 Monthly follow-up reports

Authority: IC 8-3-1-1

Affected: IC 8-3-1-21; IC 8-9-1-4

Sec. 4. Accidents initially reported by telegram or telephone in Section II [*section 2 of this rule*] are to be reported on monthly reports to be submitted within 30 days after close of reporting month. *(Indiana Department of Transportation; 105 IAC 5-3-4; No. 33722: Reporting of Railroad Accidents Rule 12, Sec IV; filed Sep 11, 1978, 3:00 p.m.: 1 IR 638; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-3-4) to Indiana Department of Transportation (105 IAC 5-3-4) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

Rule 4. Railroad Construction; Lateral and Vertical Clearance Requirements**105 IAC 5-4-1 Submission of verified petition for relief from statutory track clearance requirements**

Authority: IC 8-8-1-12; IC 8-23-2-6

Affected: IC 8-3-1-21; IC 8-8-1-11; IC 8-8-1-12; IC 8-9-1-4

Sec. 1. Before any railroad carrier, or any party, person, association, municipality, or private corporation (hereinafter "petitioner") builds, maintains, alters, or rebuilds a structure, or any part thereof, which will have less lateral or vertical clearance distance than provided for by chapter 118 of the Acts of the Indiana general assembly of 1907, as amended, as found at IC 8-8-1-11 through IC 8-8-1-12 (hereinafter the "Act"), a verified petition setting forth the clearance distances requested (hereinafter the "petition") shall be submitted to the department of transportation (hereinafter the "department"). (*Indiana Department of Transportation; 105 IAC 5-4-1; filed May 7, 1982, 2:05 p.m.: 5 IR 1179; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2219; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-4-1) to Indiana Department of Transportation (105 IAC 5-4-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-4-2 Designated form and verification of petition

Authority: IC 8-8-1-12; IC 8-23-2-6

Affected: IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 2. The petition shall be in the form designated by the department and shall be verified by the petitioner. (*Indiana Department of Transportation; 105 IAC 5-4-2; filed May 7, 1982, 2:05 p.m.: 5 IR 1179; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2219; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-4-2) to Indiana Department of Transportation (105 IAC 5-4-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-4-3 Service of petition upon interested parties

Authority: IC 8-8-1-12; IC 8-23-2-6

Affected: IC 4-21.5; IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 3. Petitioner shall, concurrently with the filing of the petition with the department, post and maintain (until thirty-one (31) days after filing and service of the petition) a copy of the petition and all attachments thereto at eye level in plain view at the site for which relief is requested. The petitioner shall also serve a copy of the petition upon the utility consumer counselors' office and any other party of interest. Said service, and certification thereof, shall be made in the form and manner provided by the Indiana Rules of Trial Procedure and IC 4-21.5. (*Indiana Department of Transportation; 105 IAC 5-4-3; filed May 7, 1982, 2:05 p.m.: 5 IR 1180; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2219; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-4-3) to Indiana Department of Transportation (105 IAC 5-4-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-4-4 Procedure for summary relief and public hearings (Repealed)

Sec. 4. (*Repealed by Indiana Department of Transportation; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2225*)

105 IAC 5-4-5 Basis for granting requested relief

Authority: IC 8-8-1-12; IC 8-23-2-6

Affected: IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 5. The department will decide whether to grant relief from the statutory track clearance requirements within sixty (60) days of the petition's filing. The decision of the department with respect to reduction of a statutorily required clearance distance shall be based upon the necessity for such relief and whether the clearance area may be safely utilized if such relief is granted. (*Indiana Department of Transportation; 105 IAC 5-4-5; filed May 7, 1982, 2:05 p.m.: 5 IR 1180; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2219; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-4-5) to Indiana Department of Transportation (105 IAC 5-4-5) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-4-5.1 Requests for review of the department's decision

Authority: IC 8-8-1-12; IC 8-23-2-6

Affected: IC 4-21.5; IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 5.1. Any interested party desiring review of the department's decision on the petition may petition for review under IC 4-21.5. (*Indiana Department of Transportation; 105 IAC 5-4-5.1; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2220; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 5-4-6 Minimum lateral clearances; docks

Authority: IC 8-8-1-12; IC 8-23-2-6

Affected: IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 6. Where relief is sought from the lateral clearance distances required by the Act for a public or private dock ("dock" being defined as any structure from which railroad cars are loaded or unloaded), the department may grant such relief in accordance with the following provisions:

- (1) That access is available to the dock surface by stair or ladder on the side from which normal duties will be performed.
- (2) That a clearance distance of at least eight (8) feet is maintained on the side of the tracks opposite from the structure.
- (3) That a yellow stripe, measuring not less than four (4) inches in width and extending the length of the dock within the clearance area, will be painted upon the surface of the dock not less than eight (8) feet from the center of the track and no structure, device, or materials shall be installed or maintained on the surface of the dock between the yellow line and the center of the track during any movement of railroad cars in the clearance area.
- (4) That if the dock is located inside a structure, a ground level pedestrian doorway (of normal and customary proportions) into the structure and with access to the dock will be maintained on each side of the structure from which normal duties will be performed.

(*Indiana Department of Transportation; 105 IAC 5-4-6; filed May 7, 1982, 2:05 p.m.: 5 IR 1180; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2220; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-4-6) to Indiana Department of Transportation (105 IAC 5-4-6) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-4-7 Minimum lateral clearances; multiple tracks

Authority: IC 8-8-1-12; IC 8-23-2-6

Affected: IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 7. A petition of the type outlined in sections 1 through 5.1 of this rule is required where relief is sought from the clearance distances required by the Act for clearance areas involving the entrance of two (2) or more railroad tracks into a structure. (*Indiana Department of Transportation; 105 IAC 5-4-7; filed May 7, 1982, 2:05 p.m.: 5 IR 1181; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2220; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-4-7) to Indiana Department of Transportation (105 IAC 5-4-7) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-4-8 Minimum vertical clearances

Authority: IC 8-8-1-12; IC 8-23-2-6

Affected: IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 8. A petition of the type outlined in sections 1 through 5.1 of this rule is required where relief is sought from the vertical clearance distance above any part of railroad tracks as required by the Act. (*Indiana Department of Transportation; 105 IAC 5-4-8; filed May 7, 1982, 2:05 p.m.: 5 IR 1181; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2220; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-4-8) to Indiana Department of Transportation (105 IAC 5-4-8) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-4-9 Crane operation over tracks

Authority: IC 8-8-1-12; IC 8-23-2-6

Affected: IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

RAILROADS

Sec. 9. A petition of the type outlined in sections 1 through 5.1 of this rule is required where relief is sought from the vertical clearance distance required by the Act due to the operation of an overhead crane above the railroad tracks. The department may approve such operation provided that, in addition to the sign hereinafter provided, a flashing red light shall be located on each side of the tracks at eight (8) feet to twelve (12) feet above the level of the top of the rails of the track in advance of the clearance area (erected and maintained in the size, manner, and in such a position as the department may direct) and that said light shall be lighted at all times that such crane is operating above the tracks and extinguished only when the crane and appurtenances thereto are no longer within the clearance distances prescribed by the Act. (*Indiana Department of Transportation; 105 IAC 5-4-9; filed May 7, 1982, 2:05 p.m.: 5 IR 1181; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2221; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-4-9) to Indiana Department of Transportation (105 IAC 5-4-9) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-4-10 Lighted warning signs

Authority: IC 8-8-1-12; IC 8-23-2-6

Affected: IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 10. For each clearance area that the department has approved a reduction of the clearance distance required by the Act, separately lighted warning signs advising of the close clearance distance, as described in section 13 of this rule hereto, will be erected and maintained in the size, manner, and in such positions as the department may direct. (*Indiana Department of Transportation; 105 IAC 5-4-10; filed May 7, 1982, 2:05 p.m.: 5 IR 1181; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2221; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-4-10) to Indiana Department of Transportation (105 IAC 5-4-10) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-4-11 Tracks kept free of debris and spillage

Authority: IC 8-8-1-12; IC 8-23-2-6

Affected: IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 11. For each clearance area that the department has approved a reduction of the clearance distance required by the Act, said clearance area will be kept free of all debris, spillage, oil and grease, and the footing will be maintained in a safe and even manner at all times. (*Indiana Department of Transportation; 105 IAC 5-4-11; filed May 7, 1982, 2:05 p.m.: 5 IR 1181; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2221; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-4-11) to Indiana Department of Transportation (105 IAC 5-4-11) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-4-12 Reduced clearance; written notice

Authority: IC 8-8-1-12; IC 8-23-2-6

Affected: IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 12. For each clearance area that the department has approved a reduction of the clearance distance required by the Act, the petitioner and the railroad serving the clearance area shall prior to the use of the clearance area certify in writing to the department that written notice of the reduced clearance has been provided to each of their respective employees, and other third persons known by them to frequent the clearance area. (*Indiana Department of Transportation; 105 IAC 5-4-12; filed May 7, 1982, 2:05 p.m.: 5 IR 1181; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2221; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-4-12) to Indiana Department of Transportation (105 IAC 5-4-12) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-4-13 Appendix; warning sign specifications

Authority: IC 8-8-1-12; IC 8-23-2-6

Affected: IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 13. Each warning sign shall meet the following minimum specifications:

- (1) It shall be rectangular and constructed with dimensions of no less than twenty-four (24) inches in height and sixteen (16)

inches in width.

(2) The sign shall be constructed of metal or wood and shall have a flat white background and black lettering.

(3) Where less than statutory lateral clearance is maintained the sign shall be worded as follows:

The word "WARNING" shall be printed on the sign with letters at least three (3) inches in height and no less than three-eighths [*sic.*] (3/8) inch in letter line or stroke width, with the top edge of letters within two (2) inches of the top edge of the sign background. The words, "No Clearance For Man On Side Of Car," shall be printed on the sign in letters no less than one and one-half (1½) inches high with brush strokes of at least one-fourth (¼) inch and placed three (3) lines below the word "WARNING."

(4) Where less than statutory vertical clearance is maintained the words, "WARNING" and "No Clearance For Man On Top Of Car," shall be printed on the sign in accordance with the specifications set forth in subdivision (3).

(Indiana Department of Transportation; 105 IAC 5-4-13; filed May 7, 1982, 2:05 p.m.: 5 IR 1181; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2221; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-4-13) to Indiana Department of Transportation (105 IAC 5-4-13) by P.L.112-1989, SECTION 5, effective July 1, 1989.

Rule 5. Rail Service Continuation Subsidies

105 IAC 5-5-1 Applicability of rule

Authority: IC 8-1-1-3; IC 8-3-1.5-2

Affected: IC 8-3-1.5-2; IC 8-3-1.5-23

Sec. 1. Application of Rules. These rules shall apply to any proceeding relative to rail service continuation assistance to rail segments included in the State Rail Plan as eligible for such assistance. *(Indiana Department of Transportation; 105 IAC 5-5-1; No. 34227: Rail Service Continuation Subsidies Rule I; filed Dec 29, 1975, 1:30 p.m.: Rules and Regs. 1976, p. 397; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-5-1) to Indiana Department of Transportation (105 IAC 5-5-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

105 IAC 5-5-2 Policy statement; required contributions

Authority: IC 8-1-1-3; IC 8-3-1.5-2

Affected: IC 8-3-1.5-3; IC 8-3-1.5-23

Sec. 2. Commission Policy. It shall be the policy of the Commission in all proceedings hereunder to encourage and stimulate financial contribution by rail users, local and/or regional transportation authorities and/or other interested petitioning persons to the fullest extent possible toward any rail service continuation assistance authorized by the Commission pursuant to the State Rail Preservation Act [*IC 8-3-1.5*], the objective being that any rail segment designated by the State Rail Plan as eligible for rail service continuation assistance shall become self-sustaining or fully subsidized by those persons served by such rail segments at the earliest possible date. *(Indiana Department of Transportation; 105 IAC 5-5-2; No. 34227: Rail Service Continuation Subsidies Rule II; filed Dec 29, 1975, 1:30 p.m.: Rules and Regs. 1976, p. 397; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-5-2) to Indiana Department of Transportation (105 IAC 5-5-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

105 IAC 5-5-3 Definitions

Authority: IC 8-1-1-3; IC 8-3-1.5-2

Affected: IC 8-3-1.5-1; IC 8-3-1.5-23

Sec. 3. Definitions. (A) Where applicable the definitions set forth in the State Rail Preservation Act [*IC 8-3-1.5*] and the federal Regional Rail Reorganization Act of 1973 shall be applicable to these rules, and

(B) The term "Rail Segment" shall mean a portion of track identified by the United States Railway Association, in their Final System Plan, the limits of which are defined in terms of mile posts, and

(C) The term "Rail Service Continuation Assistance" shall mean any financial assistance provided to cover operating losses, rehabilitation, maintenance, administration or other services necessary for the continued operation of rail service on a rail segment, and

(D) The term "State Rail Plan" shall mean a comprehensive plan for rail segments not included in the Final System Plan of the United States Railway Association pursuant to the federal Regional Rail Reorganization Act of 1973 that must be prepared by the State of Indiana in order to receive federal funds pursuant to said act. (*Indiana Department of Transportation; 105 IAC 5-5-3; No. 34227: Rail Service Continuation Subsidies Rule III; filed Dec 29, 1975, 1:30 p.m.: Rules and Regs. 1976, p. 397; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-5-3) to Indiana Department of Transportation (105 IAC 5-5-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-5-4 Administrative procedure; petitions; hearings

Authority: IC 8-1-1-3; IC 8-3-1.5-2

Affected: IC 8-1-2-47; IC 8-3-1.5-2; IC 8-3-1.5-23

Sec. 4. Procedure. (A) When consistent with these rules, the Rules and Regulations of This Commission Concerning Practices and Procedure, as found at Burns Indiana Administrative Rules and Regulations, Section 54-401 [IC 8-1-2-47] et seq., shall apply with respect to any proceeding conducted pursuant to the State Rail Preservation Act [IC 8-3-1.5] and these rules.

(B) Any interested person, jointly or separately, may apply for rail service continuation assistance with regard to any rail segment designated by the State Rail Plan as eligible therefor by petitioning the Public Service Commission of Indiana for such assistance within 30 days of final approval by the Commission of the State Rail Plan, or any amendments to that Plan.

(C) All petitions filed hereunder shall specify:

(1) petitioner's interest in the rail segment involved.

(2) the specific rail segment involved and the name of the railroad operating company last known to petitioner to have operated rail service over such rail segment,

(3) a complete description of the nature and degree of the rail service continuation assistance requested,

(4) the petitioner's ability and intent to contribute toward the requested rail service continuation assistance and the nature of said contribution,

(5) a proposed timetable within which such rail segment may become self-sustaining or completely subsidized by petitioner.

(D) Any person who jointly or separately files a petition herein, shall within 20 days thereof, cause notice of such filing to be published in at least one newspaper of general circulation published in each county in which the rail segment involved is located.

(E) Within 45 days after approval of the State Rail Plan the Commission shall cause a pre-hearing conference to be scheduled with respect to each rail segment for which one or more petitions for Rail Service Continuation Assistance has been filed.

(F) Following pre-hearing conference and order thereon all petitions concerning the same rail segment shall be consolidated for hearing by the Commission at the times and places determined by the Commission pursuant to the pre-hearing conference order and pursuant to notice to all parties of record without further publication. (*Indiana Department of Transportation; 105 IAC 5-5-4; No. 34227: Rail Service Continuation Subsidies Rule IV; filed Dec 29, 1975, 1:30 p.m.: Rules and Regs. 1976, p. 398; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-5-4) to Indiana Department of Transportation (105 IAC 5-5-4) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-5-5 Department prerogatives

Authority: IC 8-1-1-3; IC 8-3-1.5-2

Affected: IC 8-3-1.5-2; IC 8-3-1.5-23

Sec. 5. Commission Prerogatives. Notwithstanding any provision herein contained, the Commission may at any time and at its discretion initiate and conduct such proceedings as it deems appropriate with respect to rail service continuation assistance or any other matter authorized by and not inconsistent with the State Rail Preservation Act [IC 8-3-1.5] and the State Rail Plan. (*Indiana Department of Transportation; 105 IAC 5-5-5; No. 34227: Rail Service Continuation Subsidies Rule V; filed Dec 29, 1975, 1:30 p.m.: Rules and Regs. 1976, p. 398; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-5-5) to Indiana Department of Transportation (105 IAC 5-5-5) by P.L.112-1989, SECTION 5, effective July 1, 1989.

Rule 6. Railroad Policemen; Basic Training and Fitness Standards

105 IAC 5-6-1 Completion of basic training course; waiver based on previous experience and training

Authority: IC 8-3-17-1; IC 8-23-2-6
 Affected: IC 5-2-1-1; IC 5-2-1-11

Sec. 1. All railroad police officers employed on or after January 1, 1976, by any railroad operating within the state of Indiana whether said employment is on a probationary, permanent, or other basis, shall, within one (1) year of the date of employment successfully complete the minimum basic training course prescribed for Indiana railroad policemen by the Indiana law enforcement training board (hereinafter the "board"). Provided, however, that any such railroad policeman police officer [sic.] who has had previous law enforcement training meeting or exceeding the standards prescribed by the board may, upon proof of such previous experience and training and the recommendation of the board, be granted a waiver of the training mandated herein, at the discretion of the Indiana department of transportation (hereinafter the "department"). (*Indiana Department of Transportation; 105 IAC 5-6-1; No. 34294: Fitness Standards for Railroad Policemen A; filed Jan 7, 1976, 10:30 a.m.: Rules and Regs. 1977, p. 325; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2222; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-6-1) to Indiana Department of Transportation (105 IAC 5-6-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-6-2 Location of basic training course

Authority: IC 8-3-17-1; IC 8-23-2-6
 Affected: IC 5-2-1-1; IC 5-2-1-11

Sec. 2. Said minimum basic training course will be taken at the central training facility provided by the board. (*Indiana Department of Transportation; 105 IAC 5-6-2; No. 34294: Fitness Standards for Railroad Policemen B; filed Jan 7, 1976, 10:30 a.m.: Rules and Regs. 1977, p. 326; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2222; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-6-2) to Indiana Department of Transportation (105 IAC 5-6-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-6-3 Failure to complete course; revocation of commission

Authority: IC 8-3-17-1; IC 8-23-2-6
 Affected: IC 5-2-1-1; IC 8-3-17-3.5

Sec. 3. Any railroad police officer described in section 1 of this rule who fails to successfully complete said required basic training course within one (1) year after first or original employment on or after January 1, 1976, shall have his or her commission revoked by the department after the first anniversary of his date of appointment. (*Indiana Department of Transportation; 105 IAC 5-6-3; No. 34294: Fitness Standards for Railroad Policemen C; filed Jan 7, 1976, 10:30 a.m.: Rules and Regs. 1977, p. 326; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2222; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-6-3) to Indiana Department of Transportation (105 IAC 5-6-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-6-4 Minimum passing score

Authority: IC 8-3-17-1; IC 8-23-2-6
 Affected: IC 5-2-1-1; IC 8-3-17-3.5

Sec. 4. The board shall establish, and apply uniformly to all railroad police officers attending the central training facility, a minimum passing score as prescribed by the board's basic training course for railroad police officers. (*Indiana Department of Transportation; 105 IAC 5-6-4; No. 34294: Fitness Standards for Railroad Policemen D; filed Jan 7, 1976, 10:30 a.m.: Rules and Regs. 1977, p. 326; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2223; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-6-4) to Indiana Department of Transportation (105 IAC 5-6-4) by P.L.112-1989, SECTION 5, effective July 1, 1989.

105 IAC 5-6-5 Eligibility for commission

Authority: IC 8-3-17-1; IC 8-23-2-6
Affected: IC 5-2-1-1; IC 8-3-17-3.5

Sec. 5. In order to be eligible for commission as a railroad police officer, an applicant must comply with the following:

- (1) The applicant shall have reached his or her twenty-first birthday.
- (2) The applicant shall possess an acuity of vision as prescribed by the board.
- (3) The applicant shall be a high school graduate as evidenced by a diploma issued by a high school accredited by the department or agency of a state authorized to accredit high schools. An equivalency diploma issued by such an accredited high school is acceptable.
- (4) The applicant shall possess *[sic.]* a valid driving license.
- (5) The applicant shall be of good reputation and character. The employing railroad shall conduct a character and background investigation on each applicant prior to applicant receiving commission, and the results shall be submitted in written form (Appendix A attached) for inspection by the department or its authorized representative.
- (6) The applicant shall not have been convicted of a felony or any crime involving moral turpitude. The applicant shall be fingerprinted and a search shall be made of local, state, and national fingerprint files to disclose any criminal conviction record; and the fingerprint cards and any identification records shall be submitted for inspection by the department or its authorized representative.
- (7) A dishonorable discharge from military service shall disqualify the applicant and a discharge other than honorable may be grounds for rejection in accordance with subdivisions 5 through 6.
- (8) A physician approved by the employing railroad with an unlimited license to practice medicine shall examine the applicant to aid in determining that the applicant is physically and emotionally fit for normal police functions. The applicant shall satisfy the minimum medical fitness standards of the employing railroad company. The results shall be retained in written form for inspection by the department or its authorized representative. A copy of the report of the physical examination shall be presented to the board in the prescribed form prior to acceptance for training at the central training facility. Such examination shall have been administered to the applicant within one (1) year prior to acceptance for training.

(Indiana Department of Transportation; 105 IAC 5-6-5; No. 34294: Fitness Standards for Railroad Policemen E; filed Jan 7, 1976, 10:30 a.m.: Rules and Regs. 1977, p. 326; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2223; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-6-5) to Indiana Department of Transportation (105 IAC 5-6-5) by P.L.112-1989, SECTION 5, effective July 1, 1989.

Rule 7. Downgrading of Rail-Highway Crossing Protection

105 IAC 5-7-1 Definitions

Authority: IC 8-6-7.7-2; IC 8-23-2-6
Affected: IC 8-6-7.7-2

Sec. 1. For this rule, “automatic train-activated warning signal” means gates, cantilever flashers, standard flashers, audibles, or wigwags. *(Indiana Department of Transportation; 105 IAC 5-7-1; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2223; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

105 IAC 5-7-2 Submission of verified petition for the removal of automatic train-activated warning signals from rail-highway grade crossings

Authority: IC 8-6-7.7-2; IC 8-23-2-6
Affected: IC 8-6-7.7-1; IC 8-6-7.7-2

Sec. 2. Before any railroad carrier, party, person, association, municipality, or private corporation (hereinafter “petitioner”) removes any automatic train-activated warning signals from a grade crossing (as defined by IC 8-6-7.7-1), a verified petition (hereinafter “petition”) requesting the consent of the Indiana department of transportation (hereinafter “department”) shall be submitted to the department. *(Indiana Department of Transportation; 105 IAC 5-7-2; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2224; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

105 IAC 5-7-3 Contents of the petition

Authority: IC 8-6-7.7-2; IC 8-23-2-6
Affected: IC 8-6-7.7-2

Sec. 3. The petition shall be in the form designated by the department and shall be verified by the petitioner. (*Indiana Department of Transportation; 105 IAC 5-7-3; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2224; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 5-7-4 Service of petition upon interested parties

Authority: IC 8-6-7.7-2; IC 8-23-2-6
Affected: IC 4-21.5; IC 8-6-7.7-2

Sec. 4. Petitioner shall, concurrent with the filing of the petition with the department, serve a copy of the petition upon the utility consumer counselor's office and the local governing body. (*Indiana Department of Transportation; 105 IAC 5-7-4; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2224; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 5-7-5 Decision; review

Authority: IC 8-6-7.7-2; IC 8-23-2-6
Affected: IC 4-21.5; IC 8-6-7.7-2

Sec. 5. The department will decide whether to grant consent for the removal of the automatic train-activated warning signals within one hundred twenty (120) days of the petition's filing. The decision of the department with respect to consent for the removal of automatic train-activated warning signals shall be based upon the information contained in the petition, department inspection of the crossing in question, applicable statutes and regulations, and any other relevant information filed with the department. The petition will be approved if the department determines that the grade crossing may be safely utilized in the absence of automatic train-activated warning signals. Any interested party desiring review of the department's decision on the petition may petition for review under IC 4-21.5. (*Indiana Department of Transportation; 105 IAC 5-7-5; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2224; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 5-7-6 Requests for public hearing

Authority: IC 8-6-7.7-2; IC 8-23-2-6
Affected: IC 4-21.5; IC 8-6-7.7-2

Sec. 6. If an interested party requests a public hearing on the petition at any time before the department has reached a decision, the department will conduct such a hearing under the provisions of IC 4-21.5. If such a hearing is requested, the one hundred twenty (120) day decision deadline set in section 5 of this rule will be postponed until the hearing process is complete. (*Indiana Department of Transportation; 105 IAC 5-7-6; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2224; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

Rule 8. Crossing Construction or Relocation

105 IAC 5-8-1 Submission of verified petition to establish, alter, or relocate a rail-highway grade crossing

Authority: IC 8-6-1-7; IC 8-6-1-9; IC 8-23-2-6
Affected: IC 8-6-1

Sec. 1. Before any railroad carrier, or any party, person, association, municipality, or private corporation (hereinafter "petitioner") constructs, alters, or relocates a rail-highway grade crossing, a verified petition (hereinafter "petition") requesting the approval of the Indiana department of transportation (hereinafter "department") shall be submitted to the department. (*Indiana Department of Transportation; 105 IAC 5-8-1; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2224; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 5-8-2 Contents of the petition

Authority: IC 8-6-1-7; IC 8-6-1-9; IC 8-23-2-6
Affected: IC 8-6-1

Sec. 2. The petition shall be in the form designated by the department and shall be verified by the petitioner. (*Indiana Department of Transportation; 105 IAC 5-8-2; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2224; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 5-8-3 Service of petition upon interested parties

Authority: IC 8-6-1-7; IC 8-6-1-9; IC 8-23-2-6
Affected: IC 4-21.5; IC 8-6-1

Sec. 3. Petitioner shall, concurrent with the filing of the petition with the department, serve a copy of the petition upon the Indiana consumer counselors' office and any other party of interest including but not limited to the railroad and the local governing body. (*Indiana Department of Transportation; 105 IAC 5-8-3; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2224; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 5-8-4 Decision; review

Authority: IC 8-6-1-7; IC 8-6-1-9; IC 8-23-2-6
Affected: IC 4-21.5; IC 8-6-1

Sec. 4. The department will decide whether to grant approval for the construction, alteration, or relocation of a rail-highway grade crossing within ninety (90) days of the petition's filing. Any interested party desiring review of the department's decision on the petition may petition for review under IC 4-21.5. (*Indiana Department of Transportation; 105 IAC 5-8-4; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2225; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 5-8-5 Requests for public hearing

Authority: IC 8-6-1-7; IC 8-6-1-9; IC 8-23-2-6
Affected: IC 4-21.5; IC 8-6-1

Sec. 5. If an interested party requests a public hearing on the petition at any time before the department has reached a decision, the department will conduct such a hearing under the provisions of IC 4-21.5. If such a hearing is requested, the ninety (90) day decision deadline set in section 4 of this rule will be postponed until the hearing process is complete. (*Indiana Department of Transportation; 105 IAC 5-8-5; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2225; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 5-8-6 Written notice of compliance

Authority: IC 8-6-1-7; IC 8-6-1-9; IC 8-23-2-6
Affected: IC 8-6-1

Sec. 6. Upon fulfillment of the provisions of the department's order, the petitioner shall notify the department in writing that all conditions have been complied with. (*Indiana Department of Transportation; 105 IAC 5-8-6; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2225; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

Rule 9. Filing of Railroad Operating Information

105 IAC 5-9-1 Submission of current operating rule book

Authority: IC 8-3-1-1; IC 8-9-1-1
Affected: IC 8-9-1-1

Sec. 1. Any railroad operating or incorporated in Indiana shall submit one (1) copy of its current operating rule book covering operations in Indiana to the department of transportation ("department"). Rule books shall be filed with the department within fifteen

(15) days of their adoption or amendment. (*Indiana Department of Transportation; 105 IAC 5-9-1; filed Jan 16, 1990, 4:50 p.m.: 13 IR 1014; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 5-9-2 Submission of current operating timetables

Authority: IC 8-3-1-1; IC 8-3-1-18; IC 8-3-1-21

Affected: IC 8-3-1-18; IC 8-3-1-21

Sec. 2. Any railroad operating or incorporated in Indiana shall submit one (1) copy of its current operating timetable for any operations within Indiana to the department. Timetables shall be filed with the department within fifteen (15) days of their adoption or amendment. (*Indiana Department of Transportation; 105 IAC 5-9-2; filed Jan 16, 1990, 4:50 p.m.: 13 IR 1014; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 5-9-3 Submission of bulletin orders and notices

Authority: IC 8-3-1-1; IC 8-3-1-18; IC 8-3-1-21

Affected: IC 8-3-1-18; IC 8-3-1-21

Sec. 3. Any railroad operating or incorporated in Indiana shall submit one (1) copy of any bulletin orders or employee notices that are issued covering any aspect of operations in Indiana to the department. Bulletin orders or employee notices shall be filed with the department within one (1) week of the time that they are issued. (*Indiana Department of Transportation; 105 IAC 5-9-3; filed Jan 16, 1990, 4:50 p.m.: 13 IR 1014; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

Rule 10. Opening and Closing Railroad Crossings

105 IAC 5-10-1 Criteria for opening a crossing

Authority: IC 8-6-7.7-3.1; IC 8-23-2-6

Affected: IC 8-6-1-7; IC 8-6-7.7

Sec. 1. Subject to the provisions of IC 8-6-1-7 and IC 8-6-7.7, the department may approve a petition to open a crossing after making findings and conclusions which reflect consideration of all the following factors, to the extent that same are relevant to the crossing decision under consideration:

- (1) Passenger trains do not operate in excess of sixty (60) m.p.h. at the location of the proposed crossing (Class 3 FRA track classification or higher). In cases where passenger service does not operate, this criteria is not applicable.
- (2) An alternate public crossing is not located within one (1) mile of the proposed crossing.
- (3) No crossings within two (2) miles of the proposed crossing have had at least three (3) accidents in the preceding five (5) years, with the expected characteristics of the proposed crossing being similar to the nearby crossings. Characteristics for all crossings within two (2) miles of the proposed crossing must be submitted with the petition.
- (4) The proposed crossing will have expected average annual daily traffic (AADT) of five hundred (500) or greater in rural areas or one thousand (1,000) or greater in urbanized areas, where the traffic collection procedure is completed in accordance with the Federal Highway Administration's (FHWA) Traffic Monitoring Guide, Third Edition, February 1995. This requirement shall not be applicable where a nonmotorized public grade crossing has been petitioned to the department for opening.
- (5) Consideration shall be given to the overall design speed of the roadway approaches involving the proposed grade crossing. This requirement shall not be applicable where a nonmotorized public grade crossing has been petitioned to the department for opening.
- (6) There are not more than ten (10) train movements per day at the proposed crossing.
- (7) Freight trains do not operate in excess of twenty-five (25) m.p.h. at the location of the proposed crossing (Class 2 FRA track classification or higher).
- (8) The proposed crossing has, at a minimum, standard crossbucks, pavement markings, and flashing lights. Any proposed crossing must also meet all standards for a rail-highway intersection as provided in the Indiana Manual on Uniform Traffic Control Devices, which is incorporated by reference at 105 IAC 9-2-1. The requirement for flashing lights may be waived if the petitioner can demonstrate that such devices are not essential for safety at the proposed crossing.

- (9) The proposed crossing is not within two hundred (200) feet of a roadway intersection. Adjustment of this criteria will consider the maximum queue expected for the design hour.
- (10) The proposed crossing does not have, at a minimum, an eighty (80) degree intersection alignment.
- (11) The proposed crossing will not provide access for trucks carrying hazardous materials unless the utilization of the crossing by such traffic is incidental.
- (12) The proposed crossing will not provide access for vehicles carrying passenger for hire unless the utilization of the crossing by such traffic is incidental.
- (13) The proposed crossing will not provide access for school buses unless the use of the crossing by the school bus traffic provides enhanced safety over other transportation routes, as documented by the highest school transportation official.
- (14) The proposed crossing will provide improved safety access for emergency vehicles. The department requires documentation from the highest emergency response official whose jurisdiction is located where the crossing is proposed for opening.
- (15) While a new crossing may satisfy the conditions listed in this section, if it can be shown by evidence that there are extenuating circumstances which, in the opinion of the department, a new crossing would still constitute a hazard, it would be denied.
- (16) While a new crossing may not satisfy the conditions listed in this section, if it can be shown by evidence that there are extenuating circumstances which, in the opinion of the department, a new crossing would still be justified, it would be approved.

(Indiana Department of Transportation; 105 IAC 5-10-1; filed Jun 17, 1998, 9:00 a.m.: 21 IR 4190; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed Aug 5, 2002, 1:05 p.m.: 25 IR 4051)

105 IAC 5-10-2 Criteria for abolishing a crossing

Authority: IC 8-6-7.7-3.1; IC 8-23-2-6
Affected: IC 8-6-7.7

Sec. 2. Subject to the provisions of IC 8-6-7.7, a crossing may be closed after making findings and conclusions which reflect consideration of all the following factors, to the extent that same are relevant to the crossing decision under consideration:

- (1) The crossing is located where passenger train service operates at greater than ten (10) m.p.h. (FRA Accepted Track Classification). In cases where passenger service does not operate, this criteria is not applicable.
- (2) The crossing is located in a rail line section with at least four (4) crossings within an urban area and three (3) at grade crossing within a rural area within a one (1) mile segment along the railroad corridor.
- (3) The crossing has an accident prediction rate of two-hundredths (.02) or higher, as determined by the Federal Railroad Administration's (FRA) Accident Prediction methodology, as set forth in the Rail-Highway Crossing Resource Allocation Procedure, Third Edition, August 1987.
- (4) The crossing has an average annual daily traffic (AADT) of five hundred (500) or less within rural areas or one thousand (1,000) or less within urbanized areas, where the traffic collection procedure is completed by guidance provided in the Federal Highway Administration's (FHWA) Traffic Monitoring Guide, Third Edition, February 1995. This requirement shall not be applicable when it refers to a nonmotorized public grade crossing.
- (5) The posted or established speed limit on the road through the crossing exceeds ten (10) m.p.h. within one thousand (1,000) feet of the crossing. This requirement shall not be applicable when it refers to a nonmotorized public grade crossing.
- (6) The crossing has more than ten (10) train movements per day which utilize the crossing.
- (7) The crossing is located where freight train service operates at greater than twenty-five (25) m.p.h. (Class 2 FRA track classification or higher).
- (8) The crossing has, at a minimum, a standard crossbuck or a standard crossbuck with flasher or other activated warning device.
- (9) The roadway approach to the crossing is skewed or the physical characteristics of the crossing otherwise limit the ability to traverse the crossing in a safe manner.
- (10) If the crossing is utilized by the following types of vehicles, then the use by such vehicles should be considered in determining whether a crossing stays open or is closed. The presence or lack of presence of any of the following types of vehicles may not solely be responsible for closure or nonclosure of a crossing:
 - (A) Trucks carrying hazardous materials.

RAILROADS

(B) Vehicles carrying passengers for hire.

(C) School buses.

(D) Emergency vehicles.

(Indiana Department of Transportation; 105 IAC 5-10-2; filed Jun 17, 1998, 9:00 a.m.: 21 IR 4191; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed Aug 5, 2002, 1:05 p.m.: 25 IR 4052)

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