

Final Rules

TITLE 105 INDIANA DEPARTMENT OF TRANSPORTATION

LSA Document #00-248(F)

DIGEST

Amends 105 IAC 12 concerning procurement of supplies and services. Effective 30 days after filing with the secretary of state.

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SECTION 1. 105 IAC 12-1-6 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-6 “Change order” defined

Authority: IC 5-22-4-2; IC 8-23-2-6
Affected: IC 5-22

Sec. 6. “Change order” means a written order that:

- (1) is signed by the ~~commissioner~~, **purchasing agent**; and
- (2) directs the contractor to make changes **that the contract authorizes the purchasing agent to order** without the consent of the contractor.

(Indiana Department of Transportation; 105 IAC 12-1-6; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366)

SECTION 2. 105 IAC 12-1-9 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-9 “Contract modification” defined

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 9. “Contract modification” means a written alteration: (1) in ~~specifications~~; a **specification**, delivery point, rate of delivery, period of performance, price, quantity, or ~~other~~ **another** provision of a contract; ~~which alteration is and~~ (2) accomplished by mutual ~~approval~~ **action** of the parties to the contract.

(Indiana Department of Transportation; 105 IAC 12-1-9; filed

Jan 15, 1993, 1:00 p.m.: 16 IR 1502; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2802; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366)

SECTION 3. 105 IAC 12-1-10 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-10 “Contractor” defined

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 10. “Contractor” ~~means any~~ **refers to a person having who has** a contract with the department. *(Indiana Department of Transportation; 105 IAC 12-1-10; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366)*

SECTION 4. 105 IAC 12-1-12 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-12 “Designee” defined

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 12. “Designee” means ~~a duly~~ **an** authorized representative of the commissioner. *(Indiana Department of Transportation; 105 IAC 12-1-12; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366)*

SECTION 5. 105 IAC 12-1-13 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-13 “Established catalog price” defined

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 13. “Established catalog price” ~~means~~ **refers to** the price included in a catalog, price list, schedule, or other form that: (1) is regularly maintained by the manufacturer or contractor; (2) is either published or otherwise available for inspection by customers; and (3) states prices at which sales are currently or were last made to a significant number of any category of buyers, or buyers constituting the general buying public, for the supplies or services involved.

(Indiana Department of Transportation; 105 IAC 12-1-13; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366)

SECTION 6. 105 IAC 12-1-14 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-14 “Invitation for bid” defined

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 14. “Invitation ~~to for~~ bid” means all documents, whether attached or incorporated by reference, used for ~~the purpose of~~ soliciting bids. ~~The term, invitation to bid, includes a request for proposals.~~ *(Indiana Department of Transportation; 105 IAC 12-*

1-14; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366)

SECTION 7. 105 IAC 12-1-16 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-16 “Person” defined

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 16. “Person” ~~means any~~ **includes an association, a business, individual, a committee, a corporation, partnership, a fiduciary, an individual, a joint stock company, a joint venture, or other a limited liability company, a partnership, a sole proprietorship, a trust, or another legal entity, organization, or group of individuals.** (*Indiana Department of Transportation; 105 IAC 12-1-16; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367*)

SECTION 8. 105 IAC 12-1-20 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-20 “Purchase description” defined

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 20. (a) “Purchase description” means the words used in an invitation ~~to for~~ bid to describe the supplies or ~~service services~~ to be purchased. ~~and~~

(b) **The term** includes specifications attached to, or made a part of, the invitation ~~to for~~ bid. (*Indiana Department of Transportation; 105 IAC 12-1-20; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367*)

SECTION 9. 105 IAC 12-1-20.1 IS ADDED TO READ AS FOLLOWS:

105 IAC 12-1-20.1 “Purchasing agent” defined

Authority: IC 5-22-4-2; IC 8-23-2-6
Affected: IC 5-22

Sec. 20.1. **“Purchasing agent” means an individual authorized by the department to act as an agent for the department in the administration of the duties of the department.** (*Indiana Department of Transportation; 105 IAC 12-1-20.1; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367*)

SECTION 10. 105 IAC 12-1-21 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-21 “Request for proposals” or “RFP” defined

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 21. “Request for proposals” **or “RFP”** means all documents, whether attached or incorporated by reference, used for soliciting proposals. (*Indiana Department of Transporta-*

tion; 105 IAC 12-1-21; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367)

SECTION 11. 105 IAC 12-1-23 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-23 “Responsive bidder” defined

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 23. “Responsive bidder” means a person who has submitted a bid that conforms in all material respects to the invitation ~~to for~~ bid. (*Indiana Department of Transportation; 105 IAC 12-1-23; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367*)

SECTION 12. 105 IAC 12-1-24 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-24 “Services” defined

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 24. “Services” means the furnishing of labor, time, or effort by a ~~contractor~~ **person not involving the delivery of specific supplies other than printed documents or other items that are merely incidental to the required performance.** (*Indiana Department of Transportation; 105 IAC 12-1-24; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367*)

SECTION 13. 105 IAC 12-1-25 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-25 “Specifications” defined

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 25. (a) “Specifications” means ~~any a~~ **a description of the physical or functional characteristics of a supply or service or the nature of a supply or service. and may include**

(b) **The term includes** a description of any requirements for inspecting, testing, or preparing a supply ~~or service or construction item~~ for delivery. (*Indiana Department of Transportation; 105 IAC 12-1-25; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367*)

SECTION 14. 105 IAC 12-1-26 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-26 “Supplies” defined

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 26. “Supplies” means ~~all personal~~ **any property, including but not limited to, equipment, goods, and materials. and goods. The term does not include an interest in real prop-**

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erty. (*Indiana Department of Transportation; 105 IAC 12-1-26; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367*)

SECTION 15. 105 IAC 12-2-4 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-2-4 Minority participation

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 4. The department will make good faith efforts to solicit participation of minorities on every invitation to for bid. (*Indiana Department of Transportation; 105 IAC 12-2-4; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 368*)

SECTION 16. 105 IAC 12-2-6 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-2-6 Bid guarantees

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 6. At the discretion of the department, a bidder may be required to submit with its bid a bid guarantee in the form of a certified check, a cashier's check, or a bid bond acquired from a surety company authorized to do business in the state of Indiana. If required, the amount shall be specified in the invitation to for bid. The bid guarantee of an unsuccessful bidder will be returned upon award of the contract. The bid guarantee of the successful bidder will be returned after the bidder enters into a contract with the department. (*Indiana Department of Transportation; 105 IAC 12-2-6; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505; filed Oct 3, 2001, 9:35 a.m.: 25 IR 368*)

SECTION 17. 105 IAC 12-2-7 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-2-7 Performance bonds

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 7. At the discretion of the department, a successful bidder may be required to submit a performance bond in the form of a certified check, a cashier's check, or a performance bond acquired from a surety company authorized to do business in the state of Indiana. If required, the amount of the performance bond and the time that it must be submitted will be specified in the invitation to for bid. Performance bonds will be returned, upon request, at the successful completion of the contract. (*Indiana Department of Transportation; 105 IAC 12-2-7; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505; filed Oct 3, 2001, 9:35 a.m.: 25 IR 368*)

SECTION 18. 105 IAC 12-2-9 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-2-9 Public notice

Authority: IC 8-23-2-6
Affected: IC 5-3-1; IC 5-22

Sec. 9. (a) The department shall give public notice according to the following schedule: in the manner required by IC 5-3-1.

(1) If the procurement is estimated to exceed fifty thousand dollars (\$50,000), notice shall be published two (2) times, at least one (1) week apart, with the second publication made at least seven (7) days before the date the bids will be received.

(2) If the procurement is estimated to exceed twenty-five thousand dollars (\$25,000), but not to exceed fifty thousand dollars (\$50,000), notice shall be published at least one (1) time, at least seven (7) days before the date the bids will be received.

(3) If the procurement is estimated to be less than twenty-five thousand dollars (\$25,000), publication of notice is not required.

(4) The department may publish additional notices at its discretion.

(b) Whenever notice is required by subsection (a), it shall be published in one (1) newspaper of general circulation in Marion County, Indiana. If any of the services or supplies being procured are for use outside Marion County, Indiana, notice also may be published in one (1) or more newspapers of general circulation in that area.

(c) If the procurement is estimated to exceed twenty-five thousand dollars (\$25,000), the department shall post notices on a public bulletin board located in the department's central office in Indianapolis, Indiana. (*Indiana Department of Transportation; 105 IAC 12-2-9; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505; filed Oct 3, 2001, 9:35 a.m.: 25 IR 368*)

SECTION 19. 105 IAC 12-2-14 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-2-14 Withdrawal of bids or proposals

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 14. A bidder bearing proper authorization and identification may sign for and receive an unopened bid or proposal and withdraw the bid or proposal prior to the exact time for submission of bids or proposals. A bidder may modify its bid or proposal by withdrawing its bid or proposal as provided above and resubmitting a modified bid or proposal prior to the exact time for submission of bids or proposals. Neither the staff nor the facilities of the department will be available to assist a bidder desiring to make modifications. It is the bidder's responsibility to make all modifications. (*Indiana Department of Transportation; 105 IAC 12-2-14; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1506; filed Oct 3, 2001, 9:35 a.m.: 25 IR 368*)

SECTION 20. 105 IAC 12-2-16 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-2-16 Award; cancellation; rejection

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 16. (a) The department reserves the right to accept or reject any or all bids, or any part thereof, and to award the items separately or all to one (1) bidder. A bidder bidding on an all or none basis must state so in its bid.

(b) Prior to the opening of bids, the department may cancel an invitation ~~to~~ **for** bid in whole or in part, when it is in the best interest of the department. Reasons for cancellation include, but are not limited to:

- (1) the department no longer requires the supplies or services;
- (2) the department no longer can reasonably expect to fund the procurement; or
- (3) proposed amendments to the invitation ~~to~~ **for** bid would be of such magnitude that a new invitation ~~to~~ **for** bid is desirable.

(c) After the opening of bids, but prior to award of a contract, the department may reject all bids, in whole or in part, when it is in the best interest of the department. Reasons for rejection include, but are not limited to:

- (1) the department no longer requires the supplies or services;
- (2) ambiguous or otherwise inadequate specifications were part of the invitation ~~to~~ **for** bid;
- (3) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- (4) all bids received contain unreasonable prices; or
- (5) there is reason to believe that the bids or proposals may not have been independently prepared.

(d) When the department cancels an invitation ~~to~~ **for** bid, the department will send notice to each person who submitted a bid, stating the reason for ~~the~~ cancellation. **The reason for cancellation shall be made part of the procurement file and shall be available for public inspection.**

(e) When two (2) or more bids are equal, award shall be made by a drawing by lot limited to those bidders. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be witnessed by at least three (3) persons, and the contract file shall contain the names and addresses of the witnesses. (*Indiana Department of Transportation; 105 IAC 12-2-16; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1506; filed Oct 3, 2001, 9:35 a.m.: 25 IR 369*)

SECTION 21. 105 IAC 12-3-1 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-3-1 Purchases less than \$2,500

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 1. (a) A procurement with an estimated cost not exceeding **two thousand** five hundred dollars (~~\$500~~) (**\$2,500**) may be made under the procedure outlined in this section.

(b) Bids shall be invited from at least one (1) person known to deal in the supplies or services to be procured.

(c) The purchase description and date bids are due shall be communicated to the person invited to bid. Means of communication may include mail, telephone, **electronic mail**, or facsimile machine.

(d) The department may consider an advertised price in a catalog, newspaper advertisement, radio commercial, television commercial, or other media communication to be a bid received by the department. The department must know of the advertised price at the time bids are due.

(e) If a satisfactory bid is received, a contract shall be awarded to the lowest responsive and responsible bidder.

(f) If no responsive bid is received from a responsible bidder, the department reserves the right to repeat the process described in this section. (*Indiana Department of Transportation; 105 IAC 12-3-1; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1507; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2802; errata filed Sep 14, 1994, 2:50 p.m.: 18 IR 268; filed Oct 3, 2001, 9:35 a.m.: 25 IR 369*)

SECTION 22. 105 IAC 12-3-2 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-3-2 Purchases less than \$75,000

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 2. (a) A procurement with an estimated cost not exceeding **five seventy-five** thousand dollars (~~\$5,000~~) (**\$75,000**) may be made under the procedure outlined in this section.

(b) ~~Where practicable,~~ Bids shall be invited from at least three (3) persons known to deal in the supplies or services to be procured.

(c) The purchase description and the date bids are due shall be communicated to the persons invited to bid. Means of communication may include mail, telephone, **electronic mail**, or facsimile machine.

(d) The department may consider an advertised price in a catalog, newspaper, advertisement, radio commercial, television commercial, or other media communication to be a bid received by the department. The department must know of the advertised price at the time bids are due.

(e) If satisfactory bids are received, a contract shall be awarded to the lowest responsive and responsible bidder.

(f) If no responsive bid is received from a responsible bidder, the department reserves the right to repeat the process described in this section. (*Indiana Department of Transportation; 105 IAC 12-3-2; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1507; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2803; filed Oct 3, 2001, 9:35 a.m.: 25 IR 369*)

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SECTION 23. 105 IAC 12-3-4 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-3-4 Competitive sealed bids

Authority: IC 8-23-2-6

Affected: IC 5-22-18-2

Sec. 4. (a) A contract for supplies or services may be awarded under the procedure outlined in this section regardless of the estimated dollar value.

(b) An invitation ~~to for~~ bid under this section shall be issued to potential bidders and must include the following:

- (1) A purchase description.
- (2) All contractual terms and conditions ~~applicable that apply to the procurement.~~ **purchase.**
- (3) A statement of the evaluation criteria ~~to that will~~ be used, including ~~criteria such as any of the following:~~
 - (A) Inspection.
 - (B) Testing.
 - (C) Quality.
 - (D) Workmanship.
 - (E) Delivery. ~~and~~
 - (F) Suitability for a particular purpose.

(4) The time, date, and place ~~for the submission of bids and for the opening of bids.~~

(5) A statement concerning whether the bid must be accompanied by a certified check or other evidence of financial responsibility that may be imposed in accordance with rules or policies of the governmental body.

(6) A statement concerning the conditions under which a bid may be canceled or rejected in whole or in part as specified under IC 5-22-18-2.

(c) Bids shall be publicly opened at the time and place designated in the invitation ~~to for~~ bid in the presence of one (1) or more witnesses.

(d) A contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder. (*Indiana Department of Transportation; 105 IAC 12-3-4; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1507; filed Oct 3, 2001, 9:35 a.m.: 25 IR 370*)

SECTION 24. 105 IAC 12-3-5 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-3-5 Competitive sealed proposal or request for proposal

Authority: IC 5-22-4-2; IC 8-23-2-6

Affected: IC 5-3-1; IC 5-22

Sec. 5. (a) ~~The commissioner must make~~ **When a purchasing agent makes** a written determination ~~approving that the procurement use of supplies and services under this section.~~ **competitive sealed bidding is either not practicable or not**

advantageous to the governmental body, the purchasing agent may award a contract using the procedure provided by this section instead of competitive sealed bidding.

(b) ~~Proposals~~ **The purchasing agent shall be solicited solicit proposals** through a request for proposals, which must include ~~the criteria to be used in evaluating the proposals.~~ **following:**

(1) A statement concerning the relative importance of price and the other evaluation factors.

(2) A statement concerning whether the proposal must be accompanied by a certified check or other evidence of financial responsibility.

(c) Public notice shall be given in the manner required by IC 5-3-1.

~~(d)~~ **(d)** Proposals shall be opened at the date and time specified in the request for proposals.

~~(e)~~ **(e)** The department may conduct discussions with persons submitting proposals for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Persons submitting proposals must be accorded fair and equal treatment with respect to the opportunity for discussion and revision of proposals. In conducting discussions, the department shall not disclose information derived from proposals submitted by competing persons.

~~(f)~~ **(f)** After identification of the responsible offer or whose proposal appears to be the most advantageous to the department, the department will enter into contract preparation activities with the bidder. If at any time the contract preparation activities are judged to be ineffective, the department may cease all activities with that bidder and begin contract preparation activities with the next highest ranked bidder, and the process may continue until a contract is executed. The department reserves the right to cease all contract preparation activities at any time and ~~the to~~ reject all proposals, if such action is determined to be in the best interest of the department. (*Indiana Department of Transportation; 105 IAC 12-3-5; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1508; filed Oct 3, 2001, 9:35 a.m.: 25 IR 370*)

SECTION 25. 105 IAC 12-3-7 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-3-7 Open-end contracts

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 7. (a) Procurement of various types of aggregates and bituminous materials may be awarded under the procedure outlined in this section.

(b) The department will solicit unit prices for the various types of aggregates and bituminous materials in the invitation

~~to~~ **for** bid. Prices submitted in bids shall be binding upon the bidder for the time period specified in the invitation ~~to~~ **for** bid.

(c) A procurement of a specified quantity of material will be awarded to the bidder whose relative cost per unit is the lowest, using the following formula:

$$C = P + (2 \times D \times M)$$

- Where: P = Price quoted per unit.
 D = Haul distance from supplier to the department worksite.
 M = Cost per mile as determined by the department.
 C = Relative cost per unit.

(d) The department may continue to procure materials from the bids submitted for the period specified in the invitation ~~to~~ **for** bid. (*Indiana Department of Transportation; 105 IAC 12-3-7; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1508; filed Oct 3, 2001, 9:35 a.m.: 25 IR 370*)

SECTION 26. 105 IAC 12-3-8 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-3-8 Special procurements

Authority: IC 5-22-4-2; IC 8-23-2-6
 Affected: IC 5-22

Sec. 8. (a) ~~The department may make a special procurement~~ **Notwithstanding any other provision of this article, a purchasing agent may make a purchase without soliciting bids or proposals** under any of the following circumstances:

- (1) When there exists a unique opportunity to obtain supplies or services at a substantial savings to the department.
- (2) When the market structure requires the department to inspect and bid on the supplies to be procured.
- (3) **When only one (1) source meets the department's reasonable requirements** for the procurement of data processing contracts or license agreements ~~for~~ **involving:**
 - (A) software programs; or
 - (B) supplies or services. ~~when only one (1) source meets the department's reasonable requirements.~~
- (4) When the compatibility of equipment, accessories, or replacement parts is a substantial consideration in the procurement and only one (1) source meets the department's reasonable requirements.
- (5) When there exists, under emergency conditions, a threat to public health, welfare, or safety.
- (6) When the department has solicited for a procurement ~~under another section of this chapter~~ and has not received a responsive bid from a responsible bidder.
- (7) When procurement of the required supplies or services ~~under another section of this chapter~~ would seriously impair the functioning of the department.
- (8) For the evaluation of supplies or a system containing supplies to obtain functional information or comparative data or for any other purpose that in the judgment of the commissioner may

advance the long term competitive position of the state.

(9) For the procurement of copyrighted materials to be used, provided, or distributed by the department.

(b) A special procurement must be made with such competition as is practicable under the circumstances.

(c) **A purchasing agent shall maintain the contract records for a special purchase in a separate file. The contract file shall include** a written determination of ~~the a~~ basis for the special ~~procurement purchase~~ and for the selection of the particular ~~contractor must be included in the contract file.~~

(d) A special procurement must be approved by the commissioner. (*Indiana Department of Transportation; 105 IAC 12-3-8; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1508; filed Oct 3, 2001, 9:35 a.m.: 25 IR 371*)

SECTION 27. 105 IAC 12-4-1 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-4-1 Price adjustments

Authority: IC 8-23-2-6
 Affected: IC 5-22

Sec. 1. The department may enter into a contract ~~which provide that provides~~ for price adjustments under the conditions defined in the invitation ~~to~~ **for** bid. (*Indiana Department of Transportation; 105 IAC 12-4-1; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1509; filed Oct 3, 2001, 9:35 a.m.: 25 IR 371*)

SECTION 28. 105 IAC 12-4-3 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-4-3 Equipment rental or lease with option to purchase

Authority: IC 8-23-2-6
 Affected: IC 5-22

Sec. 3. A contract for rental or lease may contain an option to purchase under the following circumstances:

- (1) Exercise of the option shall be at the sole discretion of the commissioner.
- (2) The option must be part of the invitation ~~to~~ **for** bid. (*Indiana Department of Transportation; 105 IAC 12-4-3; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1509; filed Oct 3, 2001, 9:35 a.m.: 25 IR 371*)

SECTION 29. 105 IAC 12-4-4 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-4-4 Additions

Authority: IC 8-23-2-6
 Affected: IC 5-22

Sec. 4. (a) If a bidder inserts contract terms or bids on items not listed in the invitation ~~to~~ **for** bid, the department will treat

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the additional material as a proposal for addition to the contract and may:

- (1) find the bidder to be nonresponsive;
- (2) permit the bidder to withdraw the proposed additions to the contract; or
- (3) accept any of the proposed additions to the contract.

(b) The department will not accept proposed additions to the contract that are prejudicial to the interest of the department or fair competition. The department's decision to permit a change will be made in writing. (*Indiana Department of Transportation; 105 IAC 12-4-4; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1509; filed Oct 3, 2001, 9:35 a.m.: 25 IR 371*)

SECTION 30. 105 IAC 12-4-6 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-4-6 Option to renew

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 6. A contract may contain an option to renew or extension of its terms, for a specified period of time, under the following circumstances:

- (1) Exercise of the option is at the discretion of the department.
- (2) The provision must be included in the invitation to bid solicitation.
- (3) A contract for supplies or services may be entered into for a period not to exceed four (4) years.
- (4) Performance obligations for succeeding fiscal years shall be subject to availability of funds for each year.
- (5) The invitation to for bid and contract specify the exact payment terms.

(*Indiana Department of Transportation; 105 IAC 12-4-6; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1510; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2803; filed Oct 3, 2001, 9:35 a.m.: 25 IR 372*)

SECTION 31. 105 IAC 12-3-3 IS REPEALED.

LSA Document #00-248(F)

Notice of Intent Published: 24 IR 698

Proposed Rule Published: August 1, 2001; 24 IR 3664

Hearing Held: August 23, 2001

Approved by Attorney General: September 25, 2001

Approved by Governor: October 2, 2001

Filed with Secretary of State: October 3, 2001, 9:35 a.m.

Incorporated Documents Filed with Secretary of State: None

TITLE 329 SOLID WASTE MANAGEMENT BOARD

LSA Document #00-255(F)

DIGEST

Adds 329 IAC 3.1-6-6 to conditionally exclude from regulation under 329 IAC 3.1 electric arc furnace dust that is treated

to be nonhazardous by Heritage Environmental Services, LLC at Nucor Steel Corporation, Crawfordsville, Indiana. Effective 30 days after filing with the secretary of state.

HISTORY

Findings and Determination of the Commissioner Pursuant to IC 13-14-9-7, Tentative Recommendation for Rulemaking, Second Notice of Comment Period, and Notice of First Public Hearing: December 1, 2000, Indiana Register (24 IR 804).

Date of First Public Hearing: March 20, 2001.

Proposed Rule and Notice of Second Public Hearing: May 1, 2001, Indiana Register (24 IR 2515).

Date of Second Public Hearing: June 19, 2001.

329 IAC 3.1-6-6

SECTION 1. 329 IAC 3.1-6-6 IS ADDED TO READ AS FOLLOWS:

329 IAC 3.1-6-6 Waste excluded from regulation; Heritage Environmental Services, LLC and Nucor Steel Corporation, Crawfordsville, Indiana

Authority: IC 13-14-8; IC 13-22-2

Affected: IC 13-22

Sec. 6. Electric arc furnace dust (EAFD), hazardous waste code K061, that is generated by Heritage Environmental Services, LLC (Heritage) and Nucor Steel, Division of Nucor, Corporation (Nucor) at Nucor's Crawfordsville, Indiana plant, and treated to be nonhazardous is excluded from regulation under this article so long as management of the waste complies with all of the following conditions:

(1) Delisting levels for the waste excluded by this section are as follows:

(A) The constituent concentrations measured in any of the extracts required by subdivision (2) must not exceed any of the levels listed in Table 1:

Table 1. Maximum Constituent Concentrations in TCLP Extracts

Antimony	0.206 mg/L
Arsenic	0.0936 mg/L
Barium	55.7 mg/L
Beryllium	0.416 mg/L
Cadmium	0.15 mg/L
Chromium (total)	1.55 mg/L
Lead	5.0 mg/L
Mercury	0.149 mg/L
Nickel	28.3 mg/L
Selenium	0.58 mg/L
Silver	3.84 mg/L
Thallium	0.088 mg/L
Vanadium	21.1 mg/L
Zinc	280 mg/L

(B) Total mercury in the treated EAFD must not exceed one (1.0) milligram per kilogram.

(2) Heritage shall demonstrate on a monthly basis that

the constituents in the treated EAFD do not exceed the delisting levels in subdivision (1) as follows:

(A) Heritage shall collect two (2) representative samples of the treated EAFD each month. Each sample must be analyzed using all of the following tests:

(i) Method 1311, Toxicity Characteristic Leaching Procedure (TCLP), described in U.S. Environmental Protection Agency Publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", 3rd Edition (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996) (SW-846).

(ii) Method 1311, described in item (i), substituting an extraction fluid with a pH of 12.0 ± 0.05 standard units for the normal extraction fluid. Heritage may remove dissolved oxygen to less than five-tenths (0.5) parts per million by the addition of a stoichiometric amount of sodium hydrosulfite.

(iii) Method 7471A, Mercury in Solid or Semi-Solid Waste (Manual Cold-Vapor Technique), described in SW-846.

(B) Detection levels must be less than the delisting levels in subdivision (1).

(C) Heritage must comply with Chapter 1, "Quality Control", of SW-846.

U.S. Environmental Protection Agency Publication SW-846 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(3) Changes in the manufacturing process or the treatment process must be managed as follows:

(A) Heritage must notify the department in writing if any of the following occur:

(i) If Nucor changes the manufacturing process or chemicals used in the manufacturing process from those described in the petition for delisting.

(ii) If Heritage changes the treatment process or the chemicals used in the treatment process from those described in the petition for delisting.

(B) Heritage must handle all wastes generated after any process change as hazardous waste until all of the following occur:

(i) Heritage has demonstrated that:

(AA) the wastes continue to meet all delisting levels in subdivision (1); and

(BB) no new hazardous constituents listed in 40 CFR Part 261, Appendix VIII have been introduced.

(ii) Heritage has received written approval from the department to continue to manage the treated EAFD under this exclusion.

(4) Heritage must submit an annual report that summarizes the data obtained through monthly verification testing to IDEM by February 1 of each year. The report

must include the results of each month's analysis required by subdivision (2) for the previous calendar year. (5) Heritage must compile, summarize, and maintain records of operating conditions and analytical data. The records must be maintained for a minimum of five (5) years. The records must be made available for inspection by the department during normal working hours.

(6) All data required by subdivisions (4) and (5) must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

(7) The treated EAFD must be disposed of in accordance with:

(A) 329 IAC 10; or

(B) this article.

(8) Solid waste landfill units permitted under 329 IAC 10 that accept the treated EAFD must comply with the groundwater monitoring requirements of 329 IAC 10-21.

(9) The treated EAFD must be covered in accordance with 329 IAC 10-20-13 through 329 IAC 10-20-14.

(10) Only the following materials may be used as alternative daily cover over the treated EAFD:

(A) Category B slag debris.

(B) Foundry sand.

(C) Petroleum contaminated soils.

(D) Fly ash.

(E) Conditioned fly ash.

(F) Coal ash.

(G) Uncontaminated rocks, bricks, concrete, road demolition waste materials, or dirt.

(H) Other materials approved in accordance with 329 IAC 10-20-14.1 for use over the treated EAFD after the effective date of this rule.

(11) No waste that is capable of providing oxygen or acting as a source of oxygen may be disposed of in the same cell or unit as the treated EAFD.

(12) If, at any time after disposal of the delisted waste, Heritage possesses or is otherwise made aware of any data relevant to the delisted waste indicating that any constituent identified in subdivision (1) is at a level in a test extract or in the leachate that is higher than the delisting level listed in subdivision (1), then Heritage must report such data in writing to the commissioner within ten (10) days of first possessing or being made aware of that data.

(13) If, at any time after disposal of the treated EAFD, Heritage possesses or is otherwise made aware of any data relevant to the delisted waste indicating that any of the following constituents is at a level in the groundwater higher than the levels listed in Table 2:

Table 2. Maximum Allowable Concentrations in Groundwater

Antimony	0.006 mg/L
Arsenic	0.005 mg/L
Barium	2.0 mg/L

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Beryllium	0.004 mg/L
Cadmium	0.005 mg/L
Chromium	0.1 mg/L
Lead	0.015 mg/L
Mercury	0.002 mg/L
Nickel	0.753 mg/L
Selenium	0.05 mg/L
Silver	0.187 mg/L
Thallium	0.002 mg/L
Vanadium	0.263 mg/L
Zinc	11.25 mg/L
Sulfides	1.0 mg/L

then Heritage must report such data in writing to the commissioner with ten (10) days after first possessing or being made aware of that data.

(14) No more than thirty thousand (30,000) cubic yards of treated EAFD may be treated or disposed of annually under this exclusion.

(Solid Waste Management Board; 329 IAC 3.1-6-6; filed Oct 3, 2001, 9:43 a.m.: 25 IR 372)

LSA Document #00-255(F)

Proposed Rule Published: May 1, 2001; 24 IR 2515

Hearing Held: June 19, 2001

Approved by Attorney General: September 14, 2001

Approved by Governor: September 29, 2001

Filed with Secretary of State: October 3, 2001, 9:43 a.m.

Incorporated Documents Filed with Secretary of State: None

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

LSA Document #01-1(F)

DIGEST

Amends 345 IAC 1-5 to allow dogs and cats to be vaccinated for rabies every three years under certain circumstances. The rule amends requirements for rabies vaccination of dogs, cats, and ferrets. Makes other changes in the law of rabies control. Effective 30 days after filing with the secretary of state.

345 IAC 1-5-1

345 IAC 1-5-2

345 IAC 1-5-3

SECTION 1. 345 IAC 1-5-1 IS AMENDED TO READ AS FOLLOWS:

345 IAC 1-5-1 Rabies vaccination

Authority: IC 15-2.1-3-19

Affected: IC 15-2.1-3-13; IC 15-2.1-6

Sec. 1. (a) For the purpose of administering the rabies control

law, IC 15-2.1-6 and this rule, an animal is deemed to be vaccinated for rabies immunized only when the following provisions are met:

(1) The animal must be vaccinated by a veterinarian that is:
(A) licensed to practice veterinary medicine in Indiana; and
(B) accredited veterinarian by the United States Department of Agriculture under 9 CFR, Subchapter J.

(2) The vaccine used must be licensed and approved by the United States Department of Agriculture. The dosage and administration of either a modified live virus or inactivated the vaccine used must be in accordance with this rule and the manufacturers' recommendations: specifications described on the vaccine's label and package insert.

(2) (b) The licensed and accredited veterinarian performing such a rabies vaccination of an animal shall do the following:

(A) Furnish an antirabies vaccination identification tag with the veterinarian's or clinic's name and telephone number to the owner or custodian of the animal:

(B) (1) Complete a vaccination certificate or computerized record, in triplicate, on the each animal being vaccinated for rabies that shall include the following information:

(A) The name and address of the animal's owner.

(B) The species, sex, and age of the animal vaccinated.

(C) The date the animal was vaccinated.

(D) The product name and lot number of the vaccine used.

(E) The date the animal must be revaccinated under section 2 of this rule.

(F) The number of the tag issued if a tag is issued under subdivision (3).

(G) The name of the veterinarian completing the vaccination and his or her Indiana veterinary license number.

(2) The rabies vaccination certificate completed under subdivision (1) shall be distributed as follows:

(i) (A) One (1) copy of the certificate or computerized record shall be given to the owner or custodian of the animal being vaccinated for rabies.

(ii) (B) One (1) copy of the certificate or computerized record shall be forwarded to the county health officer or the officer's designated agent upon the county health officer's request, or as otherwise directed by the state veterinarian otherwise directs, within thirty (30) days of the vaccination.

(iii) (C) One (1) copy of the certificate or computerized record shall be retained by the veterinarian vaccinating such animal covering the period of immunization.

(3) A veterinarian that vaccinates a dog, cat, or ferret shall furnish to the owner or custodian of the animal a rabies vaccination identification tag that contains the following:

(A) The veterinarian's or clinic's name and telephone number.

(B) A unique identification number.

(c) **The owner or custodian of an animal vaccinated for rabies shall keep a copy of the certificate and tag required to be issued under subsection (b) until such time as the animal must be revaccinated under section 2 of this rule. The board recommends that the animal owner or custodian shall of a dog affix such the rabies vaccination tag to the collar or harness of each animal, where it shall the dog and that it be worn at all times. Nothing in this rule shall prevent a local unit of government from requiring that rabies vaccination tags be worn at all times.**

Immunized (d) Animals that have been vaccinated for rabies are subject to all quarantine provisions which that may be imposed by state or local regulations. The final determination of an animal's rabies **vaccination** status shall be made by the state veterinarian. (*Indiana State Board of Animal Health; Reg 57-2, Title 1; filed Jun 4, 1958, 3:30 p.m.: Rules and Regs. 1959, p. 284; filed Jan 20, 1988, 4:05 p.m.: 11 IR 1740; filed Oct 23, 1989, 5:00 p.m.: 13 IR 383; filed Jun 14, 1995, 3:30 p.m.: 18 IR 2759; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895; filed Oct 1, 2001, 11:10 a.m.: 25 IR 374*) **NOTE: Originally adopted by the Indiana State Livestock Sanitary Board. Name changed by Acts 1969, Ch. 81, Sec. 1.**

SECTION 2. 345 IAC 1-5-2 IS AMENDED TO READ AS FOLLOWS:

345 IAC 1-5-2 Required rabies vaccination of dogs, cats, and ferrets

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-6

Sec. 2. All dogs, cats, and ferrets three (3) months of age and older must be vaccinated **annually** against rabies. **with The rabies vaccination of a licensed and approved vaccine administered by a licensed, accredited veterinarian: dog, cat, and ferret shall be maintained by ongoing revaccination of the animal as follows:**

- (1) Ferrets shall be revaccinated within twelve (12) months of the prior vaccination.**
- (2) Dogs and cats that are vaccinated with a rabies vaccine whose label recommends annual boosters shall be revaccinated within twelve (12) months of the prior vaccination.**
- (3) Dogs and cats that are vaccinated with a rabies vaccine whose label recommends a booster one (1) year later and triennially thereafter shall be revaccinated within twelve (12) months of the first vaccination and shall be revaccinated within thirty-six (36) months of each vaccination thereafter.**

The owner of the animal is responsible for procuring the vaccinations required by this section. (*Indiana State Board of Animal Health; 345 IAC 1-5-2; filed Jun 14, 1995, 3:30 p.m.: 18 IR 2760; filed Jun. 17, 1998, 9:03 a.m.: 21 IR 4204; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895; filed Oct 1, 2001, 11:10 a.m.: 25 IR 375*)

SECTION 3. 345 IAC 1-5-3 IS AMENDED TO READ AS FOLLOWS:

345 IAC 1-5-3 Animal rabies control program

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-6

Sec. 3. (a) A statewide animal rabies control program is established. The state veterinarian shall implement the rabies control program.

(b) The Compendium of Animal Rabies Control, ~~1999~~, **2001**, National Association of State Public Health Veterinarians, Inc., is hereby incorporated by reference as a rule of the Indiana state board of animal health and shall be used in the implementation of the program established under subsection (a), provided, however, the following shall apply:

- (1) References to preexposure or postexposure treatment of humans are recommendations from the National Association of State Public Health Veterinarians and are not requirements of the Indiana state board of animal health.
- (2) Part III(B)(2) concerning stray dogs, cats, and ferrets is a recommendation but not a requirement of the Indiana state board of animal health.
- (3) Part III(B)(4) is not incorporated.
- (4) Part III(C) is not a requirement of the Indiana state board of animal health.

(c) Where the matters incorporated by reference in this section conflict with the provisions of IC 15-2.1-6 and this rule, the express provisions of **the** statute and this rule shall control. (*Indiana State Board of Animal Health; 345 IAC 1-5-3; filed Jun 14, 1995, 3:30 p.m.: 18 IR 2760; filed Dec 10, 1997, 11:00 a.m.: 21 IR 1327; filed Jun 17, 1998, 9:03 a.m.: 21 IR 4205; filed Mar 23, 2000, 4:24 p.m.: 23 IR 1913; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895; filed Oct 1, 2001, 11:10 a.m.: 25 IR 375*)

LSA Document #01-1(F)
Notice of Intent Published: 24 IR 1378
Proposed Rule Published: June 1, 2001; 24 IR 2805
Hearing Held: July 25, 2001
Approved by Attorney General: September 14, 2001
Approved by Governor: September 28, 2001
Filed with Secretary of State: October 1, 2001, 11:10 a.m.
Incorporated Documents Filed with Secretary of State: National Association of State Public Health Veterinarians, Inc., "Compendium of Animal Rabies Prevention and Control, 2001".

TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

LSA Document #01-71(F)

DIGEST

Amends 355 IAC 4-2 to add a definition of registered technician and written instructions for a registered technician,

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clarify that a noncertified person using pesticides under the off site supervision of a certified applicator must be a registered technician, establish a limit on the number of register technicians to be supervised by a certified applicator, and establish the requirements to become registered and reregistered as a technician. Effective 30 days after filing with the secretary of state.

355 IAC 4-2-1
355 IAC 4-2-2
355 IAC 4-2-3
355 IAC 4-2-4

355 IAC 4-2-5
355 IAC 4-2-6
355 IAC 4-2-7
355 IAC 4-2-8

SECTION 1. 355 IAC 4-2-1 IS AMENDED TO READ AS FOLLOWS:

355 IAC 4-2-1 Definitions

Authority: IC 15-3-3.5-11; IC 15-3-3.6-4; IC 15-3-3.6-10.1
Affected: IC 15-3-3.6-2

Sec. 1. The following definitions apply throughout this rule:

(a) ~~The term (1) "Competent person" shall mean (†) means~~ a person with who:

(A) has the ability to read and comprehend written instructions, including the text of pesticide labels; ~~and~~
(2) ~~A person (B) is sixteen (16) years of age or over; and~~
(C) ~~is a registered technician.~~

(b) ~~The term (2) "Direct supervision" shall mean: means either of the following:~~

(†) (A) The physical presence of the supervising certified applicator at the work site under circumstances ~~which that~~ permit continuous direct voice contact with the noncertified ~~applicator; or individual.~~

(2) (B) ~~The supervising certified applicator has provided the noncertified competent person the following:~~

(i) ~~Written or otherwise verifiable instructions covering~~
(A) ~~General and site-specific precautions to prevent injury to persons or the environment or damage to property.~~

(B) ~~The mixing, handling, application and disposal and onsite storage of the pesticide.~~

(ii) ~~A copy of the labels of all pesticide products to be used.~~

(†) (iii) ~~The establishment of means and instructions to establish direct voice communication during the use of the pesticide with the supervising certified applicator. While the application of the pesticide is in progress.~~

(iv) ~~All personal protective equipment and instructions on proper use required by the labels of the pesticide products for the uses being performed.~~

(3) "Registered technician" means a noncertified person who, having met the requirements of section 8 of this rule, is registered by the state chemist and thereby is authorized to engage in pesticide use and related activities while working under the direct supervision of a certified applicator.

(c) ~~The term (4) "Work site" shall mean and include means any location at which pesticides are handled, mixed, stored, disposed, applied or used as defined in IC 15-3-3.6-2(37).~~

(5) "Written instructions" means a written or printed site assessment fact sheet or similar document that shall be reviewed by the noncertified applicator prior to each pesticide application. The required elements on the site assessment fact sheet shall be industry specific and developed by the state chemist in consultation with the appropriate certified applicator industry.

(State Chemist of the State of Indiana; Pesticide Use & Application Reg 2, Sec 1; filed Aug 3, 1976, 4:10 p.m.: Rules and Regs. 1977, p. 442; filed Apr 21, 1982, 3:45 p.m.: 5 IR 1191; filed Sep 20, 2001, 3:54 p.m.: 25 IR 376)

SECTION 2. 355 IAC 4-2-2 IS AMENDED TO READ AS FOLLOWS:

355 IAC 4-2-2 Pesticide use by noncertified persons

Authority: IC 15-3-3.5-11; IC 15-3-3.6-4
Affected: IC 15-3-3.6-7

Sec. 2. ~~Pesticides~~ Pesticide may be applied used by a noncertified person if that person is a competent person working under the direct supervision of a certified applicator. as defined herein. Since it is not considered practicable to supervise an unaccompanied agricultural aircraft pilot; All such persons engaged in the business conducting use of applying pesticides for hire by aerial application shall be certified. (State Chemist of the State of Indiana; Pesticide Use & Application Reg 2, Sec 2; filed Aug 3, 1976, 4:10 p.m.: Rules and Regs. 1977, p. 443; filed Apr 21, 1982, 3:45 p.m.: 5 IR 1192; filed Sep 20, 2001, 3:54 p.m.: 25 IR 376)

SECTION 3. 355 IAC 4-2-3 IS AMENDED TO READ AS FOLLOWS:

355 IAC 4-2-3 On-site supervision of use

Authority: IC 15-3-3.5-11; IC 15-3-3.6-4
Affected: IC 15-3-3.6

Sec. 3. The supervising certified applicator shall be physically present as defined in section ~~†(b)†~~ 1(2)(A) of this rule if:

(a) (1) the label of the pesticide being applied used so stipulates; ~~or~~

(b) (2) the noncertified applicator individual has had no prior experience with either the pesticide or the application methodology in use; ~~or~~

(3) the noncertified individual is not competent as defined in section 1(1) of this rule.

(State Chemist of the State of Indiana; Pesticide Use & Application Reg 2, Sec 3; filed Aug 3, 1976, 4:10 p.m.: Rules and Regs. 1977, p. 443; filed Apr 21, 1982, 3:45 p.m.: 5 IR 1192; filed Sep 20, 2001, 3:54 p.m.: 25 IR 376)

SECTION 4. 355 IAC 4-2-5 IS AMENDED TO READ AS FOLLOWS:

355 IAC 4-2-5 Applicability of supervision requirements

Authority: IC 15-3-3.5-11; IC 15-3-3.6-4
 Affected: IC 15-3-3.6

Sec. 5. The requirements for site awareness and direct supervision of noncertified applicators as defined herein individuals shall apply to the following:

All applications (1) Use of all pesticides to the property of another by licensed and certified operators and/or licensed for hire applicators and to any person required by IC 15-3-3.6 to be licensed as one (1) of the following:

- (A) A pesticide business.
- (B) A for hire applicator.
- (C) A not for hire applicator.
- (D) A public applicator.

All applications (2) Use of restricted use pesticides for restricted uses by licensed not for hire applicators, licensed public applicators and private applicators.

(State Chemist of the State of Indiana; Pesticide Use & Application Reg 2, Sec 5; filed Aug 3, 1976, 4:10 p.m.: Rules and Regs. 1977, p. 443; filed Apr 21, 1982, 3:45 p.m.: 5 IR 1192; filed Sep 20, 2001, 3:54 p.m.: 25 IR 377)

SECTION 5. 355 IAC 4-2-6 IS AMENDED TO READ AS FOLLOWS:

355 IAC 4-2-6 Certified and noncertified applicators' responsibilities

Authority: IC 15-3-3.5-11; IC 15-3-3.6-4
 Affected: IC 15-3-3.6

Sec. 6. Certified supervising applicators and noncertified individuals shall be responsible for the following:

(1) A certified supervising applicator shall provide the items listed in section 1(2)(B) of this rule to the noncertified applicator written or otherwise verifiable instructions as defined in Section 1(b)(2): individual.

(2) A noncertified applicator individual shall: follow the label directions and

- (A) be in possession of the items listed in section 1(2)(B) of this rule;
- (B) carry out the instructions of the supervising certified applicator; while at the work site; and
- (C) upon request, produce the items listed in section 1(2)(B) of this rule for inspection by the state chemist.

(State Chemist of the State of Indiana; Pesticide Use & Application Reg 2, Sec 6; filed Apr 21, 1982, 3:45 p.m.: 5 IR 1192; filed Sep 20, 2001, 3:54 p.m.: 25 IR 377)

SECTION 6. 355 IAC 4-2-7 IS ADDED TO READ AS FOLLOWS:

355 IAC 4-2-7 Limit on number of noncertified individuals to be supervised

Authority: IC 15-3-3.5-11; IC 15-3-3.6-4
 Affected: IC 15-3-3.6

Sec. 7. (a) A certified applicator providing direct supervision as described in section 1(2)(B) of this rule may supervise no more than ten (10) noncertified individuals unless an emergency exemption as provided in subsection (b) has been granted by the state chemist.

(b) A certified applicator may apply for and the state chemist may grant an emergency exemption for up to sixty (60) days from the date of application by the certified applicator to allow for temporary supervision of more than ten (10) noncertified individuals.

(c) The state chemist will determine if the emergency exemption as applied for is justifiable and reasonable to grant. (State Chemist of the State of Indiana; 355 IAC 4-2-7; filed Sep 20, 2001, 3:54 p.m.: 25 IR 377)

SECTION 7. 355 IAC 4-2-8 IS ADDED TO READ AS FOLLOWS:

355 IAC 4-2-8 Technician registration requirements

Authority: IC 15-3-3.5-11; IC 15-3-3.6-4
 Affected: IC 15-3-3.6-12.1

Sec. 8. (a) To become a registered technician, an individual must do the following:

(1) Pass the commercial applicator core examination described in 355 IAC 4-1-2.1(b) or, if a turf technician, pass either the core examination or the registered technician examination described in 355 IAC 4-6-4.

(2) Submit an application on a form provided by the state chemist. This form must be signed by both the applicant and the responsible certified applicator employed at the applicant's business location.

(3) Submit the thirty dollar (\$30) technician registration fee.

(b) Registration shall remain in force from the date of passing the examination through December 31 of the fourth year following the year during which the examination was passed unless revoked or suspended.

(c) The registration period may be extended indefinitely for an additional five (5) years if the registered technician accumulates at least eight (8) continuing registration credits by attending at least two (2) state chemist approved continuing registration programs while the registration is in force.

(d) Annual registration credentials shall expire on December 31 unless renewed by a payment of a thirty dollar (\$30) renewal fee by that date. Renewal after December 31 shall include a late fee of thirty dollars (\$30) as established by IC 15-3-3.6-12.1 in addition to the thirty dollar (\$30) renewal fee.

(e) The registration credential shall be in the possession of the registered technician at all times the technician is at

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a work site as defined in section 1(4) of this rule. (*State Chemist of the State of Indiana; 355 IAC 4-2-8; filed Sep 20, 2001, 3:54 p.m.: 25 IR 377*)

SECTION 8. 355 IAC 4-2-4 IS REPEALED.

LSA Document #01-71(F)

Notice of Intent Published: 24 IR 2114

Proposed Rule Published: June 1, 2001; 24 IR 2807

Hearing Held: June 29, 2001

Approved by Attorney General: September 5, 2001

Approved by Governor: September 20, 2001

Filed with Secretary of State: September 20, 2001, 3:54 p.m.

Incorporated Documents Filed with Secretary of State: None

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #01-58(F)

DIGEST

Amends 405 IAC 5-2-17 to clarify the definition of medical necessity. Amends 405 IAC 5-7-1 to clarify policy regarding suspension of incomplete prior authorization requests. Amends 405 IAC 5-8-3 to clarify consultations policy. Amends 405 IAC 5-19 to revise policy and coverage for orthopedic shoes and corrective features. 405 IAC 5-37-3 to add dentists to the list of practitioners that may provide smoking cessation counseling services. Makes additional technical conforming changes. Effective 30 days after filing with the secretary of state.

405 IAC 5-2-17

405 IAC 5-19-7

405 IAC 5-3-4

405 IAC 5-19-10

405 IAC 5-3-11

405 IAC 5-29-1

405 IAC 5-7-1

405 IAC 5-37-3

405 IAC 5-8-3

SECTION 1. 405 IAC 5-2-17 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-2-17 “Medically reasonable and necessary service” defined

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-1-15; IC 12-15-21-2

Affected: IC 12-13-7-3; IC 12-15

Sec. 17. “Medically reasonable and necessary service” as used in this title means a covered service (as defined in section 6 of this rule) that meets current professional standards commonly held to be applicable to the case; is required for the care or well being of the patient and is provided in accordance with generally accepted standards of medical or professional practice. For a service to be reimbursable by the office, it must:

(1) be medically reasonable and necessary, as determined

by the office, which shall, in making that determination, utilize generally accepted standards of medical or professional practice; and

(2) not be listed in this title as a noncovered service, or otherwise excluded from coverage.

(*Office of the Secretary of Family and Social Services; 405 IAC 5-2-17; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3302; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Oct 3, 2001, 9:47 a.m.: 25 IR 378*)

SECTION 2. 405 IAC 5-3-4 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-3-4 Audit

Authority: IC 12-8-6-3; IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3

Affected: IC 12-15-30-1

Sec. 4. Retrospective audit shall include postpayment review of the medical record to determine the medical necessity of service based upon current professional standards held applicable as defined in this article. (*Office of the Secretary of Family and Social Services; 405 IAC 5-3-4; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3303; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Oct 3, 2001, 9:47 a.m.: 25 IR 378*)

SECTION 3. 405 IAC 5-3-11 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-3-11 Criteria for prior authorization

Authority: IC 12-8-6-3; IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3

Affected: IC 12-15-30-1

Sec. 11. The office’s decision to authorize, modify, or deny a given request for prior authorization shall include consideration of the following:

(1) Individual case-by-case review of the completed Medicaid prior review and authorization request form.

(2) The medical and social information provided on the request form or documentation accompanying the request form.

(3) Review of criteria set out in this section for the service requested.

(4) The medical necessity of the requested service based upon current professional standards commonly held to be applicable to the case; as defined in this article.

(*Office of the Secretary of Family and Social Services; 405 IAC 5-3-11; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3305; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Oct 3, 2001, 9:47 a.m.: 25 IR 378*)

SECTION 4. 405 IAC 5-7-1 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-7-1 Appeals of prior authorization determinations

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-1-15; IC 12-15-21-2

Affected: IC 12-13-7-3; IC 12-15

Sec. 1. (a) Medicaid recipients may appeal the denial or

modification of prior authorization of any Medicaid covered service under 405 IAC 1.1.

(b) Any provider submitting a request for prior authorization under ~~405 IAC 3-3~~, **405 IAC 5-3**, which has been denied either in whole or in part, may appeal the decision under 405 IAC 1.1 after exhausting the administrative remedies provided in this rule.

(c) ~~A prior authorization request will be rejected~~ When there is insufficient information submitted to render a decision, ~~it a~~ **prior authorization request will be suspended for up to thirty (30) days, and the office or its contractor will request additional information from the provider. Suspension** is not a final decision on the merits of the request and is not appealable. ~~A rejected request may be resubmitted with~~ **If the provider does not submit the additional information requested within thirty (30) days, the request shall be denied. Denial is a final decision and may be appealed pursuant to subsections (a) and (b).** (*Office of the Secretary of Family and Social Services; 405 IAC 5-7-1; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3309; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Oct 3, 2001, 9:47 a.m.: 25 IR 378*)

SECTION 5. 405 IAC 5-8-3 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-8-3 Restrictions

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-1-15; IC 12-15-21-2
Affected: IC 12-13-7-3; IC 12-15

Sec. 3. (a) A consultation cannot be used for the evaluation of a nonphysician referred or self-referred recipient.

(b) ~~A~~ **An office or other outpatient** consultation must address a specific condition not previously diagnosed or managed by the consulting physician. **If an additional request for an opinion or advice regarding the same or a new problem is received from the attending physician and documented in the medical record, the office consultation codes may be used by the consulting physician again.**

(c) Reimbursement for an initial consultation is limited to one (1) per consultant, per recipient, per inpatient hospital or nursing facility admission.

(d) ~~A second consultation provided by the same consultant physician to the same recipient must be for a new unrelated condition and clearly documented as such by the requesting physician.~~ **Follow-up inpatient consultations may be billed if visits are needed to complete the initial consultation, or if subsequent consultative visits are requested by the attending physician. These consultative visits include monitoring progress, recommending management modifications, or advising on a new plan of care in response to changes in the patient's status.**

(e) If a recipient is referred for management of a condition or the consulting physician assumes patient management, consultation codes cannot be billed to Medicaid. (*Office of the Secretary of Family and Social Services; 405 IAC 5-8-3; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3310; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Oct 3, 2001, 9:47 a.m.: 25 IR 379*)

SECTION 6. 405 IAC 5-19-7 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-19-7 Prior authorization criteria

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-13-7-3; IC 12-15

Sec. 7. Prior authorization requests for DME shall be reviewed on a case-by-case basis by the contractor, using **all of** the following criteria:

- (1) The item must be medically **reasonable and necessary, as defined at 405 IAC 5-2-17**, for the treatment of an illness or injury or to improve the functioning of a body member.
- (2) The item must be adequate for the medical need; however, items with unnecessary convenience or luxury features will not be authorized.
- (3) The anticipated period of need, plus the cost of the item will be considered in determining whether the item shall be rented or purchased. This decision shall be made by the contractor based on the least expensive option available to meet the recipient's needs.

(*Office of the Secretary of Family and Social Services; 405 IAC 5-19-7; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3330; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Oct 3, 2001, 9:47 a.m.: 25 IR 379*)

SECTION 7. 405 IAC 5-19-10 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-19-10 Braces and orthopedic shoes

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-13-7-3; IC 12-15

Sec. 10. ~~(a)~~ Medicaid reimbursement is available for the following:

- (1) Braces for the leg, arm, back, and neck. ~~for recipients of all ages.~~
- (2) Orthopedic shoes. ~~for recipients over twenty-one (21) years of age with severe diabetic foot disease or if the orthopedic shoe is connected to a brace.~~
- (3) Corrective features built into shoes such as heels, lifts, and wedges. ~~only for recipients under twenty-one (21) years of age.~~

(b) ~~All items specified in subsection (a) must be ordered in writing by a physician or podiatrist and be prior authorized by the office.~~ (*Office of the Secretary of Family and Social Services; 405 IAC 5-19-10; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3330; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Oct 3, 2001, 9:47 a.m.: 25 IR 379*)

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SECTION 8. 405 IAC 5-29-1, AS AMENDED AT 24 IR 15, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-29-1 Noncovered services

Authority: IC 12-8-6-3; IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3

Affected: IC 12-13-7-3; IC 12-15

Sec. 1. The following services are not covered by Medicaid:

(1) Services that are not ~~medically medially~~ *[sic.]* reasonable or necessary according to current professional standards commonly held to be applicable to the case: as defined in this article.

(2) Services provided outside the scope of a provider's license, registration, certification, or other authority to practice under state or federal law.

(3) Experimental drugs, treatments, or procedures, and all related services.

(4) Any new product, service, or technology not specifically covered in this article. The product, service, or technology will remain a noncovered product, service, or technology until such time as the office authorizes the coverage of the product, service, or technology. This subdivision does not apply to legend drugs.

(5) Personal comfort or convenience items, including, but not limited to, television, radio, or telephone rental.

(6) Services for the remediation of learning disabilities.

(7) Treatments or therapies of an educational nature.

(8) Experimental radiological or surgical or other modalities and procedures, including, but not limited to, the following:

(A) Acupuncture.

(B) Biofeedback therapy.

(C) Carbon dioxide five percent (5%) inhalator therapy for inner ear disease.

(D) Hyperthermia.

(E) Hypnotherapy.

(9) Hair transplants.

(10) Fallopian tuboplasty (reanastomosis of the fallopian tubes) for infertility or vasovasostomy (reanastomosis of the vas ~~deferens~~ *[sic.]* ~~deferens~~). *[sic.]* This procedure is covered only in conjunction with disease.

(11) Augmentation mammoplasties for cosmetic purposes.

(12) Dermabrasion surgery for acne pitting or marsupialization.

(13) Rhinoplasty or bridge repair of the nose in the absence of a significant obstructive breathing problem.

(14) Otoplasty for protruding ears unless one (1) of the following applies to the case:

(A) ~~Multifaceted Multifaceted~~ *[sic.]* craniofacial abnormalities due to congenital malformation or maldevelopment, for example, Pierre Robin Syndrome.

(B) A recipient has pending or actual employment where protruding ears would interfere with the wearing of required protective devices.

(15) Scar removals or tattoo removals by excision or abrasion.

(16) Ear lobe reconstruction.

(17) Removal of keloids caused from pierced ears unless one (1) of the following is present:

(A) Keloids are larger than three (3) centimeters.

(B) Obstruction of the ear canal is fifty percent (50%) or more.

(18) Rhytidectomy.

(19) Penile implants.

(20) Perineoplasty for sexual dysfunction.

(21) Reconstructive or plastic surgery unless related to disease or trauma deformity.

(22) Sliding mandibular osteotomies unless related to prognathism or micrognathism.

(23) Blepharoplasties when not related to a significant obstructive vision problem.

(24) Radial keratotomy.

(25) Miscellaneous procedures or modalities, including, but not limited to, the following:

(A) Autopsy.

(B) Cryosurgery for chloasma.

(C) Conray dye injection supervision.

(D) Day care or partial day care or partial hospitalization except when provided pursuant to 405 IAC 5-21.

(E) Formalized and predesigned rehabilitation programs, including, but not limited to, the following:

(i) Pulmonary.

(ii) Cardiovascular.

(iii) Work-hardening or strengthening.

(F) Telephone transmitter used for transtelephonic monitor.

(G) Telephone, or any other means of communication, consultation from one (1) doctor to another.

(H) Artificial insemination.

(I) Cognitive rehabilitation, except for treatment of traumatic brain injury.

(26) Ear piercing.

(27) Cybex evaluation or testing or treatment.

(28) High colonic irrigation.

(29) Services that are not prior authorized under the level-of-care methodology as required by 405 IAC 5-19.

(30) Amphetamines when prescribed for weight control or treatment of obesity.

(31) Under federal law, drug efficacy study implementation drugs not covered by Medicaid.

(32) All anorectics, except amphetamines, both legend and nonlegend.

(33) Physician samples.

(Office of the Secretary of Family and Social Services; 405 IAC 5-29-1; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3356, filed Sep 27, 1999, 8:55 a.m.: 23 IR 320; filed Sep 1, 2000, 2:16 p.m.: 24 IR 15; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Oct 3, 2001, 9:47 a.m.: 25 IR 380)

SECTION 9. 405 IAC 5-37-3 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-37-3 Smoking cessation counseling

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3

Affected: IC 12-15

Sec. 3. (a) Reimbursement is available for smoking cessation counseling services rendered by licensed practitioners under applicable Indiana law participating in the Indiana Medicaid program and listed in subsection (b).

(b) The following may provide smoking cessation counseling services when prescribed by a practitioner within the scope of his license under Indiana law and within the limitations of this rule:

- (1) A physician.
- (2) A physician's assistant.
- (3) A nurse practitioner.
- (4) A registered nurse.
- (5) A psychologist.
- (6) A pharmacist.
- (7) A dentist.**

(Office of the Secretary of Family and Social Services; 405 IAC 5-37-3; filed Sep 27, 1999, 8:55 a.m.: 23 IR 324; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Oct 3, 2001, 9:47 a.m.: 25 IR 380)

LSA Document #01-58(F)

Notice of Intent Published: 24 IR 1687

Proposed Rule Published: May 1, 2001; 24 IR 2518

Hearing Held: June 6, 2001

Approved by Attorney General: September 28, 2001

Approved by Governor: October 2, 2001

Filed with Secretary of State: October 3, 2001, 9:47 a.m.

Incorporated Documents Filed with Secretary of State: None

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #01-172(F)

DIGEST

Amends 405 IAC 1-12-24 to assess community residential facilities for the developmentally disabled (CRFs/DD) and intermediate care facilities for the mentally retarded (ICFs/MR) not operated by the state in an amount not to exceed ten percent of annual gross residential services revenue of the facility for the facility's preceding fiscal year. Effective 30 days after filing with the secretary of state.

405 IAC 1-12-24

SECTION 1. 405 IAC 1-12-24 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-12-24 Assessment methodology

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2

Affected: IC 12-13-7-3; IC 12-15-32-11

Sec. 24. (a) ~~As used in this section, "implementation date" means July 1, 1994.~~

~~(b) Beginning with the implementation date, (a) CRF/DD and ICF/MR facilities that are not operated by the state will be assessed five an amount not to exceed ten percent (5%) (10%) of the annual gross residential services revenue of the facility for the facility's preceding fiscal annual reporting period year for annual rate reviews. CRF/DD and ICF/MR facilities that are not operated by the state will be assessed an amount not to exceed ten percent (10%) of the annual-gross residential services revenue of the facility for the facility's preceding nine (9) months for determining the base rate as set out in section 5(d) of this rule. The assessment percentage shall be determined annually by the office or its contractor in such a manner that the amount assessed shall, in the aggregate, not exceed six percent (6%) of total facility revenues.~~

~~(b) The assessment on provider gross residential services revenue authorized by IC 12-15-32-11 shall be an allowable cost for cost reporting and audit purposes. Gross residential services revenue is defined as revenue from the provider's previous annual reporting period as set out in section 4(a) of this rule or previous base rate reporting period set out in section 5(d) of this rule and excludes allowable day services costs for the period. Providers will annually submit data to calculate the amount of provider assessment with their annual base and rate reviews as set out in sections 4(a) and 5(d) of this rule, using forms or in a format prescribed by the office. These forms are subject to audit by the office or its designee.~~

~~(c) If federal financial participation to match the assessment becomes unavailable under federal law after the implementation date, the authority to impose the assessment terminates on the date that the federal statutory, regulatory, or interpretive change takes place, and such termination will apply prospectively. In addition, prospective termination of the assessment as described in this subsection will result in the simultaneous termination of the assessment being considered as an allowable cost for rate setting purposes. (Office of the Secretary of Family and Social Services; 405 IAC 1-12-24; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2329; filed Aug 14, 1998, 4:27 p.m.: 22 IR 67; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Oct 3, 2001, 9:40 a.m.: 25 IR 381)~~

LSA Document #01-172(F)

Notice of Intent Published: 24 IR 2725

Proposed Rule Published: July 1, 2001; 24 IR 3179

Hearing Held: July 24, 2001

Approved by Attorney General: September 25, 2001

Approved by Governor: October 2, 2001

Filed with Secretary of State: October 3, 2001, 9:40 a.m.

Incorporated Documents Filed with Secretary of State: None

Final Rules

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #01-93(F)

DIGEST

Amends 760 IAC 2-10-1 to conform to IC 27-1-15.5-3, as amended by P.L.48-2000, and to clarify continuing education requirements for insurance agents. Effective 30 days after filing with the secretary of state.

760 IAC 2-10-1

SECTION 1. 760 IAC 2-10-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-10-1 Licensing

Authority: IC 27-8-12-7

Affected: IC 27-1-15.5-3; IC 27-1-15.5-7.1

Sec. 1. (a) ~~Effective July 1, 1993,~~ No agent is authorized to market, sell, solicit, or otherwise contact any person for the purpose of marketing long term care insurance ~~unless~~ **until** the agent has successfully passed eight (8) hours of approved continuing education courses in long term care and long term care insurance.

~~(b) In order to comply with the~~ **An agent who completes the eight (8) hours of continuing education requirement initially prescribed required by this subsection (a), an agent shall successfully complete eight (8) hours of approved continuing education courses biennially from July 1, 1993; during the first two (2) years of a four (4) year license shall also comply with subsection (b) during the second two (2) years of the license.**

(b) An agent shall successfully complete five (5) hours of approved continuing education in long term care or long term care insurance every two (2) years for a total of ten (10) hours in every four (4) year license renewal period.

(c) Continuing education courses completed pursuant to subsections (a) and (b) may be used to satisfy the continuing education requirements set forth in IC 27-1-15.5-7.1.

~~(e)~~ **(d)** Each insurer shall require an agent to provide documentation certifying that the agent has satisfied the requirements of this rule prior to accepting applications from the agent or paying the agent commission for the sale of long term care coverage. (*Department of Insurance; 760 IAC 2-10-1; filed Oct. 30, 1992, 12:00 p.m.: 16 IR 865; filed Oct 2, 2001, 4:50 p.m.: 25 IR 382*)

LSA Document #01-93(F)

Notice of Intent Published: 24 IR 2114

Proposed Rule Published: June 1, 2001; 24 IR 2832

Hearing Held: June 27, 2001

Approved by Attorney General: September 25, 2001

Approved by Governor: October 2, 2001

Filed with Secretary of State: October 2, 2001, 4:50 p.m.

Incorporated Documents Filed with Secretary of State: None

TITLE 808 STATE BOXING COMMISSION

LSA Document #00-256(F)

DIGEST

Amends 808 IAC 1-4-8 to require the promoter to furnish to the Indiana professional licensing agency remittance of a tax of five percent of the total gross receipts from the sale of admission tickets to the general fund. Amends 808 IAC 2-1-9 to eliminate "resulting from a head blow" as a reason for a medical suspension for a technical knockout. Amends 808 IAC 2-5-1 concerning the promoter's selection of officials to officiate a contest. Adds 808 IAC 2-33-2 to require promoters to provide insurance coverage for each licensed contestant. Effective 30 days after filing with the secretary of state.

808 IAC 1-4-8

808 IAC 2-5-1

808 IAC 2-1-9

808 IAC 2-33-2

SECTION 1. 808 IAC 1-4-8 IS AMENDED TO READ AS FOLLOWS:

808 IAC 1-4-8 Report of ticket sales; admission tax

Authority: IC 25-9-1-2

Affected: IC 25-9-1-22

Sec. 8. Every promoter licensed by the commission shall, within the time required by IC 25-9-1-22, furnish to the Indiana professional licensing agency for remittance to the ~~state treasurer general fund~~ a written report in duplicate on forms furnished by the commission, duly verified by the promoter showing the exact amount of tickets sold for each contest, the amount of the gross proceeds thereof, and such other data as the commission and Indiana professional licensing agency may prescribe, and shall also, within said time, pay to the Indiana professional licensing agency for remittance to the ~~state treasurer general fund~~ a tax of ~~ten five percent (10%)~~ **(5%)** of the total gross receipts from the sale of the tickets of admission to the boxing or sparring match or exhibition. (*State Boxing Commission; PT I, Sec 15; filed Aug 8, 1955, 1:00 p.m.: Rules and Regs. 1956, p. 61; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1161; readopted filed Jun 8, 2001, 2:38 p.m.: 24 IR 3235; filed Sep 27, 2001, 2:26 p.m.: 25 IR 382*)

SECTION 2. 808 IAC 2-1-9 IS AMENDED TO READ AS FOLLOWS:

808 IAC 2-1-9 Waiting period between matches

Authority: IC 25-9-1-2

Affected: IC 25-9-1-5; IC 25-9-1-18

Sec. 9. When a boxer competes in a match of ten (10) rounds

or more, the boxer will not be allowed to box again until six (6) days have elapsed. When a boxer competes in a match less than ten (10) rounds, the boxer will not be allowed to box until three (3) days have elapsed. The ringside physician and commission may recommend longer rest periods. A boxer will automatically receive medical suspensions or rest periods for the following:

(1) For a cut, the medical suspension time shall be based on the ringside physician's sound medical judgment.

(2) For a technical knockout, a minimum of thirty (30) days medical suspension for a technical knockout. ~~resulting from a head blow.~~

(3) For a knockout, sixty (60) days minimum medical suspension.

(State Boxing Commission; PT II, Sec 48; filed Aug 8, 1955, 1:00 p.m.: Rules and Regs. 1956, p. 66; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1163; readopted filed Jun 8, 2001, 2:38 p.m.: 24 IR 3235; filed Sep 27, 2001, 2:26 p.m.: 25 IR 382)

SECTION 3. 808 IAC 2-5-1 IS AMENDED TO READ AS FOLLOWS:

808 IAC 2-5-1 Officials; appointment; licensing and assignment

Authority: IC 25-9-1-2

Affected: IC 25-9-1

Sec. 1. Officials shall consist of at least two (2) referees, three (3) judges, two (2) timekeepers, and a physician. All officials shall be appointed and licensed by the commission and may be assigned, at the option of the commission, to officiate at any and all contests. ~~The promoter may choose officials subject to the approval of the commission, but the commission, if it objects to the choice of any such official by the promoter, shall designate any and all officials for any given contest.~~ *(State Boxing Commission; PT II, Sec 62; filed Aug 8, 1955, 1:00 p.m.: Rules and Regs. 1956, p. 67; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1166; readopted filed Jun 8, 2001, 2:38 p.m.: 24 IR 3235; filed Sep 27, 2001, 2:26 p.m.: 25 IR 383)*

SECTION 4. 808 IAC 2-33-2 IS ADDED TO READ AS FOLLOWS:

808 IAC 2-33-2 Insurance coverage for licensed contestants

Authority: IC 25-9-1-2

Affected: IC 25-9-1-7

Sec. 2. (a) **The promoter, licensed pursuant to IC 25-9-1-7, shall obtain insurance coverage for each licensed contestant in an amount to be determined by the commission, which shall provide for medical, surgical, and hospital care for injuries sustained while engaged in a boxing or sparring match, a semiprofessional elimination contest, or an exhibition.**

(b) The promoter shall obtain life insurance for each licensed contestant in an amount to be determined by the commission, which shall be paid to the contestant's estate in the event of the contestant's death resulting from participation in such boxing or sparring match, semiprofessional elimination contest, or exhibition.

(c) No boxing or sparring match, semiprofessional elimination contest, or exhibition shall be approved in this state unless the promoter is in full compliance with the requirements of the section concerning insurance coverage.

(State Boxing Commission; 808 IAC 2-33-2; filed Sep 27, 2001, 2:26 p.m.: 25 IR 383)

LSA Document #00-256(F)

Notice of Intent Published: 24 IR 700

Proposed Rule Published: July 1, 2001; 24 IR 3200

Hearing Held: August 3, 2001

Approved by Attorney General: September 14, 2001

Approved by Governor: September 26, 2001

Filed with Secretary of State: September 27, 2001, 2:26 p.m.

Incorporated Documents Filed with Secretary of State: None

TITLE 808 STATE BOXING COMMISSION

LSA Document #01-104(F)

DIGEST

Repeals 808 IAC 4. Effective 30 days after filing with the secretary of state.

808 IAC 4

SECTION 1. 808 IAC 4 IS REPEALED.

LSA Document #01-104(F)

Notice of Intent Published: 24 IR 2115

Proposed Rule Published: July 1, 2001; 24 IR 3201

Hearing Held: August 3, 2001

Approved by Attorney General: September 12, 2001

Approved by Governor: September 20, 2001

Filed with Secretary of State: September 20, 2001, 3:58 p.m.

Incorporated Documents Filed with Secretary of State: None
