TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #00-137(F)

DIGEST

Amends 326 IAC 2-3-1, 326 IAC 2-3-2, and 326 IAC 2-3-3 for incorporating nitrogen oxide emission threshold revisions and pollution control project exemptions. Adds 326 IAC 10-3 for the control of nitrogen oxide emissions from specific source categories. Adds 326 IAC 10-4 for the establishment of a nitrogen oxides budget trading program. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: July 1, 2000, Indiana Register (23 IR 2606).

Second Notice of Comment Period and Notice of First Hearing: December 1, 2000, Indiana Register (24 IR 766).

Date of First Hearing: February 7, 2001.

Third Notice of Comment Period and Notice of Second Hearing: April 1, 2001, Indiana Register (24 IR 2125).

Change of Hearing Notice: June 1, 2001, Indiana Register (24 IR 2722).

Date of Second Hearing: June 6, 2001.

326 IAC 2-3-1
326 IAC 2-3-2
326 IAC 2-3-3
326 IAC 10-3
326 IAC 10-4

SECTION 1. 326 IAC 2-3-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-3-1 Definitions

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 1. (a) The definitions in this section apply throughout this rule.

(b) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with the following:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two (2) year period which precedes the particular date and which is representative of normal source operation. The commissioner shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The commissioner may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emissions unit, **other than an electric utility steam generating unit specified in subdivision (4),** which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(4) For an electric utility steam generating unit, other than a new unit or the replacement of an existing unit, actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the department on an annual basis for a period of five (5) years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the department if the department determines such a period to be more representative of normal source post-change operations.

(5) When applying for a pollution control project exclusion under subsection (s)(2)(H) for a pollution control project at an existing emissions unit, actual emissions of the unit following the installation of the pollution control project shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the department on an annual basis for a period of five (5) years from the date the emissions unit resumes regular operation, information demonstrating that the pollution control project and the physical or operational changes to the unit necessary to accommodate the project did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the department if the department determines such a period to be more representative of normal source post-change operations. This subdivision cannot be used to determine if the pollution control project results in a significant net emissions increase. This subdivision can only be used for an application submitted under the pollution control project exclusion to determine if the project results in a significant net increase in representative actual annual emissions.

(c) "Allowable emissions" means the emissions rate of a source calculated using the maximum rated capacity of the source (unless a source is subject to state or federally enforceable permit limits which restrict the operating rate or hours of operation, or both) and the most stringent of the following:

(1) The applicable standards as set forth in 40 CFR 60, **New Source Performance Standards (NSPS)*,** and 40 CFR 61*, ~~New Source Performance Standards (NSPS) and~~ National Emission Standards for Hazardous Air Pollutants (NESHAPS)*. ~~respectively*.~~

(2) The emissions limitation imposed by any rule in this title, including those with a future compliance date.

(3) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(d) "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit

which are of a permanent nature. Such activities include, but are not limited to, the following:

(1) Installation of building supports and foundations.

(2) Laying underground pipework.

(3) Construction of permanent storage structures.

With respect to a change in method of operations, "begin actual construction" refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(e) "Best available control technology" or "BACT" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the Clean Air Act which would be emitted from any proposed major stationary source or major modification which the commissioner, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR 60* and 40 CFR 61*. If the commissioner determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means which achieve equivalent results.

(f) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group, that is, those which have the same first two (2) digit code, as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement (U.S. Government Printing Office).

(g) "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

(h) "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy–Clean Coal Technology", up to a total amount of two billion five hundred million dollars ($2,500,000,000) for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. EPA. The federal contribution for a qualifying project shall be at least twenty percent (20%) of the total cost of the demonstration project.

~~(g)~~ **(i)** "Commence", as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

~~(h)~~ **(j)** "Complete", in reference to an application for a permit, means that the application contains all of the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the commissioner from requesting or accepting additional information.

~~(i)~~ **(k)** "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

~~(j)~~ **(l)** "de minimis", in reference to an emissions increase of volatile organic compounds ~~or oxides of nitrogen~~ from a modification in a serious or severe ozone nonattainment area, means an increase that does not exceed twenty-five (25) tons per year when the net emissions increases from the proposed modification are aggregated on a pollutant specific basis with all other net emissions increases from the source over a five (5) consecutive calendar year period prior to, and including, the year of the modification.

(m) "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third (⅓) of its potential electric output capacity and more than twenty-five (25) megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

~~(k)~~ **(n)** "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant regulated under the provisions of the Clean Air Act.

~~(l)~~ **(o)** "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

~~(m)~~ **(p)** "Incidental emissions reductions" means the reductions in emissions of a pollutant achieved as an indirect result of complying with another rule for another pollutant.

~~(n)~~ **(q)** "Internal offset" means to use net emissions decreases from within the source to compensate for an increase in emissions.

~~(o)~~ **(r)** "Lowest achievable emission rate" or "LAER" means, for any source, the more stringent rate of emissions based on the following:

(1) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable.

(2) The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions unit within the stationary source. In no event shall the application of the lowest achievable emission rate permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

~~(p)~~ **(s)** "Major modification" means any physical change or change in the method of operation of a major stationary source that would result in a significant net emissions increase or in an area which is classified as either a serious or severe ozone nonattainment area, an increase in VOC ~~or NO_x~~ emissions that is not de minimis of any pollutant which is being regulated under the Clean Air Act. The following provisions apply:

(1) Any net emissions increase that is significant for volatile organic compounds ~~or significant for oxides of nitrogen~~ shall be considered significant for ozone.

(2) A physical change or change in the method of operation shall not include the following:

(A) Routine maintenance, repair, and replacement.

(B) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 or by reason of a natural gas curtailment plan under the Federal Power Act.

(C) Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act.

(D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(E) Use of an alternative fuel or raw material by a source which:

(i) the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any enforceable permit condition which was established after December 21, 1976, under 40 CFR 52.21* or regulations approved under 40 CFR 51.160 through 40 CFR 51.165* or 40 CFR 51.166*; or

(ii) the source is approved to use under any permit issued under this rule.

(F) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any enforceable permit condition which was established after December 21, 1976, under 40 CFR 52.21* or regulations approved under 40 CFR 51.160 through 40 CFR 51.165* or 40 CFR 51.166*.

(G) Any change in ownership at a stationary source.

(H) The addition, replacement, or use of a pollution control project at an existing emissions unit if the following conditions are met:

(i) Upon review, the department does not determine that:

(AA) such addition, replacement, or use renders the unit less environmentally beneficial; or

(BB) the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the CAA, if any; and

(CC) the pollution control project would result in a significant net emissions increase that will cause or contribute to a violation of any national ambient air quality standard (NAAQS), PSD increment, or visibility limitation.

During review, the department may request that a source submit an analysis of the air quality impact of the net emissions increase of the pollution control project.

(ii) If a pollution control project would result in a significant net emissions increase in representative actual annual emissions of a pollutant for which an area is classified as nonattainment, or an emissions increase in VOC that is not de minimis in an area which is classified as either serious or severe ozone nonattainment, then those emissions shall be offset on a one-to-one (1:1) ratio, except that no offsets are required for the following:

(AA) A pollution control project for an electric utility steam generating unit.

(BB) A pollution control project that results in a significant net increase in representative actual annual emissions of any criteria pollutant for which

the area is classified as nonattainment and current ambient monitoring data demonstrates that the air quality standard for that pollutant in the nonattainment area is not currently being violated.

(CC) A pollution control project for a NO_x budget unit, as defined in 326 IAC 10-4-2, that is being installed to control NO_x emissions for the purpose of complying with 326 IAC 10-4-2.

(iii) A pollution control project as described under this clause shall be considered a significant source modification under 326 IAC 2-7-10.5(f)(8).

(I) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(i) the state implementation plan; and

(ii) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

~~(q)~~ **(t)** "Major stationary source" means the following:

(1) Any stationary source of air pollutants, **except for those subject to subdivision (2),** which emits, or has the potential to emit, one hundred (100) tons per year or more of any air pollutant subject to regulation under the Clean Air Act.

(2) For ozone nonattainment areas, "major stationary source" includes any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit volatile organic compounds ~~or oxides of nitrogen~~ that would equal or exceed any of the following rates:

Ozone Classification	Rate
Marginal	100 tons per year
Moderate	100 tons per year
Serious	50 tons per year
Severe	25 tons per year

(3) Any of the following stationary sources with potential emissions of five (5) tons per year or more of lead or lead compounds measured as elemental lead:

(A) Primary lead smelter.

(B) Secondary lead smelters.

(C) Primary copper smelters.

(D) Lead gasoline additive plants.

(E) Lead-acid storage battery manufacturing plants that produce two thousand (2,000) or more batteries per day.

(4) Any other stationary source with potential emissions of twenty-five (25) or more tons per year of lead or lead compounds measured as elemental lead.

(5) Any physical change occurring at a stationary source not qualifying under subdivision (1), if the change would by itself qualify as a major stationary source under subdivision (1).

~~(r)~~ **(u)** "Necessary preconstruction approvals or permits" means those permits or approvals required under 326 IAC 2-2, 326 IAC 2-5.1, and 326 IAC 2-7.

~~(s)~~ **(v)** "Net emissions decrease" means the amount by which the sum of the creditable emissions increases and decreases from any source modification project is less than zero (0).

~~(t)~~ **(w)** "Net emissions increase", with reference to a significant net emissions increase, means the amount by which the sum of the emission increases and decreases at a source exceeds zero (0). For the purpose of determining de minimis in an area classified as serious or severe for ozone, the amount by which the sum of the emission increases and decreases from any source modification project exceeds zero (0). The following emissions increases and decreases are to be considered when determining net emissions increase:

(1) Any increase in actual emissions from a particular physical change or change in the method of operation.

(2) Any of the following increases and decreases in actual emissions that are contemporaneous with the particular change and are otherwise creditable:

(A) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs after January 16, 1979, and between the following:

(i) The date five (5) years before construction of the particular change commences.

(ii) The date that the increase from the particular change occurs.

(B) An increase or decrease in actual emissions is creditable only if the commissioner has not relied on the increase or decrease in issuing a permit for the source under this rule, which permit is in effect when the increase in actual emissions from the particular change occurs.

(C) An increase in actual emissions is creditable only to the extent that a new level of actual emissions exceeds the old level.

(D) A decrease in actual emissions is creditable only to the extent that:

(i) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) it is federally enforceable at and after the time that actual construction on the particular change begins;

(iii) the commissioner has not relied on it in issuing any permit under regulations approved under 40 CFR 51.160 through 40 CFR 51.165* or the state has not relied on it in demonstrating attainment or reasonable further progress; and

(iv) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(E) An increase that results from the physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.

~~(u)~~ **(x)** "New", in reference to a major stationary source, a modified major stationary source, or a major modification, means one which commences construction after the effective date of this rule.

(y) "Pollution control project" means any activity or project undertaken at an existing emissions unit for purposes of reducing emissions from such unit. Such activities or projects do not include the replacement of an existing emissions unit with a newer or different unit, or the reconstruction of an existing emissions unit. Such activities or projects are limited to any of the following:

(1) The installation of conventional and advanced flue gas desulfurization and sorbent injection for sulfur dioxide.

(2) Electrostatic precipitators, baghouses, high efficiency multiclones, and scrubbers for particulate or other pollutants.

(3) Flue gas recirculation, low-NO_x burners, selective noncatalytic reduction and selective catalytic reduction for nitrogen oxides.

(4) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, flares, and carbon adsorbers for volatile organic compounds and hazardous air pollutants.

(5) An activity or project to accommodate switching to a fuel which is less polluting than the fuel in use prior to the activity or project, including, but not limited to, natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions and including any activity that is necessary to accommodate switching to an inherently less polluting fuel.

(6) A permanent clean coal technology demonstration project conducted under Title II, Section 101(d) of the Further Continuing Appropriations Act of 1985 (Sec. 5903(d) of Title 42 of the United States Code), or subsequent appropriations, up to a total amount of two billion five hundred million dollars ($2,500,000,000) for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. EPA.

(7) A permanent clean coal technology demonstration project that constitutes a repowering project.

(8) Pollution prevention projects which the department has determined through a significant source modification to be environmentally beneficial. Pollution prevention projects that may result in an unacceptable increased risk from the release of hazardous air pollutants or that may result in an increase in utilization are not environmentally beneficial.

(9) Installation of a technology, for the purposes of this subsection, which is not listed in subdivisions (1) through (8) but is determined to be environmentally beneficial by the department through a significant source modification.

~~(v)~~ **(z)** "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

~~(w)~~ **(aa)** "Reasonable further progress" or "RFP" means the annual incremental reductions in emissions of a pollutant which are sufficient in the judgment of the board to provide reasonable progress towards attainment of the applicable ambient air quality standards established by 326 IAC 1-3 by the dates set forth in the Clean Air Act.

(bb) "Repowering" means replacement of an existing coal-fired boiler with one (1) of the following clean coal technologies:

(1) Atmospheric or pressurized fluidized bed combustion.

(2) Integrated gasification combined cycle.

(3) Magnetohydrodynamics.

(4) Direct and indirect coal-fired turbines.

(5) Integrated gasification fuel cells.

(6) As determined by the U.S. EPA, in consultation with the Secretary of Energy, a derivative of one (1) or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

Repowering shall also include any oil or gas-fired unit, or both, which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy. The U.S. EPA shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under Section 409 of the Clean Air Act.

(cc) "Representative actual annual emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two (2) year period after a physical change or change in the method of operation of a unit, (or a different consecutive two (2) year period within ten (10) years after that change, where the department determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the department shall:

(1) Consider all relevant information, including, but not limited to, the following:

(A) Historical operational data.

(B) The company's own representations.

(C) Filings with Indiana or federal regulatory authorities.
(D) Compliance plans under Title IV of the CAA.
(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

~~(x)~~ **(dd)** "Secondary emission" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this rule, secondary emissions must be specific, well-defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(1) emissions from the ships or trains coming to or from the new or modified stationary source; and

(2) emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

~~(y)~~ **(ee)** "Significant", in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, means a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy
PM_{10}	15 tpy
Ozone (marginal and moderate areas)	40 tpy of volatile organic compound (VOC) ~~or oxides of nitrogen~~ ~~(NO_x)~~
Lead	0.6 tpy

~~(z)~~ **(ff)** "Source modification project" means all those physical changes or changes in the methods of operation at a source which are necessary to achieve a specific operational change.

~~(aa)~~ **(gg)** "Stationary source" means any building, structure, facility, or installation, including a stationary internal combustion engine, which emits or may emit any air pollutant subject to regulation under the Clean Air Act.

(hh) "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five (5) years or less, and that complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

~~*Copies of the Code of Federal Regulations (CFR)~~ ***These documents are incorporated by reference and copies** may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204-2220. *(Air Pollution Control Board; 326 IAC 2-3-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2401; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1106; filed Nov 12, 1993, 4:00 p.m.: 17 IR 725; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1002; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed Aug 17, 2001, 3:45 p.m.: 25 IR 6)*

SECTION 2. 326 IAC 2-3-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-3-2 Applicability
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 2. (a) This rule applies to new and modified major stationary sources or major modifications constructed in an area designated in 326 IAC 1-4 as nonattainment as of the date of submittal of a complete application, for a pollutant for which the stationary source or modification is major.

(b) This rule applies to modifications of major stationary sources of volatile organic compounds (VOC) ~~or oxides of nitrogen~~ ~~(NO_x)~~ in serious and severe ozone nonattainment areas as follows:

(1) A modification of a major stationary source with a de minimis increase in emissions shall be exempt from section 3 of this rule.

(2) A modification having an increase in emissions that is not de minimis to an existing major stationary source that does not have the potential to emit one hundred (100) tons or more of volatile organic compounds (VOC) ~~or oxides of nitrogen~~ ~~(NO_x)~~ per year will not be subject to section 3(a) of this rule if the owner or operator of the source elects to internal offset the increase by a ratio of one and three-tenths (1.3) to one (1). If the owner or operator does not make such an election or is unable to, section 3(a) of this rule applies, except that best available control technology (BACT) shall be substituted for lowest achievable emission rate (LAER) required by section 3(a)(2) of this rule.

(3) A modification having an increase in emissions that is not de minimis to an existing major stationary source emitting or having the potential to emit one hundred (100) tons of volatile organic compounds (VOC) ~~or oxides of nitrogen~~ ~~(NO_x)~~ or more per year will be subject to the requirements of

section 3(a) of this rule, except that the owner or operator may elect to internal offset the increase at a ratio of one and three-tenths (1.3) to one (1) as a substitute for lowest achievable emission rate (LAER) required by section 3(a)(2) of this rule.

(c) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any federally enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then this rule applies to the source or modification as though construction had not yet commenced on the source or modification.

(d) In the case of an area which has been redesignated nonattainment, any source which would not have been required to submit a permit application under 326 IAC 2-2 concerning the prevention of significant deterioration will not be subject to this rule if construction commences within eighteen (18) months of the area's redesignation.

(e) Major stationary sources or major modifications which would locate in any area designated as attainment or unclassifiable in the state of Indiana and would exceed the following significant impact levels at any locality, for any pollutant, which is designated as nonattainment, must meet the requirements specified in section 3(a)(1) through 3(a)(3) of this rule. All values are expressed in micrograms per cubic meter ($\mu g/m^3$):

Pollutant	Annual	24-hour	8-hour	3-hour	1-hour
Sulfur dioxide	1	5	X	25	X
Total suspended particulates	1	5	X	X	X
PM_{10}	1	5	X	X	X
Nitrous oxides	1	X	X	X	X
Carbon monoxide	X	X	500	X	2,000

(f) This rule does not apply to a source or modification, other than a source of volatile organic compounds ~~or oxides of nitrogen~~ in a serious or severe ozone nonattainment area, or a source of PM_{10} in a serious PM_{10} area, that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(1) Coal cleaning plants (with thermal driers).
(2) Kraft pulp mills.
(3) Portland cement plants.
(4) Primary zinc smelters.
(5) Iron and steel mill plants.
(6) Primary aluminum ore reduction plants.
(7) Primary copper smelters.
(8) Municipal incinerators capable of charging more than two hundred fifty (250) tons of refuse per day.
(9) Hydrofluoric, sulfuric, and nitric acid plants.
(10) Petroleum refineries.
(11) Lime plants.
(12) Phosphate rock processing plants.
(13) Coke oven batteries.
(14) Sulfur recovery plants.
(15) Carbon black plants (furnace process).
(16) Primary lead smelters.
(17) Fuel conversion plants.
(18) Sintering plants.
(19) Secondary metal production plants.
(20) Chemical process plants.
(21) Fossil-fuel boilers (or combinations thereof) totaling more than two hundred fifty million (250,000,000) British thermal units per hour heat input.
(22) Petroleum storage and transfer unit with a storage capacity exceeding three hundred thousand (300,000) barrels.
(23) Taconite ore processing plants.
(24) Glass fiber processing plants.
(25) Charcoal production plants.
(26) Fossil fuel-fired steam electric plants of more than two hundred fifty million (250,000,000) British thermal units per hour heat input.
(27) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act.

(g) For purposes of this rule, secondary emissions from a source need not be considered in determining whether the source would qualify as a major source. However, if a source is subject to this rule on the basis of the direct emissions from the source, the applicable conditions must also be met for secondary emissions. However, such secondary emissions may be exempt from the requirements specified in section 3(a)(2) through 3(a)(3) of this rule.

(h) Hazardous air pollutants listed in and regulated by 326 IAC 14-1 are not exempt from this rule.

(i) The installation, operation, cessation, or removal of temporary clean coal technology demonstration projects funded under the Department of Energy)Clean Coal Technology Appropriations may be exempt from the requirements of section 3 of this rule. To qualify for this exemption, the project must be at an existing facility, operate for no more than five (5) years, and comply with all other applicable rules for the area. *(Air Pollution Control Board; 326 IAC 2-3-2; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2404; filed Nov 12, 1993, 4:00 p.m.: 17 IR 728; filed Aug 17, 2001, 3:45 p.m.: 25 IR 11)*

SECTION 3. 326 IAC 2-3-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-3-3 Applicable requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 3. (a) Prior to the issuance of a construction permit to a source subject to this rule, the applicant shall comply with the following requirements:

(1) The proposed major new source or major modification shall demonstrate that the source will meet all applicable requirements of this title, any applicable new source performance standard in 40 CFR 60*, or any national emission standard for hazardous air pollutants in 40 CFR 61*. If the commissioner determines that the proposed major new source cannot meet the applicable emission requirements, the permit to construct will be denied.

(2) The applicant will apply emission limitation devices or techniques to the proposed construction or modification such that the lowest achievable emission rate (LAER) for the applicable pollutant will be achieved.

(3) The applicant shall either demonstrate that all existing major sources owned or operated by the applicant in the state of Indiana are in compliance with all applicable emission limitations and standards contained in the Clean Air Act and in this title or demonstrate that they are in compliance with a federally enforceable compliance schedule requiring compliance as expeditiously as practicable.

(4) The applicant shall submit an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(5) Emissions resulting from the proposed construction or modification shall be offset by a reduction in actual emissions of the same pollutant from an existing source or combination of existing sources. The emission offset shall be such that there will be reasonable further progress toward attainment of the applicable ambient air quality standards as follows:

(A) Greater than one-for-one, unless otherwise specified.

(B) For ozone nonattainment areas, the following table shall determine the minimum offset ratio requirements for major stationary sources of volatile organic compounds: ~~or oxides of nitrogen:~~

Ozone Classification	Minimum Offset Requirements
Marginal	1.1 to 1
Moderate	1.15 to 1
Serious	1.2 to 1
Severe	1.3 to 1

(6) The applicant shall obtain the necessary preconstruction approvals and shall meet all the permit requirements specified in 326 IAC 2-5.1 or 326 IAC 2-7.

(b) The following provisions shall apply to all emission offset evaluations:

(1) Emission offsets shall be determined on a tons per year, and, whenever possible, a pounds per hour basis when all facilities requiring offset involved in the emission offset calculations are operating at their maximum potential or allowed production rate. When offsets are calculated on a tons per year basis, the baseline emissions for existing sources providing the offsets shall be calculated using the allowed or actual annual operating hours, whichever is less.

(2) The baseline for determining credit for emission offsets will be the emission limitations or actual emissions, whichever is lower, in effect at the time the application to construct or modify a source is filed. Credit for emission offset purposes may be allowable for existing control that goes beyond that required by source-specific emission limitations contained in this title.

(3) In cases where the applicable rule under this title does not contain an emission limitation for a source or source category, the emission offset baseline involving such sources shall be the actual emissions determined at their maximum expected or allowable production rate.

(4) In cases where emission limits for existing sources allow greater emissions than the uncontrolled emission rate of the source, emission offset credit shall only be allowed for emissions controlled below the uncontrolled emission rate.

(5) A source may receive offset credit from emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels; provided, that the work force to be affected has been notified of the proposed shutdown or curtailment. Emission offsets that involve reducing operating hours or production or source shutdowns must be federally enforceable. Emission offsets may be credited for a source shutdown or curtailment provided that the applicant can establish that such shutdown or curtailment occurred less than one (1) year prior to the date of permit application, and the proposed new source is a replacement for the shutdown or curtailment.

(6) Emission offset credit involving an existing fuel combustion source will be based on the allowable emissions under other rules of this title for the type of fuel being burned at the time the new source application is filed. If the existing source commits to switch to a cleaner fuel at some future date, emission offset credit based on the allowable emissions for the fuels involved is acceptable; provided, the permit is conditioned to require the use of a specific alternative control measure which would achieve the same degree of emission reduction should the source switch back to a dirtier fuel at some later date. The commissioner will grant emission offset credit for fuel switching only after ensuring that adequate supplies of the new fuel are available at least for the next ten (10) years.

(7) In the case of volatile organic compound emissions, no emission offset credit may be allowed for replacing one (1) hydrocarbon compound with another of lesser reactivity, except for those compounds defined as nonphotochemically reactive hydrocarbons in 326 IAC 1-2-48.

(8) No emission reduction may be approved to offset emissions which cannot be federally enforced. Offsetting emissions shall be considered federally enforceable if the reduc-

tion is included as a condition in the applicable permit as specified in 326 IAC 2-5.1 or 326 IAC 2-7, if issued under a federally-approved air permit program.

(9) Emission reductions required under any other rule adopted by the air pollution control board shall not be creditable as emission reductions and therefore cannot be used for emission offsets.

(10) Incidental emission reductions that are not otherwise required by any other rule adopted by the air pollution control board shall be creditable as emission reductions for emission offsets if such emission reductions meet all of the other requirements for offsets.

(11) A source may offset by alternative or innovative means emission increases from rocket engine or motor firing and cleaning related to such firing at an existing or modified major source that tests rocket engines or motors under the following conditions:

(A) Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source that is permitted to test such engines on November 15, 1990.

(B) The source demonstrates to the satisfaction of the department that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source.

(C) The source has obtained a written finding from:

(i) the Department of Defense;

(ii) the Department of Transportation;

(iii) the National Aeronautics and Space Administration; or

(iv) other appropriate federal agency;

that the testing of rocket motors or engines at the facility is required for a program essential to the national security.

(D) The source will comply with an alternative measure, imposed by the department, designed to offset any emission increases beyond permitted levels not directly offset by the source.

(Air Pollution Control Board; 326 IAC 2-3-3; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2406; filed Nov 12, 1993, 4:00 p.m.: 17 IR 730; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1005; filed Aug 17, 2001, 3:45 p.m.: 25 IR 12)

SECTION 4. 326 IAC 10-3 IS ADDED TO READ AS FOLLOWS:

Rule 3. Nitrogen Oxide Reduction Program for Specific Source Categories

326 IAC 10-3-1 Applicability

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to any of the following:

(1) Portland cement kiln with process rates equal to or greater than:

(A) long dry kilns of twelve (12) tons per hour (tph);

(B) long wet kilns of ten (10) tph;

(C) preheater kilns of sixteen (16) tph; or

(D) precalciner and combined preheater and precalciner kilns of twenty-two (22) tph.

(2) The following affected boilers:

Source	Point ID	Unit
(A) Bethlehem Steel Corporation	075	Boiler #7
	076	Boiler #8
	077	Boiler #9
	078	Boiler #10
	079	Boiler #11
	080	Boiler #12
(B) Ispat Inland Incorporated	280 & 281	Boiler #211
	282 & 283	Boiler #212
	284 & 285	Boiler #213
	330	Boiler #501
	330	Boiler #502
	330	Boiler #503
(C) LTV Steel Company	020	Boiler #4
	021	Boiler #5
	022	Boiler #6
	023	Boiler #7
	024	Boiler #8
(C) U.S. Steel Company–Gary Works	720	Boiler #1
	720	Boiler #2
	720	Boiler #3
	701	Boiler #1
	701	Boiler #2
	701	Boiler #3
	701	Boiler #5
	701	Boiler #6

(3) Any other blast furnace gas fired boiler with a heat input greater than two hundred fifty million (250,000,000) British thermal units per hour.

(b) A unit subject to this rule and a New Source Performance Standard (NSPS), a National Emission Standard for Hazardous Air Pollutants, or an emission limit established under 326 IAC 2 shall comply with the limitations and requirements of the more stringent rule. For a unit subject to this rule and 326 IAC 10-1, compliance with the emission limits in section 3(a)(1)(A) *[of this rule]* during the ozone control period shall be deemed to be compliance with the emission limits in 326 IAC 10-1-4(b)(1) during the ozone control period, and such limits shall supersede those in 326 IAC 10-1-4(b)(1) during the ozone control period.

(c) The monitoring, record keeping, and reporting requirements under sections 4 and 5 of this rule shall not apply to a unit that opts into the NO_x budget trading program under 326 IAC 10-4.

(d) The requirements of this rule shall not apply to the specific units subject to this rule during startup and shutdown periods and periods of malfunction.

(e) During periods of blast furnace reline, startup, and period of malfunction, the affected boilers shall not be required to meet the requirement to derive fifty percent (50%) of the heat input from blast furnace gas. *(Air Pollution Control Board; 326 IAC 10-3-1; filed Aug 17, 2001, 3:45 p.m.: 25 IR 14)*

326 IAC 10-3-2 Definitions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-11-2; IC 13-15; IC 13-17

Sec. 2. For purposes of this rule, the definition given for a term in this rule shall control in any conflict between 326 IAC 1-2 and this rule. In addition to the definitions provided in IC 13-11-2 and 326 IAC 1-2, the following definitions apply throughout this rule unless expressly stated otherwise or unless the context clearly implies otherwise:

(1) "Blast furnace gas fired" means deriving at least fifty percent (50%) of its total heat input from the combustion of blast furnace gas during the ozone control period.

(2) "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other heat transfer medium.

(3) "Clinker" means the product of a Portland cement kiln from which finished cement is manufactured by milling and grinding.

(4) "Continuous emission monitoring system" or "CEMS" means the total equipment necessary for the determination of a gas or particulate matter concentration or emission rate using pollutant analyzer measurements and a conversion equation, graph, or computer program to produce results in units of the applicable emission limitation or standard.

(5) "Long dry kiln" means a Portland cement kiln fourteen (14) feet or larger in diameter and four hundred (400) feet or greater in length that employs no preheating of the feed. The inlet feed to the kiln is dry.

(6) "Long wet kiln" means a Portland cement kiln fourteen (14) feet or larger in diameter and four hundred (400) feet or greater in length that employs no preheating of the feed. The inlet feed to the kiln is a slurry.

(7) "Low-NO_x burners" means a type of cement kiln burner system designed to lower NO_x formation by controlling flame turbulence, delaying fuel/air mixing, and establishing fuel-rich zones for initial combusting, that for firing of solid fuel by a kiln's main burner includes an indirect firing system or comparable technique for the main burner to lower the amount of primary combustion air supplied with the pulverized fuel. In an indirect firing system, one (1) air stream is used to convey pulverized fuel from the grinding equipment and another air stream is used to supply primary combustion air to the kiln burner with the pulverized fuel, with intermediate storage of the fuel.

(8) "Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(9) "Mid-kiln firing" means the secondary firing in a kiln system by injecting solid fuel at an intermediate point in the kiln system using a specially designed feed injection mechanism for the purpose of decreasing NO_x emissions through:

(A) burning part of the fuel at a lower temperature; and

(B) reducing conditions at the fuel injection point that may destroy some of the NO_x formed upstream in the kiln system.

(10) "Ozone control period" means the period as follows:

(A) For 2004, beginning May 31 and ending on September 30, inclusive.

(B) For 2005 and each year thereafter, beginning May 1 of a year and ending on September 30 of the same year, inclusive.

(11) "Portland cement" means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates, usually containing one (1) or more of the forms of calcium sulfate as an interground addition.

(12) "Portland cement kiln" means a system, including any solid, gaseous, or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

(13) "Precalciner kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers and a second burner is used to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln that forms clinker.

(14) "Preheater kiln" means a Portland cement kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln that forms clinker.

(15) "Semi-dry pre-calciner kiln" means a kiln where the inlet feed to the kiln system is a wet slurry. The wet slurry is subsequently processed in an integrated system consisting of a dryer and a separately fired pre-calciner, which in combination, dries the excess moisture from the feed stream (using only exhaust gases from the pre-calciner and kiln), and calcines the resulting dried material before introduction into the rotary kiln. The final fusion in the kiln forms the clinker.

(16) "Shutdown" means the cessation of operation of a Portland cement kiln or affected boiler for any purpose.

(17) "Startup" means the setting in operation of a Portland cement kiln or affected boiler for any purpose.

(Air Pollution Control Board; 326 IAC 10-3-2; filed Aug 17, 2001, 3:45 p.m.: 25 IR 15)

326 IAC 10-3-3 Emissions limits
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 3. (a) After May 31, 2004, an owner or operator of any Portland cement kiln subject to this rule shall not operate the kiln during the ozone control period of each year unless the owner or operator complies with one (1) of the following:

(1) Operation of the kiln with one (1) of the following:

(A) Low-NO_x burners.

(B) Mid-kiln firing.

(2) A limit on the amount of NO_x emitted when averaged over the ozone control period as follows:

(A) For long wet kilns, six (6) pounds of NO_x per ton of clinker produced.

(B) For long dry kilns, five and one-tenth (5.1) pounds of NO_x per ton of clinker produced.

(C) For preheater kilns, three and eight-tenths (3.8) pounds of NO_x per ton of clinker produced.

(D) For precalciner and combined preheater and precalciner kilns, two and eight-tenths (2.8) pounds of NO_x per ton of clinker produced.

(3) Installation and use of alternative control techniques that may include kiln system modifications, such as conversions to semi-dry precalciner kiln processing, subject to department and U.S. EPA approval, that achieve a thirty percent (30%) emissions decrease from baseline ozone control period emissions. Baseline emissions shall be the average of the sum of ozone control period emissions for the two (2) highest emitting years from 1995 through 2000 determined in accordance with subsection (d)(1).

(b) The owner or operator of any Portland cement kiln proposing to install and use an alternative control technique under subsection (a)(3) shall submit the proposed alternative control technique and calculation of baseline emissions with supporting documentation to the department and U.S. EPA for approval by May 1, 2003. The department shall include the approved plan with emission limitations in the source's operating permit.

(c) The owner or operator of any affected boiler subject to this rule shall limit NO_x emissions to seventeen-hundredths pound of NO_x per million Btus (0.17 lb/mmBtu) of heat input averaged over the ozone control period and ensure that greater than fifty percent (50%) of the heat input shall be derived from blast furnace gas averaged over an ozone control period. By May 1, 2003, the owner or operator of an affected boiler shall submit to the department a compliance plan for approval by the department and U.S. EPA including the following:

(1) Baseline stack test data, or proposed testing, for establishment of fuel specific emission factors, or the emission factors for the type of boiler from the Compilation of Air Pollutant Emission Factors (AP-42), Fifth Edition, January 1995*, Supplements A through G, December 2000 for each fuel to be combusted. The fuel specific emission factor shall be developed from representative emissions testing, pursuant to 40 CFR 60, Appendix A, Method 7, 7A, 7C, 7D, or 7E***, based on a range of typical operating conditions. The owner or operator must establish that these operating conditions are representative, subject to approval by the department, and must certify that the emissions testing is being conducted under representative conditions.**

(2) Anticipated fuel usage and combination of fuels.

(3) If desired by the source, a proposal for averaging the emission limit and fuel allocation among commonly owned units, including the proposed methodology for determining compliance.

(d) Baseline ozone control period emissions shall be determined using one (1) of the following methods:

(1) The average of the emission factors for the type of kiln from the Compilation of Air Pollutant Emission Factors (AP-42), Fifth Edition, January 1995*, Supplements A through G, December 2000 and the NO_x Control Technologies for the Cement Industry, Final Report, September 19, 2000****.**

(2) The site-specific emission factor developed from representative emissions testing, pursuant to 40 CFR 60, Appendix A, Method 7, 7A, 7C, 7D, or 7E*, based on a range of typical operating conditions. The owner or operator must establish that these operating conditions are representative, subject to approval by the department, and must certify that the emissions testing is being conducted under representative conditions.**

(3) An alternate method for establishing the emissions factors, when submitted with supporting data to substantiate such emissions factors and approved by the department and U.S. EPA as set forth in subsection (b).

(4) For affected boilers, as outlined in the site specific compliance plan submitted under subsection (c).

*****/****These documents are incorporated by reference and may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 10-3-3; filed Aug 17, 2001, 3:45 p.m.: 25 IR 16)*

326 IAC 10-3-4 Monitoring and testing requirements
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 4. (a) Beginning May 31, 2004, and each ozone

control period thereafter, any owner or operator of a Portland cement kiln complying with section 3(a)(1) of this rule shall operate and maintain the device according to a preventative maintenance plan prepared in accordance with 326 IAC 1-6-3.

(b) Beginning May 31, 2004, and each ozone control period thereafter, any owner or operator of a Portland cement kiln complying with section 3(a)(2) or 3(a)(3) of this rule shall monitor NO_x emissions during the ozone control period of each year using a NO_x CEMS in accordance with 40 CFR 60, Subpart A* and 40 CFR 60, Appendix B*, and comply with the quality assurance procedures specified in 40 CFR 60, Appendix F* and 326 IAC 3, as applicable.

(c) Beginning May 31, 2004, and each ozone control period thereafter, any owner or operator of an affected boiler or commonly owned affected boilers shall monitor fuel usage and percentage of heat input derived from each fuel combusted to demonstrate that greater than fifty percent (50%) of the heat input is derived from blast furnace gas.

***These documents are incorporated by reference and copies may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 10-3-4; filed Aug 17, 2001, 3:45 p.m.: 25 IR 16)*

326 IAC 10-3-5 Record keeping and reporting
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 5. (a) Beginning May 31, 2004, and each ozone control period thereafter, any owner or operator of a Portland cement kiln or affected boiler shall comply with the following record keeping and reporting requirements:

(1) An owner or operator of a Portland cement kiln complying with section 3(a)(1) of this rule shall create and maintain records that include, but are not limited to, the following:

(A) All routine and nonroutine maintenance, repair, or replacement performed on the device or devices.

(B) The date, time, and duration of any startup, shutdown, or malfunction in the operation of a kiln or the device or devices.

(2) An owner or operator of a Portland cement kiln complying with section 3(a)(2) or 3(a)(3) of this rule or an affected boiler shall create and maintain records that include, but are not limited to, the following:

(A) For Portland cement kilns, the following:

(i) Emissions, in pounds of NO_x per ton of clinker produced from each affected Portland cement kiln.

(ii) Daily clinker production records.

(B) For affected boilers, daily records of the fuel usage, including percentages of different fuels combusted and heat input derived from each fuel, including the following:

(i) Type of fuel used.

(ii) Quantity of fuel used.

(iii) Fuel specific emission factor (lbs/million cubic feet (mmcft) gas or lbs/1,000 gal oil).

(iv) Fuel specific heat content (mmBtu/1,000 gal for oil or mmBtu/mmcft for gas).

(v) Emissions in lb/mmBtu.

(C) The date, time, and duration of any startup, shutdown, or malfunction in the operation of any of the Portland cement kilns, affected boilers, or the emissions monitoring equipment.

(D) The results of any performance testing.

(E) If a unit is equipped with a CEMS, identification of time periods:

(i) during which NO_x standards are exceeded, the reason for the exceedance, and action taken to correct the exceedance and to prevent similar future exceedances; and

(ii) for which operating conditions and pollutant data were not obtained including reasons for not obtaining sufficient data and a description of corrective actions taken.

(F) All records required to be produced or maintained shall be retained on site for a period of five (5) years. The records shall be made available to the department or the U.S. EPA upon request.

(b) By May 31, 2004, the owner or operator of a Portland cement kiln shall submit to the department the following information:

(1) The identification number and type of each unit subject to this rule.

(2) The name and address of the plant where the unit is located.

(3) The name and telephone number of the person responsible for demonstrating compliance with this rule.

(4) Anticipated control measures, if any.

(c) The owner or operator of a Portland cement kiln subject to this rule shall submit a report documenting for that unit the total NO_x emissions and the average NO_x emission rate for the ozone control period of each year to the department by October 31, beginning in 2004 and each year thereafter. For Portland cement kilns complying with section 3(a)(1) of this rule, estimated emissions and emission rate shall be determined in accordance with section 3(d) of this rule or from CEMS data, if a Portland cement kiln is equipped with a CEMS as of the effective date of this rule.

(d) The owner or operator of a Portland cement kiln complying with section 3(a)(1) of this rule shall include a

certification with the report under subsection (c) that the control technology was installed, operated, and maintained in accordance with this rule.

(e) The owner or operator of an affected boiler subject to this rule shall submit a report to the department documenting compliance with all applicable requirements of this rule in accordance with its site specific compliance plan detailed under section 3(c) of this rule for the ozone control period of each year by October 31, beginning in 2004 and each year thereafter. *(Air Pollution Control Board; 326 IAC 10-3-5; filed Aug 17, 2001, 3:45 p.m.: 25 IR 17)*

326 IAC 10-3-6 Violations
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 6. For purposes of determining the number of days of violations, if a Portland cement kiln or affected boiler has excess emissions for an ozone control period, each day in the ozone control period constitutes a day in violation unless the owners and operators demonstrate that a lesser number of days should be considered. *(Air Pollution Control Board; 326 IAC 10-3-6; filed Aug 17, 2001, 3:45 p.m.: 25 IR 18)*

SECTION 5. 326 IAC 10-4 IS ADDED TO READ AS FOLLOWS:

Rule 4. Nitrogen Oxides Budget Trading Program

326 IAC 10-4-1 Applicability
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule establishes a NO_x emissions budget and NO_x trading program for electricity generating units and large affected units as described in this rule. The following units shall be NO_x budget units, and any source that includes one (1) or more NO_x budget units shall be a NO_x budget source, and shall be subject to the requirements of this rule:

(1) An electricity generating unit (EGU) as defined under section 2(16) of this rule.

(2) A large affected unit as defined in section 2(27) of this rule.

(b) A unit described under subsection (a) shall not be a NO_x budget unit, if the unit has a federally enforceable permit that meets the requirements of subdivisions (1) through (3):

(1) The federally enforceable permit includes terms and conditions that restrict the unit to burning only natural gas or fuel oil during the ozone control period in 2004 or the first year of operation for the source and each ozone control period thereafter.

(2) The federally enforceable permit includes terms and conditions that restrict the unit's potential NO_x mass emissions for the ozone control period to twenty-five (25) tons or less.

(3) For each ozone control period, the federally enforceable permit must do the following:

(A) Restrict the unit to burning only natural gas or fuel oil during an ozone control period in 2004 or later and each ozone control period thereafter.

(B) Include one (1) of the following mechanisms for ensuring that the unit's ozone control period NO_x emissions do not exceed twenty-five (25) tons:

(i) Limit the unit's total actual control period emissions to twenty-five (25) tons of NO_x emissions, measured by a continuous emissions monitoring system (CEMS) in accordance with 40 CFR 75, Subpart H* and section 12 of this rule or monitoring approved under 40 CFR 75, Appendix E*.

(ii) Restrict the unit's operating hours to the number calculated by dividing twenty-five (25) tons of potential NO_x mass emissions by the unit's maximum potential hourly NO_x mass emissions, where the unit's potential NO_x mass emissions shall be calculated as follows:

(AA) Select the default NO_x emission rate in 40 CFR 75.19(c), Table LM-2* that would otherwise be applicable assuming that the unit burns only the type of fuel, for example, only natural gas or only fuel oil, that has the highest default NO_x emission factor of any type of fuel that the unit is allowed to burn under the fuel use restriction in clause (A).

(BB) Multiply the default NO_x emission rate under subitem (AA) by the unit's maximum rated hourly heat input. The owner or operator of the unit may petition the department to use a lower value for the unit's maximum rated hourly heat input than the value as defined under section 2(25) of this rule. The department may approve the lower value if the owner or operator demonstrates that the maximum hourly heat input specified by the manufacturer or the highest observed hourly heat input, or both, are not representative, and that the lower value is representative, of the unit's current capabilities because modifications have been made to the unit, limiting its capacity permanently.

(iii) Restrict the unit's usage of each fuel that it is authorized to burn such that the unit's potential NO_x mass emissions will not exceed twenty-five (25) tons per ozone control period, calculated as follows:

(AA) Identify the default NO_x emission rate in 40 CFR 75.19(c), Table LM-2* or an alternative emission rate determined in accordance with 40 CFR 75.19(c)(1)(iv)* for each type of fuel that the unit is allowed to burn under the fuel use restriction in clause (A).

(BB) Identify the amount of each type of fuel (in mmBtu) that the unit burned during the ozone control period.

(CC) For each type of fuel identified in subitem (BB), multiply the default NO_x emission rate under subitem (AA) and the amount (in mmBtu) of the fuels burned by the unit during the ozone control period.

(DD) Sum the products in subitem (CC) to verify that the unit's NO_x emissions were equal to or less than twenty-five (25) tons.

(C) Require that the owner or operator of the unit shall retain records, on site at the source or at a central location within Indiana for those owner or operators with unattended sources that includes the unit for a period of five (5) years, demonstrating that the terms and conditions of the permit related to these restrictions were met. Records retained at a central location within Indiana shall be available immediately at the location and submitted to the department or U.S. EPA within three (3) business days following receipt of a written request. Nothing in this clause shall alter the record retention requirements for a source under 40 CFR 75*.

(D) Require that the owner or operator of the unit shall report the unit's hours of operation, treating any partial hour of operation as a whole hour of operation, or such other parameter as is being used to demonstrate compliance with the twenty-five (25) ton per ozone control period during each ozone control period to the department by November 1 of each year for which the unit is subject to the federally enforceable permit.

The unit shall be subject only to the requirements of this subsection starting with the effective date of the federally enforceable permit under subdivision (1).

(4) Within thirty (30) days after a final decision, the department shall notify the U.S. EPA in writing when a unit under subsection (a):

(A) is issued a federally enforceable permit under this subsection; or

(B) whose federally enforceable permit issued by the department under this subsection:

(i) is revised to remove any restriction;

(ii) includes any restriction that is no longer applicable; or

(iii) does not comply with any restriction.

(5) A unit described under this subsection shall be a NO_x budget unit, subject to the requirements of this rule if one (1) of the following occurs for any ozone control period:

(A) The fuel use restriction under subdivision (3)(A) or the applicable restriction under subdivision (3)(B) is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable.

(B) The unit does not comply with the fuel use restriction under subdivision (3)(A) or the applicable restriction under subdivision (3)(B).

The unit shall be treated as commencing operation and, for a unit under subsection (a)(1), commencing commercial operation on September 30 of the ozone control period for which the fuel use restriction or the applicable restriction is no longer applicable or during which the unit does not comply with the fuel use restriction or the applicable restriction.

(6) A unit exempt under this subsection shall comply with the restriction in subdivision (3) during the ozone control period in each year.

(7) The department will allocate NO_x allowances to the unit under section 9(d) of this rule. For each control period for which the unit is allocated NO_x allowances under section 9(d) of this rule:

(A) the owners and operators of the unit must specify a general account, in which U.S. EPA will record the NO_x allowances; and

(B) after U.S. EPA records the NO_x allowance allocation under section 9(d) of this rule, the U.S. EPA will deduct, from the general account in clause (A), NO_x allowances that are allocated for the same or a prior ozone control period as the NO_x allowances allocated under section 9(d) of this rule and that equal the NO_x emission limitation (in tons of NO_x) on which the unit's exemption under this subsection is based. The NO_x authorized account representative shall ensure that the general account contains the NO_x allowances necessary for completion of the deduction.

(c) A unit subject to 40 CFR 97* shall be subject to the requirements of this rule on May 1, 2004. Allowances for such unit shall be allocated in accordance with section 9 of this rule for the 2004 ozone control period and thereafter. Allowances from the compliance supplement pool shall be allocated in accordance with section 15 of this rule and any banked allowances shall be available for use under this rule beginning in 2004. A unit subject to 40 CFR 97* may petition the commissioner for an extension of the compliance date from May 1, 2004, to a date no later than May 31, 2004, and the commissioner shall grant the petition if but only if final U.S. EPA action, final federal legislation, or an order from a court of competent jurisdiction delays the compliance date under 40 CFR 97* beyond May 1, 2004.

*These documents are incorporated by reference, and copies may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 10-4-1; filed Aug 17, 2001, 3:45 p.m.: 25 IR 18)*

326 IAC 10-4-2 Definitions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-11-2; IC 13-15; IC 13-17

Sec. 2. For purposes of this rule, the definition given for

a term in this rule shall control in any conflict between 326 IAC 1-2 and this rule. In addition to the definitions provided in IC 13-11-2 and 326 IAC 1-2, the following definitions apply throughout this rule, unless expressly stated otherwise or unless the context clearly implies otherwise:

(1) "Account certificate of representation" means the completed and signed submission required by section 6 of this rule for certifying the designation of a NO_x authorized account representative for a NO_x budget source or a group of identified NO_x budget sources who is authorized to represent the owners and operators of the source or sources and of the NO_x budget units at the source or sources with regard to matters under the NO_x budget trading program.

(2) "Account number" means the identification number given by the U.S. EPA to each NO_x allowance tracking system account.

(3) "Acid rain emissions limitation" means, as defined in 40 CFR 72.2*, a limitation on emissions of sulfur dioxide or nitrogen oxides under the acid rain program under Title IV of the Clean Air Act (CAA).

(4) "Allocate" or "allocation" means the determination by the department or the U.S. EPA of the number of NO_x allowances to be initially credited to a NO_x budget unit or an allocation set-aside.

(5) "Automated data acquisition and handling system" or "DAHS" means that component of the CEMS, or other emissions monitoring system approved for use under 40 CFR 75, Subpart H*, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by 40 CFR 75, Subpart H*.

(6) "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other heat transfer medium.

(7) "Combined cycle system" means a system comprised of one (1) or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

(8) "Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

(9) "Commence commercial operation" means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation subject to the following:

(A) Except as provided in section 3 of this rule, for a unit that is a NO_x budget unit under section 1 of this rule on the date the unit commences commercial operation, the date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered.

(B) Except as provided in section 3 or 13 of this rule, for a unit that is not a NO_x budget unit under section 1 of this rule on the date the unit commences commercial operation, the date the unit becomes a NO_x budget unit under section 1 of this rule shall be the unit's date of commencement of commercial operation.

(10) "Commence operation" means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, startup of a unit's combustion chamber subject to the following:

(A) Except as provided in section 3 of this rule, for a unit that is a NO_x budget unit under section 1 of this rule on the date of commencement of operation, the date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered.

(B) Except as provided in section 3 or 13 of this rule, for a unit that is not a NO_x budget unit under section 1 of this rule on the date of commencement of operation, the date the unit becomes a NO_x budget unit under section 1 of this rule shall be the unit's date of commencement of operation.

(11) "Common stack" means a single flue through which emissions from two (2) or more units are exhausted.

(12) "Compliance account" means a NO_x allowance tracking system account, established by the U.S. EPA for a NO_x budget unit under section 10 of this rule, in which the NO_x allowance allocations for the unit are initially recorded and in which are held NO_x allowances available for use by the unit for an ozone control period for the purpose of meeting the unit's NO_x budget emissions limitation.

(13) "Compliance certification" means a submission to the department or the U.S. EPA, as appropriate, that is required under section 8 of this rule to report a NO_x budget source's or a NO_x budget unit's compliance or noncompliance with this rule and that is signed by the NO_x authorized account representative in accordance with section 6 of this rule.

(14) "Continuous emission monitoring system" or "CEMS" means the equipment required under 40 CFR 75, Subpart H* to sample, analyze, measure, and provide, by readings taken at least once every fifteen (15) minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for NO_x. The following systems are component parts included, consistent with 40 CFR 75*, in a continuous emission monitoring system:

(A) Flow monitor.

(B) Nitrogen oxides pollutant concentration monitors.

(C) Diluent gas monitor, oxygen or carbon dioxide, when the monitoring is required by 40 CFR 75, Subpart H*.

(D) A continuous moisture monitor when the monitoring is required by 40 CFR 75, Subpart H*.

(E) An automated data acquisition and handling system.

(15) "Electricity for sale under firm contract to the grid" means electricity for sale where the capacity involved is intended to be available at all times during the period covered by a guaranteed commitment to deliver, even under adverse conditions.

(16) "Electricity generating unit" or "EGU" means the following:

(A) For units that commenced operation before January 1, 1997, a unit serving a generator during 1995 or 1996 that had a nameplate capacity greater than twenty-five (25) megawatts and produced electricity for sale under a firm contract to the electric grid.

(B) For units that commenced operation on or after January 1, 1997, and before January 1, 1999, a unit serving a generator during 1997 or 1998 that had a nameplate capacity greater than twenty-five (25) megawatts and produced electricity for sale under a firm contract to the electric grid.

(C) For units that commenced operation on or after January 1, 1999, a unit serving a generator at any time that has a nameplate capacity greater than twenty-five (25) megawatts and produces electricity for sale.

(17) "Emissions", for the purpose of this rule, means nitrogen oxides exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the U.S. EPA by the NO_x authorized account representative and as determined by the U.S. EPA in accordance with 40 CFR 75, Subpart H*.

(18) "Energy efficiency or renewable energy projects" means any of the following implemented in Indiana:

(A) End-use energy efficiency projects, including demand-side management programs.

(B) Highly efficient electricity generation for the predominant use of a single end user, such as combined cycle, combined heat and power, microturbines, and fuel cell systems. In order to be considered as highly efficient electricity generation under this clause, combined cycle, combined heat and power, microturbines, and fuel cell generating systems must meet or exceed the following thresholds:

(i) For combined heat and power projects generating both electricity and thermal energy for space, water, or industrial process heat, rated energy efficiency of sixty percent (60%).

(ii) For microturbine projects rated at or below five hundred (500) kilowatts generating capacity, rated energy efficiency of forty percent (40%).

(iii) For combined cycle projects rated at greater than five hundred (500) kilowatts, rated energy efficiency of fifty percent (50%).

(iv) For fuel cell systems, rated energy efficiency of forty percent (40%), whether or not the fuel cell system is part of a combined heat and power energy system.

(C) Zero-emission renewable energy projects, including wind, photovoltaic, and hydropower projects. Eligible hydropower projects are restricted to systems employing a head of ten (10) feet or less or systems employing a head greater than ten (10) feet that make use of a dam that existed prior to the effective date of this rule.

(D) Energy efficiency projects generating electricity through the capture of methane gas from sanitary landfills, water treatment plants, or sewage treatment plants.

(E) The installation of highly efficient electricity generation equipment for the sale of power where such equipment replaces or displaces retired electrical generating units. In order to be considered as highly efficient under this clause, generation equipment must meet or exceed the following energy efficiency thresholds:

(i) For coal-fired electrical generation units, rated energy efficiency of forty-two percent (42%).

(ii) For natural gas-fired electrical generating units, rated energy efficiency of fifty percent (50%).

(F) Improvements to existing fossil fuel fired electrical generation units that increase the efficiency of the unit and decrease the heat rate used to generate electricity.

Energy efficiency or renewable energy projects do not include nuclear power projects. This definition is solely for the purposes of implementing this rule and does not apply in other contexts.

(19) "Energy Information Administration" means the Energy Information Administration of the United States Department of Energy.

(20) "Excess emissions" means any tonnage of NO_x emitted by a NO_x budget unit during an ozone control period that exceeds the NO_x budget emissions limitation for the unit.

(21) "Fossil fuel" means any of the following:

(A) Natural gas.

(B) Petroleum.

(C) Coal.

(D) Any form of solid, liquid, or gaseous fuel derived from the above material.

(22) "Fossil fuel-fired" means, with regard to a unit, the combustion of fossil fuel, alone or in combination with any other fuel, under any of the following scenarios:

(A) Fossil fuel actually combusted comprises more than fifty percent (50%) of the annual heat input on a British thermal unit (Btu) basis during any year starting in 1995. If a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995.

(B) Fossil fuel is projected to comprise more than fifty percent (50%) of the annual heat input on a Btu basis during any year, provided that the unit shall be fossil fuel-fired as of the date, during the year, that the unit begins combusting fossil fuel.

(23) "General account" means a NO_x allowance tracking system account, established under section 10 of this rule, that is not a compliance account or an overdraft account.

(24) "Generator" means a device that produces electricity.

(25) "Heat input" means the product, in million British thermal units per unit of time (mmBtu/time), of the following:

(A) The gross calorific value of the fuel, in British thermal units per pound (Btu/lb).

(B) The fuel feed rate into a combustion device, in mass of fuel per unit of time (lb/time), as measured, recorded, and reported to the U.S. EPA by the NO_x authorized account representative and as determined by the U.S. EPA in accordance with 40 CFR 75, Subpart H*.

Heat input does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(26) "Heat input rate" means the amount of heat input (in mmBtu) divided by unit operating time (in hours) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hours) during which the unit combusts the fuel.

(27) "Large affected unit" means the following:

(A) For units that commenced operation before January 1, 1997, a unit that has a maximum design heat input greater than two hundred fifty million (250,000,000) Btus per hour and that did not serve during 1995 or 1996 a generator producing electricity for sale under a firm contract to the electric grid.

(B) For units that commenced operation on or after January 1, 1997, and before January 1, 1999, a unit that has a maximum design heat input greater than two hundred fifty million (250,000,000) Btus per hour and that did not serve during 1997 or 1998 a generator producing electricity for sale under a firm contract to the electric grid.

(C) For units that commence operation on or after January 1, 1999, a unit with a maximum design heat input greater than two hundred fifty million (250,000,000) Btus per hour that:

(i) at no time serves a generator producing electricity for sale; or

(ii) at any time serves a generator producing electricity for sale, if any such generator has a nameplate capacity of twenty-five (25) megawatts or less and has the potential to use no more than fifty percent (50%) of the potential electrical output capacity of the unit.

Large affected unit does not include a unit subject to 326 IAC 10-3.

(28) "Life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of the unit's total costs, pursuant to a contract:

(A) for the life of the unit;

(B) for a cumulative term of no less than thirty (30) years, including contracts that permit an election for early termination; or

(C) for a period equal to or greater than twenty-five (25) years or seventy percent (70%) of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

(29) "Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

(30) "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. The unit may use either of the following:

(A) 40 CFR 75, Appendix D* to report heat input. Calculate this value in accordance with 40 CFR 75*, using the maximum fuel flow rate and the maximum gross calorific value.

(B) A flow monitor and a diluent gas monitor. Report this value in accordance with 40 CFR 75*, using the maximum potential flow rate and either of the following:

(i) The maximum carbon dioxide (CO_2) concentration, in percent of CO_2.

(ii) The minimum oxygen (O_2) concentration, in percent of O_2.

(31) "Maximum potential NO_x emission rate" means:

(A) the emission rate of nitrogen oxides, in pounds per million British thermal units (lb/mmBtu);

(B) calculated in accordance with 40 CFR 75, Appendix F, Section 3*;

(C) using the maximum potential nitrogen oxides concentration as defined in 40 CFR 75, Appendix A, Section 2*; and

(D) either the:

(i) maximum oxygen (O_2) concentration in percent of O_2; or

(ii) minimum carbon dioxide (CO_2) concentration in percent of CO_2;

under all operating conditions of the unit except for unit start up, shutdown, and upsets.

(32) "Maximum rated hourly heat input" means a unit-specific maximum hourly heat input, in million British thermal units (mmBtu), that is the higher of either the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

(33) "Monitoring system" means any monitoring system that meets the requirements of 40 CFR 75, Subpart H*, including the following:

(A) A continuous emissions monitoring system.

(B) An excepted monitoring system under 40 CFR 75.19* or 40 CFR 75, Appendix D or E*.

(C) An alternative monitoring system.

(34) "Most stringent state or federal NO_x emissions limitation" means, with regard to a NO_x budget opt-in source, the lowest NO_x emissions limitation, in terms of pounds per million British thermal units (lb/mmBtu), that is applicable to the unit under state or federal law, regardless of the averaging period to which the emissions limitation applies.

(35) "Nameplate capacity" means the maximum electrical generating output, in megawatt electrical (MWe), that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.

(36) "Nontitle V permit" means a federally enforceable permit issued by the department under 326 IAC 2-8.

(37) "NO_x allowance" means an authorization by the department or the U.S. EPA under the nitrogen oxides (NO_x) budget trading program to emit up to one (1) ton of NO_x during the ozone control period of the specified year or of any year thereafter, except as provided in section 14(b) of this rule. "NO_x allowance" also includes an authorization to emit up to one (1) ton of nitrogen oxides during the ozone control period of the specified year or of any year thereafter by the U.S. EPA under 40 CFR 97* or by a permitting authority in accordance with a state NO_x budget trading program established pursuant to 40 CFR 51.121* and approved and administered by the U.S. EPA.

(38) "NO_x allowance deduction" or "deduct NO_x allowances" means the permanent withdrawal of NO_x allowances by the U.S. EPA from a NO_x allowance tracking system compliance account or overdraft account to account for the number of tons of NO_x emissions from a NO_x budget unit for an ozone control period, determined in accordance with 40 CFR 75, Subpart H* and section 12 of this rule, or for any other allowance surrender obligation under this rule.

(39) "NO_x allowance tracking system" means the system by which the U.S. EPA records allocations, deductions, and transfers of NO_x allowances under the NO_x budget trading program.

(40) "NO_x allowance tracking system account" means an account in the NO_x allowance tracking system established by the U.S. EPA for purposes of recording the allocation, holding, transferring, or deducting of NO_x allowances.

(41) "NO_x allowance transfer deadline" means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO_x allowances may be submitted for recordation in a NO_x budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NO_x budget emissions limitation for the ozone control period immediately preceding the deadline.

(42) "NO_x allowances held" or "hold NO_x allowances" means the NO_x allowances recorded by the U.S. EPA, or submitted to the U.S. EPA for recordation, in accordance with sections 10 and 11 of this rule, in a NO_x allowance tracking system account.

(43) "NO_x authorized account representative" means either of the following:

(A) For a NO_x budget source or NO_x budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO_x budget units at the source, in accordance with section 6 of this rule, to represent and legally bind each owner and operator in matters pertaining to the NO_x budget trading program.

(B) For a general account, the natural person who is authorized, in accordance with section 10 of this rule, to transfer or otherwise dispose of NO_x allowances held in the general account.

(44) "NO_x budget emissions limitation" means, for a NO_x budget unit, the tonnage equivalent of the NO_x allowances available for compliance deduction for the unit and for an ozone control period under sections 10(i) and 10(k) of this rule, adjusted by any deductions of the NO_x allowances for any of the following reasons:

(A) To account for excess emissions for a prior ozone control period under section 10(k)(5) of this rule.

(B) To account for withdrawal from the NO_x budget trading program.

(C) For a change in regulatory status, for a NO_x budget opt-in source under sections *[sic., section]* 13(g) through 13(i) of this rule.

(45) "NO_x budget opt-in permit" means a NO_x budget permit covering a NO_x budget opt-in source.

(46) "NO_x budget opt-in source" means a source that includes one (1) or more NO_x budget units:

(A) that has elected to become a NO_x budget source under the NO_x budget trading program; and

(B) whose NO_x budget opt-in permit has been issued and is in effect under section 13 of this rule.

(47) "NO_x budget permit" means the legally binding and federally enforceable written document, or portion of the document:

(A) issued by the department under this rule, including any permit revisions; and

(B) specifying the NO_x budget trading program requirements applicable to the following:

(i) A NO_x budget source.

(ii) Each NO_x budget unit at the NO_x budget source.

(iii) The owners and operators and the NO_x autho-

rized account representative of the NO_x budget source and each NO_x budget unit.

(48) "NO_x budget source" means a source that includes one (1) or more NO_x budget units.

(49) "NO_x budget trading program" means a multistate nitrogen oxides air pollution control and emission reduction program established in accordance with this rule, 40 CFR 97*, and a state NO_x budget trading program established pursuant to 40 CFR 51.121*and approved and administered by the U.S. EPA, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

(50) "NO_x budget unit" means a unit that is subject to the NO_x budget trading program emissions limitation under section 1(a) or 13(a) of this rule.

(51) "Operating" means, with regard to a unit under sections 7(c)(4)(B) and 13(a) of this rule, having documented heat input for more than eight hundred seventy-six (876) hours in the six (6) months immediately preceding the submission of an application for an initial NO_x budget permit under section 13(d) of this rule.

(52) "Operator" means any person who operates, controls, or supervises a NO_x budget unit, a NO_x budget source, or a unit for which an application for a NO_x budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of a unit or source.

(53) "Opt-in" means to elect to become a NO_x budget unit under the NO_x budget trading program through a final, effective NO_x budget opt-in permit under section 13 of this rule.

(54) "Overdraft account" means the NO_x allowance tracking system account, established by the U.S. EPA under section 10 of this rule, for each NO_x budget source where there are two (2) or more NO_x budget units.

(55) "Owner" means any of the following persons:

(A) Any holder of any portion of the legal or equitable title in a NO_x budget unit or in a unit for which an application for a NO_x budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn.

(B) Any holder of a leasehold interest in a NO_x budget unit or in a unit for which an application for a NO_x budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn.

(C) Any purchaser of power from a NO_x budget unit or from a unit for which an application for a NO_x budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO_x budget unit or the unit for which an application for a NO_x budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn.

(D) With respect to any general account, any person who has an ownership interest with respect to the NO_x allowances held in the general account and who is subject to the binding agreement for the NO_x authorized account representative to represent that person's ownership interest with respect to NO_x allowances.

(56) "Ozone control period" means the period as follows:

(A) For 2004, the following:

(i) For units not subject to 40 CFR 97*, beginning May 31 and ending on September 30, inclusive.

(ii) For units subject to 40 CFR 97*, beginning May 1 and ending on September 30, inclusive.

(B) For 2005 and each year thereafter, beginning May 1 of a year and ending on September 30 of the same year, inclusive.

(57) "Percent monitor data availability" means, for purposes of sections 13(e)(2) and section 15(b)(1)(D) of this rule, total unit operating hours for which quality-assured data were recorded under 40 CFR 75, Subpart H* and section 12 of this rule in a control period, divided by the total number of unit operating hours per control period, and multiplied by one hundred percent (100%).

(58) "Potential electrical output capacity" means thirty-three percent (33%) of a unit's maximum design heat input.

(59) "Rated energy efficiency" means the percentage of gross energy input that is recovered as useable net energy output in the form of electricity or thermal energy, or both, that is used for heating, cooling, industrial processes, or other beneficial uses as follows:

(A) For electric generators, rated energy efficiency is calculated as one (1) net kilowatt hour (three thousand four hundred twelve (3,412) British thermal units) of electricity divided by the unit's design heat rate using the higher heating value of the fuel.

(B) For combined heat and power projects, rated energy efficiency is calculated using the following formula:

$$Eff\% = (NEO + UTO)/GEI$$

Where: Eff% = Rated energy efficiency

NEO = Net electrical output of the system converted to British thermal units per unit of time.

UTO = Utilized thermal output or the energy value in British thermal units of thermal energy from the system that is used for heating, cooling, industrial processes, or other beneficial uses, per unit of time.

GEI = Gross energy input, based upon the higher heating value of fuel, per unit of time.

(60) "Receive" or "receipt of" means, when referring to the department or the U.S. EPA, to come into possession of a document, information, or correspondence, whether sent in writing or by authorized electronic transmission, as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the department or the U.S. EPA in the regular course of business.
(61) "Recordation", "record", or "recorded" means, with regard to NO_x allowances, the movement of NO_x allowances by the U.S. EPA from one (1) NO_x allowance tracking system account to another, for purposes of allocation, transfer, or deduction.
(62) "Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR 60, Appendix A*.
(63) "Repowered natural gas-fired generating unit", for the purposes of this rule, means an electricity generating unit that is fueled by natural gas and provides steam to a generation turbine that was previously served by a coal-fired unit that was retired in 2000 or later.
(64) "Serial number" means, when referring to NO_x allowances, the unique identification number assigned to each NO_x allowance by the U.S. EPA, under sections *[sic., section]* **10(e) through 10(g) of this rule.**
(65) "Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the CAA. For purposes of Section 502(c) of the CAA, a source, including a source with multiple units, shall be considered a single facility.
(66) "Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:
(A) in person;
(B) by United States Postal Service; or
(C) by other means of dispatch or transmission and delivery.
Compliance with any submission, service, or mailing deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.
(67) "Title V operating permit" means a permit issued under 326 IAC 2-7.
(68) "Title V operating permit regulations" means the rules under 326 IAC 2-7.
(69) "Ton" or "tonnage" means any short ton, two thousand (2,000) pounds. For the purpose of determining compliance with the NO_x budget emissions limitation, total tons for an ozone control period shall be calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates, in accordance with 40 CFR 75, Subpart H*, with any remaining fraction of a ton equal to or greater than fifty-hundredths (0.50) ton deemed to equal one (1) ton and any fraction of a ton less than fifty-hundredths (0.50) ton deemed to equal zero (0) tons.
(70) "Trading program budget" means the total number of NO_x tons apportioned to all NO_x budget units, in accordance with the NO_x budget trading program, for use in a given ozone control period.
(71) "Unit" means a fossil fuel-fired:
(A) stationary boiler;
(B) combustion turbine; or
(C) combined cycle system.
(72) "Unit operating day" means a calendar day in which a unit combusts any fuel.
(73) "Unit operating hour" or "hour of unit operation" means any hour, or fraction of an hour, during which a unit combusts any fuel.
(74) "United States Environmental Protection Agency" or "U.S. EPA" means the administrator of the U.S. EPA or the administrator's duly authorized representative. The department authorizes the U.S. EPA to assist the department in implementing this rule by carrying out the functions set forth for the U.S. EPA in this rule.
(75) "Utilization" means the heat input, expressed in million British thermal units per unit of time, for a unit. The unit's total heat input for the ozone control period in each year shall be determined in accordance with 40 CFR 75* if the NO_x budget unit was otherwise subject to the requirements of 40 CFR 75* for the year, or shall be based on the best available data reported to the U.S. EPA for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75* for the year.

***These documents are incorporated by reference, and copies may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 10-4-2; filed Aug 17, 2001, 3:45 p.m.: 25 IR 19)*

326 IAC 10-4-3 Retired unit exemption
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 3. (a) This section applies to any NO_x budget unit, other than a NO_x budget opt-in source, that is permanently retired.

(b) Any NO_x budget unit, other than a NO_x budget opt-in source, that is permanently retired shall be exempt from the NO_x budget trading program, except for the provisions of this section and sections 1, 2, 5, and 9 through 11 of this rule.

(c) An exemption under this section shall become effective the day on which the unit is permanently retired. Within thirty (30) days of permanent retirement, the NO_x autho-

rized account representative, authorized in accordance with section 6 of this rule, shall submit a notice to the department and the U.S. EPA. The notice shall state, in a format prescribed by the department, that the unit:

(1) is permanently retired; and

(2) shall comply with the requirements of subsection (e).

(d) After receipt of the notice under subsection (c), the department shall amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under subsections (b) and (e).

(e) A unit exempt under this section shall comply with the following provisions:

(1) The unit shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

(2) The owners and operators of the unit shall be allocated allowances in accordance with section 9 of this rule. For each ozone control period for which the unit is allocated one (1) or more NO_x allowances, the owners and operators of the unit shall specify a general account, in which U.S. EPA will record the NO_x allowances.

(3) If the unit is located at a source that is required, or but for this exemption would be required, to have an operating permit under 326 IAC 2-7, the unit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x budget permit application under section 7(c) of this rule for the unit not less than two hundred seventy (270) days prior to the later of:

(A) May 31, 2004; or

(B) the date on which the unit is to first resume operation.

(4) If the unit is located at a source that is required, or but for this exemption would be required, to have a FESOP permit under 326 IAC 2-8, the unit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x budget permit application under section 7(c) of this rule for the unit not less than two hundred seventy (270) days prior to the later of:

(A) May 31, 2004; or

(B) the date on which the unit is to first resume operation.

(5) The owners and operators and, to the extent applicable, the NO_x authorized account representative shall comply with the requirements of the NO_x budget trading program concerning all periods for which the exemption is not in effect, even if the requirements arise, or must be complied with, after the exemption takes effect.

(6) A unit that is exempt under this section is not eligible to be a NO_x budget opt-in unit under section 13 of this rule.

(7) The owners and operators shall retain records at the source, or at a central location within Indiana for those owners or operators with unattended sources, demonstrating that the unit is permanently retired for a period of five (5) years. The five (5) year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the department or the U.S. EPA. The owners and operators bear the burden of proof that the unit is permanently retired. Records retained at a central location within Indiana shall be available immediately at the location and submitted to the department or U.S. EPA within three (3) business days following receipt of a written request. Nothing in this subdivision shall alter the record retention requirements for a source under 40 CFR 75*.

(8) A unit exempt under subsection (b) shall lose its exemption on the earlier of the following dates:

(A) The date on which the NO_x authorized account representative submits a NO_x budget permit application under subdivision (3) or (4).

(B) The date on which the NO_x authorized account representative is required under subdivision (3) or (4) to submit a NO_x budget permit application.

For the purpose of applying monitoring requirements under 40 CFR 75, Subpart H*, a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

***These documents are incorporated by reference, and copies may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 10-4-3; filed Aug 17, 2001, 3:45 p.m.: 25 IR 25)*

326 IAC 10-4-4 Standard requirements

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 4. (a) The owners, operators, and NO_x authorized account representative of each NO_x budget source shall comply with the following permit requirements:

(1) The NO_x authorized account representative of each NO_x budget source required to have a federally enforceable permit and each NO_x budget unit required to have a federally enforceable permit at the source shall submit the following:

(A) A complete NO_x budget permit application under section 7(c) of this rule to the department in accordance with the deadlines specified in section 7(b) of this rule.

(B) Any supplemental information that the department determines is necessary in order to review a NO_x budget permit application in a timely manner and issue or deny a NO_x budget permit.

(2) The owners and operators of each NO_x budget source

required to have a federally enforceable permit and each NO_x budget unit required to have a federally enforceable permit at the source shall have a NO_x budget permit and operate the unit in compliance with the NO_x budget permit.

(3) The owners and operators of a NO_x budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NO_x budget permit application, nor to have a NO_x budget permit, under section 7 of this rule for the NO_x budget source.

(b) The owners and operators and, to the extent applicable, the NO_x authorized account representative of each NO_x budget source and each NO_x budget unit at the source shall comply with the following monitoring requirements:

(1) The monitoring requirements of 40 CFR 75* and section 12 of this rule.

(2) The emissions measurements recorded and reported in accordance with 40 CFR 75* and section 12 of this rule shall be used to determine compliance by the unit with the NO_x budget emissions limitation under subsection (c).

(c) The owners and operators of each NO_x budget source shall comply with the following NO_x requirements:

(1) The owners and operators of each NO_x budget source and each NO_x budget unit at the source shall hold NO_x allowances available for compliance deductions under section 10(j) of this rule, as of the NO_x allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount:

(A) not less than the total NO_x emissions for the ozone control period from the unit, as determined in accordance with 40 CFR 75* and section 12 of this rule;

(B) to account for excess emissions for a prior ozone control period under section 10(k)(5) of this rule; or

(C) to account for withdrawal from the NO_x budget trading program, or a change in regulatory status of a NO_x budget opt-in unit.

(2) Each ton of NO_x emitted in excess of the NO_x budget emissions limitation shall constitute a separate violation of the Clean Air Act (CAA) and this rule.

(3) A NO_x budget unit shall be subject to the requirements under subdivision (1) starting on the later of:

(A) May 31, 2004; or

(B) the date on which the unit commences operation.

(4) NO_x allowances shall be held in, deducted from, or transferred among NO_x allowance tracking system accounts in accordance with sections 9 through 11, 13, and 14 of this rule.

(5) A NO_x allowance shall not be deducted, in order to comply with the requirements under subdivision (1), for an ozone control period in a year prior to the year for which the NO_x allowance was allocated.

(6) A NO_x allowance allocated under the NO_x budget trading program is a limited authorization to emit one (1) ton of NO_x in accordance with the NO_x budget trading program. No provision of the NO_x budget trading program, the NO_x budget permit application, the NO_x budget permit, or an exemption under section 3 of this rule and no provision of law shall be construed to limit the authority of the U.S. EPA or the department to terminate or limit the authorization.

(7) A NO_x allowance allocated under the NO_x budget trading program does not constitute a property right.

(8) Upon recordation by the U.S. EPA under section 10, 11, or 13 of this rule, every allocation, transfer, or deduction of a NO_x allowance to or from a NO_x budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically, and become a part of, any NO_x budget permit of the NO_x budget unit by operation of law without any further review.

(d) The owners and operators of a NO_x budget unit that has excess emissions in any ozone control period shall do the following:

(1) Surrender the NO_x allowances required for deduction under section 10(k)(5) of this rule.

(2) Pay any fine, penalty, or assessment or comply with any other remedy imposed under section 10(k)(7) of this rule.

(e) The owners and operators of each NO_x budget source shall comply with the following record keeping and reporting requirements:

(1) Unless otherwise provided, the owners and operators of the NO_x budget source and each NO_x budget unit at the source shall keep either on site at the source or at a central location within Indiana for those owners or operators with unattended sources, each of the following documents for a period of five (5) years. This period may be extended for cause, at any time prior to the end of five (5) years, in writing by the department or the U.S. EPA:

(A) The account certificate of representation for the NO_x authorized account representative for the source and each NO_x budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with section 6(h) of this rule. The certificate and documents shall be retained either on site at the source or at a central location within Indiana for those owners or operators with unattended sources beyond the five (5) year period until the documents are superseded because of the submission of a new account certificate of representation changing the NO_x authorized account representative.

(B) All emissions monitoring information, in accordance with 40 CFR 75* and section 12 of this rule, provided that to the extent that 40 CFR 75* and section 12 of this rule provides for a three (3) year period for record keeping, the three (3) year period shall apply.

(C) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NO_x budget trading program.

(D) Copies of all documents used to complete a NO_x budget permit application and any other submission under the NO_x budget trading program or to demonstrate compliance with the requirements of the NO_x budget trading program.

Records retained at a central location within Indiana shall be available immediately at the location and submitted to the department or U.S. EPA within three (3) business days following receipt of a written request. Nothing in this subdivision shall alter the record retention requirements for a source under 40 CFR 75*.

(2) The NO_x authorized account representative of a NO_x budget source and each NO_x budget unit at the source shall submit the reports and compliance certifications required under the NO_x budget trading program, including those under section 8, 12, or 13 of this rule.

(f) The owners and operators of each NO_x budget source shall be liable as follows:

(1) Any person who knowingly violates any requirement or prohibition of the NO_x budget trading program, a NO_x budget permit, or an exemption under section 3 of this rule shall be subject to enforcement pursuant to applicable state or federal law.

(2) Any person who knowingly makes a false material statement in any record, submission, or report under the NO_x budget trading program shall be subject to criminal enforcement pursuant to the applicable state or federal law.

(3) No permit revision shall excuse any violation of the requirements of the NO_x budget trading program that occurs prior to the date that the revision takes effect.

(4) Each NO_x budget source and each NO_x budget unit shall meet the requirements of the NO_x budget trading program.

(5) Any provision of the NO_x budget trading program that applies to a NO_x budget source, including a provision applicable to the NO_x authorized account representative of a NO_x budget source, shall also apply to the owners and operators of the source and of the NO_x budget units at the source.

(6) Any provision of the NO_x budget trading program that applies to a NO_x budget unit, including a provision applicable to the NO_x authorized account representative of a NO_x budget unit, shall also apply to the owners and operators of the unit. Except with regard to the requirements applicable to units with a common stack under 40 CFR 75* and section 12 of this rule, the owners and operators and the NO_x authorized account representative of one (1) NO_x budget unit shall not be liable for any violation by any other NO_x budget unit of which they are not owners or operators or the NO_x authorized account representative and that is located at a source of which they are not owners or operators or the NO_x authorized account representative.

(g) No provision of the NO_x budget trading program, a NO_x budget permit application, a NO_x budget permit, or an exemption under section 3 of this rule shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NO_x authorized account representative of a NO_x budget source or NO_x budget unit from compliance with any other provision of the applicable, approved state implementation plan, a federally enforceable permit, or the CAA.

***These documents are incorporated by reference, and copies may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 10-4-4; filed Aug 17, 2001, 3:45 p.m.: 25 IR 26)*

326 IAC 10-4-5 Computation of time

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 5. (a) Unless otherwise stated, any time period scheduled, under the NO_x budget trading program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the NO_x budget trading program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period except the ozone control period as defined under section 2(56) of this rule, under the NO_x budget trading program, falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day. *(Air Pollution Control Board; 326 IAC 10-4-5; filed Aug 17, 2001, 3:45 p.m.: 25 IR 28)*

326 IAC 10-4-6 NO_x authorized account representative for NO_x budget sources

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 6. (a) Except as provided under subsection (f), each NO_x budget source, including all NO_x budget units at the source, shall have one (1) and only one (1) NO_x authorized account representative, with regard to all matters under the NO_x budget trading program concerning the source or any NO_x budget unit at the source.

(b) The NO_x authorized account representative of the NO_x

budget source shall be selected by an agreement binding on the owners and operators of the source and all NO_x budget units at the source.

(c) Upon receipt by the U.S. EPA of a complete account certificate of representation under subsection (h), the NO_x authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the NO_x budget source represented and each NO_x budget unit at the source in all matters pertaining to the NO_x budget trading program, not withstanding any agreement between the NO_x authorized account representative and the owners and operators. The owners and operators shall be bound by any decision or order issued to the NO_x authorized account representative by the department, the U.S. EPA, or a court regarding the source or unit.

(d) A NO_x budget permit shall not be issued, and a NO_x allowance tracking system account shall not be established for a NO_x budget unit at a source, until the U.S. EPA has received a complete account certificate of representation under subsection (h) for a NO_x authorized account representative of the source and the NO_x budget units at the source.

(e) The following shall apply to a submission made under the NO_x budget trading program:

(1) Each submission under the NO_x budget trading program shall be submitted, signed, and certified by the NO_x authorized account representative for each NO_x budget source on behalf of which the submission is made. Each submission shall include the following certification statement by the NO_x authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the NO_x budget sources or NO_x budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.".

(2) The department and the U.S. EPA shall accept or act on a submission made on behalf of the owner or operators of a NO_x budget source or a NO_x budget unit only if the submission has been made, signed, and certified in accordance with subdivision (1).

(f) The following shall apply where the owners or operators of a NO_x budget source chose to designate an alternate NO_x authorized account representative:

(1) An account certificate of representation may designate one (1) and only one (1) alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative. The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

(2) Upon receipt by the U.S. EPA of a complete account certificate of representation under subsection (h), any representation, action, inaction, or submission by the alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

(3) Except in this subsection, subsections (a), (g), and (h), and sections *[sic., section]* 10(c) through 10(f) of this rule, whenever the term NO_x authorized account representative is used in this rule, the term shall be construed to include the alternate NO_x authorized account representative.

(g) The following shall apply when changing the NO_x authorized account representative, the alternate NO_x authorized account representative or there are changes in the owners and operators:

(1) The NO_x authorized account representative may be changed at any time upon receipt by the U.S. EPA of a superseding complete account certificate of representation under subsection (h). Notwithstanding the change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the U.S. EPA receives the superseding account certificate of representation shall be binding on the new NO_x authorized account representative and the owners and operators of the NO_x budget source and the NO_x budget units at the source.

(2) The alternate NO_x authorized account representative may be changed at any time upon receipt by the U.S. EPA of a superseding complete account certificate of representation under subsection (h). Notwithstanding the change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the U.S. EPA receives the superseding account certificate of representation shall be binding on the new alternate NO_x authorized account representative and the owners and operators of the NO_x budget source and the NO_x budget units at the source.

(3) Changes in the owners and operators shall be made as follows:

(A) In the event a new owner or operator of a NO_x budget source or a NO_x budget unit is not included in the list of owners and operators submitted in the account certificate of representation, the new owner or operator shall be deemed to be subject to and bound by

the account certificate of representation, the representations, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the department or the U.S. EPA, as if the new owner or operator were included in the list.

(B) Within thirty (30) days following any change in the owners and operators of a NO_x budget source or a NO_x budget unit, including the addition of a new owner or operator, the NO_x authorized account representative or alternate NO_x authorized account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

(h) A complete account certificate of representation for a NO_x authorized account representative or an alternate NO_x authorized account representative shall include the following elements in a format prescribed by the U.S. EPA:

(1) Identification of the NO_x budget source and each NO_x budget unit at the source for which the account certificate of representation is submitted.

(2) The name, address, e-mail address, if any, telephone number, and facsimile transmission number, if any, of the NO_x authorized account representative and any alternate NO_x authorized account representative.

(3) A list of the owners and operators of the NO_x budget source and of each NO_x budget unit at the source.

(4) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or alternate NO_x authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO_x budget source and each NO_x budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x budget trading program on behalf of the owners and operators of the NO_x budget source and of each NO_x budget unit at the source and that each owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the department, the U.S. EPA, or a court regarding the source or unit.".

(5) The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed.

Unless otherwise required by the department or the U.S. EPA, documents of agreement referred to in the account certificate of representation shall not be submitted to the department or the U.S. EPA. Neither the department nor the U.S. EPA will be under any obligation to review or evaluate the sufficiency of the documents, if submitted.

(i) The following shall apply to an objection concerning the NO_x authorized account representative:

(1) Once a complete account certificate of representation under subsection (h) has been submitted and received, the department and the U.S. EPA will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under subsection (h) is received by the U.S. EPA.

(2) Except as provided in subsections *[sic., subsection]* **(g)(1) and (g)(2), no objection or other communication submitted to the department or the U.S. EPA concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or the finality of any decision or order by the department or the U.S. EPA under the NO_x budget trading program.**

(3) Neither the department nor the U.S. EPA will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NO_x authorized account representative, including private legal disputes concerning the proceeds of NO_x allowance transfers.

(Air Pollution Control Board; 326 IAC 10-4-6; filed Aug 17, 2001, 3:45 p.m.: 25 IR 28)

326 IAC 10-4-7 Permit requirements

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15-5; IC 13-17

Sec. 7. (a) For each NO_x budget source required to have a federally enforceable permit, the permit shall include a NO_x budget permit administered by the department as follows:

(1) For NO_x budget sources required to have a Part 70 operating permit under 326 IAC 2-7, the NO_x budget portion of the Part 70 permit shall be administered in accordance with 326 IAC 2-7, except as provided otherwise by this section or section 13 of this rule.

(2) For NO_x budget sources required to have a FESOP permit, the NO_x budget portion of the FESOP permit shall be administered in accordance with 326 IAC 2-8, except as provided otherwise by this section or section 13 of this rule.

(3) Each NO_x budget permit, including a draft or proposed NO_x budget permit, if applicable, shall contain all applicable NO_x budget trading program requirements and shall be a complete and segregable portion of the permit.

(b) The NO_x authorized account representative of any NO_x budget source required to have a federally enforceable permit shall submit to the department a complete NO_x budget permit application under subsection (c) as follows:

(1) For NO_x budget sources required to have a Part 70 operating permit under 326 IAC 2-7 the following shall apply:

(A) For any source, with one (1) or more NO_x budget

units that commenced operation before January 1, 2001, the NO_x authorized account representative shall submit a complete NO_x budget permit application to the department at least two hundred seventy (270) days prior to May 31, 2004.

(B) For any source, with one (1) or more NO_x budget unit that commences operation on or after January 1, 2001, the NO_x authorized account representative shall submit a complete NO_x budget permit application at least two hundred seventy (270) days prior to the later of:

(i) May 31, 2004; or

(ii) the date on which the NO_x budget unit commences operation.

(C) For permit renewal, the NO_x authorized account representative shall submit a complete NO_x budget permit application covering the NO_x budget units at the source in accordance with 326 IAC 2-7-4(a)(1)(D).

(2) For NO_x budget sources required to have a FESOP permit under 326 IAC 2-8 the following shall apply:

(A) For any source, with one (1) or more NO_x budget units that commenced operation before January 1, 2001, the NO_x authorized account representative shall submit a complete NO_x budget permit application under subsection (c) covering each NO_x budget unit to the department at least two hundred seventy (270) days before May 31, 2004.

(B) For any source, with one (1) or more NO_x budget units that commences operation on or after January 1, 2001, the NO_x authorized account representative shall submit a complete NO_x budget permit application under subsection (c) covering each NO_x budget unit to the department at least two hundred seventy (270) days before the later of:

(i) May 31, 2004; or

(ii) the date on which the NO_x budget unit commences operation.

(C) For permit renewal, the NO_x authorized account representative shall submit a complete NO_x budget permit application under subsection (c) for the NO_x budget source covering the NO_x budget units at the source in accordance with 326 IAC 2-8-3(h).

(c) In addition to the requirements of 326 IAC 2-7-4(c) or 326 IAC 2-8-3(c), a complete NO_x budget permit application shall include, in a format prescribed by the department, the following elements concerning the NO_x budget source for which the application is submitted:

(1) Identification of the NO_x budget source, including plant name and the Office of Regulatory Information Systems (ORIS) or facility code assigned to the source by the Energy Information Administration, if applicable.

(2) Identification of each NO_x budget unit at the NO_x budget source and whether it is a NO_x budget unit under section 1(a) or 13 of this rule.

(3) The standard requirements under section 4 of this rule.

(4) For each NO_x budget opt-in unit at the NO_x budget source, the following certification statements by the NO_x authorized account representative:

(A) "I certify that each unit for which this permit application is submitted under 326 IAC 10-4-13 is not a NO_x budget unit under 326 IAC 10-4-2(a) and is not covered by a retired unit exemption under 326 IAC 10-4-3 that is in effect.".

(B) If the application is for an initial NO_x budget opt-in permit, "I certify that each unit for which this permit application is submitted under 326 IAC 10-4-13 is currently operating, as that term is defined under 326 IAC 10-4-1(51).".

(d) In addition to the requirements under 326 IAC 2-7 or 326 IAC 2-8, each NO_x budget permit, including any draft or proposed NO_x budget permit, if applicable, shall contain, in a format prescribed by the department, all elements required for a complete NO_x budget permit application under subsection (c).

(e) Each NO_x budget permit is deemed to incorporate automatically the definitions of terms under section 2 of this rule and, upon recordation by the U.S. EPA under section 10, 11, or 13 of this rule, every allocation, transfer, or deduction of a NO_x allowance to or from the compliance accounts of the NO_x budget units covered by the permit or the overdraft account of the NO_x budget source covered by the permit.

(f) Notwithstanding IC 13-15-5, the initial NO_x budget permit covering a NO_x budget unit for which a complete NO_x budget permit application is timely submitted under subsection (b) shall become effective upon issuance.

(g) Except as provided in subsection (e), the department shall revise the NO_x budget permit, as necessary, in accordance with the following:

(1) The permit modification and revision provisions under 326 IAC 2-7, for a NO_x budget source with a Part 70 operating permit.

(2) The permit modification and revision provisions under 326 IAC 2-8, for a NO_x budget source with a FESOP permit.

(Air Pollution Control Board; 326 IAC 10-4-7; filed Aug 17, 2001, 3:45 p.m.: 25 IR 30)

326 IAC 10-4-8 Compliance certification

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 8. (a) For each ozone control period in which one (1) or more NO_x budget units at a source are subject to the NO_x budget emissions limitation, the NO_x authorized account representative of the source shall submit to the department and the U.S. EPA by November 30 of that year, a compli-

ance certification report for each source covering all NO_x budget units.

(b) The NO_x authorized account representative shall include in the compliance certification report under subsection (a) the following elements, in a format prescribed by the U.S. EPA, concerning each NO_x budget unit at the source and subject to the NO_x budget emissions limitation for the ozone control period covered by the report:

(1) Identification of each NO_x budget unit.

(2) At the NO_x authorized account representative's option, the serial numbers of the NO_x allowances that are to be deducted from each unit's compliance account under section 10(k) of this rule for the ozone control period.

(3) At the NO_x authorized account representative's option, for units sharing a common stack and having NO_x emissions that are not monitored separately or apportioned in accordance with 40 CFR 75, Subpart H* and section 12 of this rule, the percentage of allowances that is to be deducted from each unit's compliance account under section 10(k)(8) of this rule.

(4) The compliance certification under subsection (c).

(c) In the compliance certification report under subsection (a), the NO_x authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NO_x budget units at the source in compliance with the NO_x budget trading program, whether each NO_x budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NO_x budget trading program applicable to the unit, including the following:

(1) Whether the unit was operated in compliance with the NO_x budget emissions limitation.

(2) Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute NO_x emissions to the unit, in accordance with 40 CFR 75, Subpart H* and section 12 of this rule.

(3) Whether all the NO_x emissions from the unit, or a group of units, including the unit, using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with 40 CFR 75, Subpart H* and section 12 of this rule. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions have been made.

(4) Whether the facts that form the basis for certification under 40 CFR 75, Subpart H* and section 12 of this rule of each monitor at the unit or a group of units, including the unit, using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under 40 CFR 75, Subpart H* and section 12 of this rule, if any, have changed.

(5) If a change is required to be reported under subdivision (4), the NO_x authorized account representative shall specify the following:

(A) The nature of the change.

(B) The reason for the change.

(C) When the change occurred.

(D) How the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

(d) The department or the U.S. EPA may review and conduct independent audits concerning any compliance certification or any other submission under the NO_x budget trading program and make appropriate adjustments of the information in the compliance certifications or other submissions.

(e) The U.S. EPA may deduct NO_x allowances from or transfer NO_x allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under subsection (a).

*These documents are incorporated by reference, and copies may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 10-4-8; filed Aug 17, 2001, 3:45 p.m.: 25 IR 31)*

326 IAC 10-4-9 NO_x allowance allocations

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 9. (a) The trading program budget allocated by the department under subsections (d) through (f) for each ozone control period shall equal the total number of tons of NO_x emissions apportioned to the NO_x budget units under section 1 of this rule for the ozone control period, as determined by the procedures in this section. The total number of tons of NO_x emissions that are available for each ozone control period for allocation as NO_x allowances under this rule are fifty-three thousand nine hundred sixty (53,960) tons apportioned as follows:

(1) For existing units:

(A) forty-three thousand six hundred fifty-four (43,654) tons for electricity generating units in 2004 through 2009 and forty-five thousand thirty-three (45,033) tons thereafter; and

(B) six thousand eight hundred forty-nine (6,849) tons for large affected units;

less the sum of the NO_x limitations (in tons) for each unit under section 1(b) of this rule that is not allocated any NO_x allowances under subsection (d) for the ozone control period and whose NO_x emission limitation (in tons of NO_x) is not included in the amount calculated under subsection (e) for the control period.

(2) For new unit allocation set-asides:

(A) two thousand two hundred ninety-eight (2,298) tons for electricity generating units in 2004 through 2009, and nine hundred nineteen (919) tons thereafter; and

(B) eighty (80) tons for large affected units in 2004 and each year thereafter.

(3) For the energy efficiency and renewable energy allocation set-aside, one thousand seventy-nine (1,079) tons.

(b) The department shall allocate NO_x allowances to NO_x budget units according to the following schedule:

(1) For EGUs, a three (3) year allocation that is recorded three (3) years in advance of the ozone control period that the allowances may be used as follows:

(A) Within thirty (30) days of the effective date of this rule, the department shall submit to the U.S. EPA the NO_x allowance allocations, in accordance with subsection (c), for the ozone control periods in 2004, 2005, and 2006.

(B) By December 31, 2003, the department shall submit to the U.S. EPA the NO_x allowance allocations, in accordance with subsection (c), for the ozone control period in 2007, 2008, and 2009.

(C) By December 31, 2006, the department shall submit to the U.S. EPA the NO_x allowance allocations, in accordance with subsection (c), for the ozone control period in 2010, 2011, and 2012.

(D) By December 31, 2009, and by December 31 every three (3) years thereafter, the department shall submit to the U.S. EPA, the NO_x allowance allocations, in accordance with subsection (c), for the ozone control periods four (4) years, five (5) years, and six (6) years after the year of the allowance allocation.

(2) For large affected units, within thirty (30) days of the effective date of this rule, the department shall submit to the U.S. EPA the NO_x allowances for the ozone control periods in 2004 through 2009. By December 31, 2006, the department shall review the allocations in light of emission trends, new units, and other relevant factors to determine whether revisions are appropriate.

(3) If the department fails to submit to the U.S. EPA the NO_x allowance allocations in accordance with this rule, the U.S. EPA will allocate, for the applicable ozone control period, the same number of NO_x allowances as were allocated for the preceding ozone control period.

(4) The department shall make available for review to the public the NO_x allowance allocations under subdivisions *[sic., subdivision]* (1)(B), (1)(C), and (1)(D) on December 31 of each year cited in subdivisions *[sic., subdivision]* (1)(B), (1)(C), and (1)(D) and shall provide a thirty (30) day opportunity for submission of objections to the NO_x allowance allocations. Objections shall be limited to addressing whether the NO_x allowance allocations are in accordance with this section. Based on any such objections, the department shall consider any objections and input from affected sources and, if appropriate, adjust each determination to the extent necessary to ensure that it is in accordance with this section. Any revised NO_x allowance allocations shall be submitted to the U.S. EPA for recordation by the following April 1.

(c) The heat input, in million British thermal units (mmBtu), used for calculating NO_x allowance allocations for each NO_x budget unit under section 1 of this rule shall be:

(1) For a NO_x allowance allocation under subsections *[sic., subsection]* (b)(1)(A), the average of the two (2) highest amounts of the unit's heat input for the ozone control periods in 1995 through 1999.

(2) For a NO_x allowance allocation under subsections *[sic., subsection]* (b)(1)(B) through (b)(1)(D), the unit's average of the two (2) highest heat inputs for the ozone control period in the years that are one (1), two (2), three (3), four (4), and five (5) years before the year when the NO_x allocation is being calculated. For the purpose of this subdivision, the ozone control period for the year 2004 shall be from May 1 through September 30.

(3) If a NO_x budget unit does not have a full five (5) years of ozone control period heat inputs, the following shall apply:

(A) For a NO_x budget unit with ozone control period heat inputs for more than two (2) years, the average of the two (2) highest ozone control period heat inputs.

(B) For a NO_x budget unit with two (2) years of ozone control period heat input, the average of the ozone control period heat input for the two (2) years.

(C) For a NO_x budget unit with one (1) year of ozone control period heat input, the actual ozone control period heat input for that year.

(4) For a NO_x allowance allocation under subsections *[sic., subsection]* (b)(1)(B), (b)(1)(C), and (b)(1)(D) for a unit exempt under section 1(b) of this rule, the heat input shall be treated as zero (0) if the unit was exempt during the previous allocation period.

The unit's total heat input for the ozone control period in each year shall be determined in accordance with 40 CFR 75* if the NO_x budget unit was otherwise subject to the requirements of 40 CFR 75* for the year, or shall be based on the best available data reported to the department for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75* for the year. The owner or operator of a NO_x budget unit shall submit heat input data within thirty (30) days if requested by the department.

(d) For each ozone control period under subsection (b), the department shall allocate to all NO_x budget units that have been in operation for at least one (1) year prior to the

year in which allocations are made, and for new NO_x budget units that have commenced operation on or after May 1, 2000 and that have not submitted notification in accordance with subsection (i), a total number of NO_x allowances equal to the amount under subsection (a)(1), in accordance with the following procedures:

(1) The department shall allocate NO_x allowances to each electricity generating unit in an amount equaling fifteen-hundredths pound per million British thermal units (0.15 lb/mmBtu) or the allowable emission rate as of the date that the unit becomes affected by this rule, whichever is more stringent, except that a coal-fired electrical generation unit with a rated energy efficiency of forty percent (40%) or higher, a repowered natural gas-fired electrical generating unit with a rated energy efficiency of forty-five percent (45%) or higher, a natural gas-fired electrical generating unit, that is not repowered, with a rated energy efficiency of fifty percent (50%) or higher, or a combined heat and power unit with an overall rated energy efficiency of sixty percent (60%) or higher shall be allocated allowances based on fifteen-hundredths (0.15) lb/mmBtu notwithstanding the allowable emission rate, multiplied by the heat input determined under subsection (c), rounded to the nearest whole NO_x allowance, as appropriate.

(2) If the initial total number of NO_x allowances allocated to all electricity generating units for an ozone control period under subdivision (1) does not equal the amount under subsection (a)(1), the department shall adjust the total number of NO_x allowances allocated to all NO_x budget units for the ozone control period under subdivision (1) so that the total number of NO_x allowances allocated equals the amount under subsection (a)(1). This adjustment shall be made by:

(A) multiplying each unit's allocation by the amount under subsection (a)(1); and

(B) dividing by the total number of NO_x allowances allocated under subdivision (1), and rounding to the nearest whole NO_x allowance, as appropriate.

(3) The department shall allocate NO_x allowances to each large affected unit in an amount equaling the following:

Source	Unit	Allowances
(A) Alcoa	1	1,089
	2	1,057
	3	1,026
(B) American Electric Power-Rockport	Auxiliary Boiler 1	2
	Auxiliary Boiler 2	1
(C) BP Amoco - Boiler House 1	1	21
	2	21
	3	21
	4	21
	5	22
(D) BP Amoco - Boiler House 3	1	252
	2	252
	3	252
	4	252
	5	252
(E) Citizens Thermal Energy	11	120
	12	138
	13	85
	14	75
	15	54
	16	69
(F) Ispat Inland	401	255
	402	255
	403	257
	404	257
	405	344
(G) National Steel	1	0
(H) New Energy	003	238
(I) Portside Energy	Auxiliary Boiler 1	50
	Auxiliary Boiler 2	5
	Combustion Turbine	34
(J) Purdue University	5	72

For units having an emission limitation only in tons on an annual basis, the allowable emission rate in pounds per million Btu (lb/mmBtu) shall be determined by dividing the emission limitation by eight thousand seven hundred sixty (8,760) hours, multiplying by two thousand (2,000) pounds, and dividing the result by the unit's permitted heat input rate. For units having an emission limitation only in parts per million (ppm), the conversion factors under 326 IAC 3-4-3 shall be used.

(e) For new NO_x budget units that commenced operation, or are projected to commence operation, on or after May 1, 2000, or for projects that reduce NO_x emissions through the implementation of energy efficiency or renewable energy measures, or both, implemented during an ozone control period beginning May 1, 2004, the department shall allocate NO_x allowances in accordance with the following procedures:

(1) The department shall establish allocation set-asides for new NO_x budget units and for energy efficiency and renewable energy projects for each ozone control period as follows:

(A) The new unit allocation set-asides shall be allocated NO_x allowances equal to the following:

(i) For EGUs, two thousand two hundred ninety-eight (2,298) tons (five percent (5%) of EGU budget) for each ozone control period in 2004 through 2009, and nine hundred nineteen (919) tons (two percent (2%) of the EGU budget) for each ozone control period thereafter.

(ii) For large affected units, eighty (80) tons (one percent (1%) of the large affected unit budget) in 2004 and each year thereafter.

(B) The energy efficiency and renewable energy allocation set-aside shall be allocated NO_x allowances equal to one thousand seventy-nine (1,079) tons (two percent (2%) of overall trading budget).

(2) The NO_x authorized account representative of a new NO_x budget unit or a general account may submit to the department a request, in writing or in a format specified by the department, for NO_x allowances as follows:

(A) For a new NO_x budget unit, for one (1) ozone control period under subsection (b), during which the NO_x budget unit commenced, or is projected to commence, operation. The NO_x authorized account representative shall reapply each year until the NO_x budget unit is eligible to use NO_x allowances allocated under subsection (d).

(B) For energy efficiency or renewable energy projects, project sponsors may request the reservation of NO_x allowances, for one (1) control period in which the project is implemented. The NO_x authorized account representative may reapply each year, not to exceed five (5) ozone control periods. Requests for allowances may be made only for projects implemented within two (2) years of the beginning of the first ozone control period for which allowances are requested. Projects must equal at least one (1) ton of NO_x emissions and multiple projects may be aggregated into one (1) allowance allocation request to equal one (1) or more tons of NO_x emissions.

The NO_x allowance allocation request must be submitted by September 1 of the calendar year that is one (1) year in advance of the first ozone control period for which the NO_x allowance allocation is requested and for new NO_x budget units, after the date on which the department issues a permit to construct the NO_x budget unit and final approval is granted from the Indiana utility regulatory commission.

(3) In a NO_x allowance allocation request under this subsection, the NO_x authorized account representative may request for an ozone control period, NO_x allowances in an amount that does not exceed the following:

(A) For an electricity generating unit, multiplying the following:

(i) Fifteen-hundredths (0.15) pound per million British thermal units or the allowable emission rate as of the date that the unit becomes affected by this rule, whichever is more stringent except that a coal-fired electrical generation unit with a rated energy efficiency of forty percent (40%) or higher, a repowered natural gas-fired electrical generating unit with a rated energy efficiency of forty-five percent (45%) or higher, a natural gas-fired electrical generating unit that is not repowered with a rated energy efficiency of fifty percent (50%) or higher, or a combined heat and power unit with an overall rated energy efficiency of sixty percent (60%) or higher shall be allocated allowances based on fifteen-hundredths (0.15) lb/mmBtu notwithstanding the allowable emission rate.

(ii) The NO_x budget unit's maximum design heat input, in million British thermal units per hour as follows:

(aa) For a unit that is permitted as a major stationary source or major modification under 326 IAC 2-2 or 326 IAC 2-3 and that is not a simple cycle system, seventy-five percent (75%) of the maximum design heat input.

(bb) For a unit that is not permitted as a major stationary source or major modification under 326 IAC 2-2 or 326 IAC 2-3 and that is a combined cycle system, fifty percent (50%) of the maximum design heat input.

(cc) For a unit that is not permitted as a major stationary source or major modification under 326 IAC 2-2 or 326 IAC 2-3 and that is not combined cycle system or for a unit that is permitted as a major stationary source or major modification under 326 IAC 2-2 or 326 IAC 2-3 and that is a simple cycle system, twenty-five percent (25%) of the maximum design heat input.

(iii) The number of hours remaining in the ozone control period starting with the first day in the ozone control period on which the unit operated or is projected to operate.

The NO_x allowances requested shall not exceed annual allowable NO_x emissions.

(B) For a large affected unit:

(i) seventeen-hundredths (0.17) pound per million British thermal units or the allowable emission rate as of the date that the unit becomes affected by this rule, whichever is more stringent;

(ii) multiplied by the NO_x budget unit's maximum design heat input, in million British thermal units per hour; and

(iii) multiplied by the number of hours remaining in the ozone control period starting with the first day in the ozone control period on which the unit operated or is projected to operate.

The NO_x allowances requested shall not exceed annual allowable NO_x emissions.

(C) For energy efficiency or renewable energy projects:

(i) Projects in sections *[sic., section]* 2(18)(A) and 2(18)(B) of this rule that claim allowances based upon reductions in the consumption of electricity and that are sponsored by end-users or non-utility third parties receive allowances based upon the number of kilowatt hours of electricity saved during an ozone control period and the following formula:

Allowances = (kWS * 0.0015)/2000

Where: Allowances = The number of allowances awarded to a project sponsor.

kWS = The number of kilowatt hours of electricity saved during an ozone control period by the project.

(ii) Projects in sections *[sic., section]* 2(18)(A) and 2(18)(B) of this rule that claim allowances based upon reductions in the consumption of electricity and that are sponsored by NOx allowance account holders that own or operate units that produce electricity and are subject to the emission limitations of this rule will be awarded allowances according to the following formula:

Allowances = (kWS * 0.000375)/2000

Where: Allowances = The number of allowances awarded to a project sponsor.

kWS = The number of kilowatt hours of electricity saved during an ozone control period by the project.

(iii) Projects in section 2(18)(A) of this rule that claim allowances based upon reductions in the consumption of energy other than electricity and that are not NO_x budget units will be awarded allowances according to the following formula:

Allowances = (((Et1/Pt1) - (Et2/Pt2)) × Pt2 × NRate)/2000

Where: Allowances = The number of allowances awarded to a project sponsor.

Et1 = Energy consumed per ozone control period prior to project implementation.

Pt1 = Units of product produced per ozone control period prior to project implementation.

Et2 = Energy consumed in the most recent ozone control period.

Pt2 = Units of product produced in the most recent ozone control period.

NRate = NO_x produced during the consumption of energy, measured in pounds per million (1,000,000) British thermal units.

(iv) Projects in section 2(18)(A) of this rule that claim allowances based upon reductions in the consumption of energy other than electricity and that are NO_x budget units will be awarded allowances according to the following formula:

Allowances = (((Et1/Pt1) - (Et2/Pt2)) × Pt2 × NRate × 0.25)/2000

Where: Allowances = The number of allowances awarded to a project sponsor.

Et1 = Energy consumed per ozone control period prior to project implementation.

Pt1 = Units of product produced per ozone control period prior to project implementation.

Et2 = Energy consumed in the most recent ozone control period.

Pt2 = Units of product produced in the most recent ozone control period.

NRate = NO_x produced during the consumption of energy, measured in pounds per million (1,000,000) British thermal units.

Product produced, as used in these formulas in this item and item (iii), may include manufactured items; raw, intermediate, or final materials; or other products measured in discrete units and produced as a result of the consumption of energy in a specific process or piece of equipment. Claims for allowances must include documentation of NO_x emissions per British thermal unit both before and after implementation of the project for the energy-consuming process for which energy savings are claimed.

(v) Projects in sections *[sic., section]* 2(18)(C) and 2(18)(D) of this rule receive allowances based upon the number of kilowatt hours of electricity each project generates during an ozone control period and according to the following formula:

Allowances = (kWG * 0.0015)/2000

Where: Allowances = The number of allowances awarded to a project sponsor.

kWG = The number of kilowatt hours of electricity generated during an ozone control period by the project.

(vi) Projects in sections *[sic., section]* 2(18)(E) and 2(18)(F) of this rule receive allowances based upon the difference in emitted NO_x per megawatt hour of operation for units before and after replacement or improvement and according to the following formula:

Allowances = ((Et1 - Et2) * h) * 0.25/2000

Where: Allowances = The number of allowances awarded to a project sponsor.

Et1 = The emission rate in pounds per megawatt hour of NO_x of the unit before improvement or replacement.

Et2 = The emission rate in pounds per megawatt hour of NO_x of the unit after improvement or replacement.

h = The number of megawatt hours of operation during the ozone control period.

Allowances will be awarded only after verification of project implementation and certification of energy, emission, or electricity savings, as appropriate. The department will consult the Indiana department of commerce concerning verification and certification.

(4) The department shall review, and allocate NO_x allowances pursuant to, each NO_x allowance allocation request by December 31 of each year as follows:

(A) Upon receipt of the NO_x allowance allocation request, the department shall determine whether and shall make any necessary adjustments to the request to ensure that:

(i) for electricity generating units, the ozone control period and the number of allowances specified are consistent with the requirements of subdivision (3)(A);

(ii) for large affected units, the ozone control period and the number of allowances specified are consistent with the requirements of subdivision (3)(B);

(iii) for energy efficiency and renewable energy projects the number of allowances specified are consistent with the requirements of subdivision (3)(C); and

(iv) for units exempt under section 1(b) *[of this rule]*, the department will determine the sum of the NO_x emission limitations (in tons of NO_x) on which the unit's exemption under section 1(b) *[of this rule]* is based.

(B) The department shall allocate allowances to all qualifying energy efficiency and renewable energy projects prior to allocating allowances to any new NO_x budget unit. The department shall give first priority to energy efficiency and renewable energy projects under sections *[sic., section]* 2(18)(A), 2(18)(C), and 2(18)(D) *[of this rule]*, next section 2(18)(B) *[of this rule]*, next section 2(18)(E) *[of this rule]*, and finally section 2(18)(F) of this rule.

(C) If the energy efficiency and renewable energy allocation set-aside for the ozone control period for which NO_x allowances are requested has an amount of NO_x allowances greater than or equal to the number requested, as adjusted under clause (A), the department shall allocate the amount of the NO_x allowances requested, as adjusted under clause (A), to the energy efficiency and renewable energy projects. Any unallocated allowances shall be distributed as follows:

(i) Fifty percent (50%) of the unallocated allowances shall remain in the set-aside for use in the next year's allocation.

(ii) Fifty percent (50%) of the unallocated allowances shall be returned to existing large affected units on a pro rata basis.

(D) If the energy efficiency and renewable energy allocation set-aside for the ozone control period for which NO_x allowances are requested has an amount of NO_x allowances less than the number requested, as adjusted under clause (A), the department shall allocate the allocation set-aside on a pro rata basis, except that allowances requested for projects under sections *[sic., section]* 2(18)(A), 2(18)(C), and 2(18)(D) *[of this rule]* shall be allocated first, allocated to projects under section 2(18)(B) *[of this rule]* second, allocated to projects under section 2(18)(E) *[of this rule]* third, and allocated to projects under section 2(18)(F) *[of this rule]* fourth.

(E) If the new unit allocation set-aside for the ozone control period for which NO_x allowances are requested, less the amount under subdivision (A)(iv) *[sic.]*, has an amount of NO_x allowances greater than or equal to the number requested, as adjusted under clause (A), the department shall allocate the amount of the NO_x allowances requested, as adjusted under clause (A), to the NO_x budget unit. If the energy efficiency and renewable energy set-aside is oversubscribed in subdivision (D) *[sic.]*, the remaining allowances shall be transferred to the energy efficiency and renewable energy set-aside. If the energy efficiency and renewable energy set-aside is under subscribed in subdivision (C) *[sic.]*, the remaining allowances shall be transferred to existing sources on a pro rata basis.

(F) If the new unit allocation set-aside for the ozone control period for which NO_x allowances are requested, less the amount under subdivision (A)(iv) *[sic.]*, has an amount of NO_x allowances less than the number requested, as adjusted under clause (A), the department shall allocate the allocation set-aside to the NO_x budget units on a pro rata basis.

(G) After a new budget unit has operated in one (1) ozone control period, it becomes an existing budget unit unless a notification has been received under subsection (i) requesting allocations under this subsection, and the department will allocate allowances for the ozone control period according to subsections (b) and (d). The unit will continue to receive allowances from the new unit set-aside according to subdivision (3) until it is eligible to use allowances allocated under subsection (d).

By December 31 of each year, the department shall take appropriate action under subdivision (4) and notify the NO_x authorized account representative that submitted the request and the U.S. EPA of the number of NO_x allowances allocated for the ozone control period to the NO_x budget unit or energy efficiency or renewable energy projects.

(f) For a new NO_x budget unit that is allocated NO_x allowances under subsection (e) for an ozone control period,

the U.S. EPA will deduct NO_x allowances under section 10(k)(1) or 10(k)(8) of this rule to account for the actual emissions of the unit during the ozone control period. Any allowances remaining in the account shall be returned to the new source unit set-aside.

(g) After making the deductions for compliance under section 10(k)(1) or 10(k)(8) of this rule for an ozone control period, the U.S. EPA will notify the department whether any NO_x allowances remain in the allocation set-asides for the ozone control period. Any NO_x allowances remaining in the new unit allocation set-asides shall remain in the new unit allocation set-aside for use in the next year's allocation.

(h) If the number of banked allowances in the new unit set-asides or the energy efficiency set-aside is greater than the following amounts:

(1) For the EGU new unit set-aside, three thousand three hundred and seventy-seven (3,377) tons for each year in 2004 through 2009 and one thousand nine hundred ninety-eight (1,998) tons each year thereafter.

(2) For the large affected unit set-aside, one thousand one hundred fifty-nine (1,159) tons in 2004 and each year thereafter.

(3) For energy efficiency and renewable energy set-aside, two thousand one hundred fifty-eight (2,158) tons in 2004 and each year thereafter.

Any banked allowances in excess of the values in subsection (e)(1)(A) or (e)(1)(B) shall be allocated to the relevant existing NO_x budget units on a pro rata basis. The allowances from the energy efficiency and renewable energy set-aside shall be allocated to existing large affected units.

(i) A new EGU that commenced operation on or after May 1, 2000, has the option to remain in the new unit set-aside and have allowances allocated in accordance with subsection (e) until such time that it has heat input data for at least two (2) full ozone control periods, but not more than five (5) full ozone control periods for the purpose of determining heat input under subsection (c). The new NO_x budget unit shall submit a notification to the department by no later than December 1 of the year prior to the allocation schedule in subsection (b), indicating the unit is to receive NO_x allowances is accordance with subsection (e).

***These documents are incorporated by reference, and copies may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 10-4-9; filed Aug 17, 2001, 3:45 p.m.: 25 IR 32)*

326 IAC 10-4-10 NO_x allowance tracking system

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 10. (a) The U.S. EPA will establish compliance and overdraft accounts consistent with subsection (c). NO_x allowances shall be recorded in the compliance accounts or overdraft accounts according to the following:

(1) Allocations of NO_x allowances pursuant to section 9 or 13(i) of this rule.

(2) Deductions or transfers of NO_x allowances pursuant to one (1) of the following:

(A) Section 8(d), 8(e), 11, 13, or 14 of this rule.

(B) Subsection (j), (k), or (m).

(b) The U.S. EPA will establish, upon request, a general account for any person consistent with subsection (d). Transfers of allowances pursuant to section 11 of this rule shall be recorded in the general account in accordance with this section.

(c) Upon receipt of a complete account certificate of representation under section 6(h) of this rule, the U.S. EPA will establish the following:

(1) A compliance account for each NO_x budget unit for which the account certificate of representation was submitted.

(2) An overdraft account for each source for which the account certificate of representation was submitted and that has two (2) or more NO_x budget units.

(d) Any person may apply to open a general account for the purpose of holding and transferring allowances. The establishment of a general account shall be subject to the following:

(1) A complete application for a general account shall be submitted to the U.S. EPA and shall include the following elements in a format prescribed by the U.S. EPA:

(A) The following information concerning the NO_x authorized account representative and any alternate NO_x authorized account representative:

(i) Name.

(ii) Mailing address.

(iii) E-mail address, if any.

(iv) Telephone number.

(v) Facsimile transmission number, if any.

(B) At the option of the NO_x authorized account representative, organization name, and type of organization.

(C) A list of all persons subject to a binding agreement for the NO_x authorized account representative or any alternate NO_x authorized account representative to represent their ownership interest with respect to the allowances held in the general account.

(D) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or the NO_x alternate authorized account representative, as applicable, by an agreement that is binding

on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x budget trading program on behalf of persons and that each person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the U.S. EPA or a court regarding the general account.".

(E) The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed.

(F) Unless otherwise required by the department or the U.S. EPA, documents of agreement referred to in the account certificate of representation shall not be submitted to the department or the U.S. EPA. Neither the department nor the U.S. EPA will be under any obligation to review or evaluate the sufficiency of the documents, if submitted.

(2) Upon receipt by the U.S. EPA of a complete application for a general account under subdivision (1), the following shall apply:

(A) The U.S. EPA will establish a general account for the person or persons for whom the application is submitted.

(B) The NO_x authorized account representative and any alternate NO_x authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NO_x allowances held in the general account in all matters pertaining to the NO_x budget trading program, notwithstanding any agreement between the NO_x authorized account representative or any alternate NO_x authorized account representative and the person. Any person having an ownership interest with respect to NO_x allowances shall be bound by any order or decision issued to the NO_x authorized account representative or any alternate NO_x authorized account representative by the U.S. EPA or a court regarding the general account.

(C) Each submission concerning the general account shall be submitted, signed, and certified by the NO_x authorized account representative or any alternate NO_x authorized account representative for the persons having an ownership interest with respect to NO_x allowances held in the general account. Each submission shall include the following certification statement by the NO_x authorized account representative or any alternate NO_x authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NO_x allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.".

(D) The U.S. EPA will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with clause (C).

(3) The following shall apply to the designation of a NO_x authorized account representative, alternate NO_x authorized account representative, or persons having an ownership interest with respect to NO_x allowances in the general account:

(A) An application for a general account may designate the following:

(i) One (1) and only one (1) NO_x authorized account representative.

(ii) One (1) and only one (1) alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative.

The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

(B) Upon receipt by the U.S. EPA of a complete application for a general account under subdivision (1), any representation, action, inaction, or submission by any alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

(C) The NO_x authorized account representative for a general account may be changed at any time upon receipt by the U.S. EPA of a superseding complete application for a general account under subdivision (1). Notwithstanding the change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the U.S. EPA receives the superseding application for a general account shall be binding on the new NO_x authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(D) The alternate NO_x authorized account representative for a general account may be changed at any time upon receipt by the U.S. EPA of a superseding complete application for a general account under subdivision (1). Notwithstanding the change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior

to the time and date when the U.S. EPA receives the superseding application for a general account shall be binding on the new alternate NO_x authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(E) In the event a new person having an ownership interest with respect to NO_x allowances in the general account is not included in the list of persons having an ownership interest with respect to the NO_x allowances in the account certificate of representation, the new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the U.S. EPA, as if the new person were included in the list.

(F) Within thirty (30) days following any change in the persons having an ownership interest with respect to NO_x allowances in the general account, including the addition of persons, the NO_x authorized account representative or any alternate NO_x authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NO_x allowances in the general account to include the change.

(4) Once a complete application for a general account under subdivision (1) has been submitted and received, the U.S. EPA will rely on the application unless and until a superseding complete application for a general account under subdivision (1) is received by the U.S. EPA.

(5) Except as provided in subdivisions *[sic., subdivision]* (3)(C) through (3)(F), no objection or other communication submitted to the U.S. EPA concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative or the finality of any decision or order by the U.S. EPA under the NO_x budget trading program.

(6) The U.S. EPA will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account, including private legal disputes concerning the proceeds of NO_x allowance transfers.

(e) The U.S. EPA will assign a unique identifying number to each account established under subsection (c) or (d).

(f) Following the establishment of a NO_x allowance tracking system account, all submissions to the U.S. EPA pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of NO_x allowances in the account, shall be made only by the NO_x authorized account representative for the account. The U.S. EPA will assign a unique identifying number to each NO_x authorized account representative.

(g) The U.S. EPA will record the NO_x allowances for 2004 in the NO_x budget units' compliance accounts and the allocation set-asides, as allocated under section 9 of this rule. The U.S. EPA will also record the NO_x allowances allocated under section 13(i)(1) of this rule for each NO_x budget opt-in source in its compliance account.

(h) Each year, after the U.S. EPA has made all deductions from a NO_x budget unit's compliance account and the overdraft account pursuant to subsection (k), the U.S. EPA will record NO_x allowances, as allocated to the unit under section 9 or 13(i)(2) of this rule, in the compliance account for the year after the last year for which allowances were previously allocated to the compliance account. Each year, the U.S. EPA will also record NO_x allowances, as allocated under section 9 of this rule, in the allocation set-aside for the year after the last year for which allowances were previously allocated to an allocation set-aside.

(i) When allocating NO_x allowances to and recording them in an account, the U.S. EPA will assign each NO_x allowance a unique identification number that shall include digits identifying the year for which the NO_x allowance is allocated.

(j) The NO_x allowances are available to be deducted for compliance with a unit's NO_x budget emissions limitation for an ozone control period in a given year only if the NO_x allowances:

(1) were allocated for an ozone control period in a prior year or the same year; and

(2) are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NO_x allowance transfer deadline for that ozone control period or are transferred into the compliance account or overdraft account by a NO_x allowance transfer correctly submitted for recordation under section 11(a) of this rule by the NO_x allowance transfer deadline for that ozone control period.

(k) The following shall apply to deductions for purposes of compliance with a unit's allocations:

(1) Following the recordation, in accordance with section 11(b) or 11(c) of this rule, of NO_x allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NO_x allowance transfer deadline for an ozone control period, the U.S. EPA will deduct NO_x

allowances available under subsection (j) to cover the unit's NO_x emissions, as determined in accordance with 40 CFR 75, Subpart H*:

(A) from the compliance account; and

(B) only if no more NO_x allowances available under subsection (j) remain in the compliance account, from the overdraft account.

In deducting allowances for units at the source from the overdraft account, the U.S. EPA will begin with the unit having the compliance account with the lowest NO_x allowance tracking system account number and end with the unit having the compliance account with the highest NO_x allowance tracking system account number, with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters.

(2) The U.S. EPA will deduct NO_x allowances first under subdivision (1)(A) and then under subdivision (1)(B) until:

(A) the number of NO_x allowances deducted for the ozone control period equals the number of tons of NO_x emissions, determined in accordance with 40 CFR 75, Subpart H*, from the unit for the ozone control period for which compliance is being determined; or

(B) no more NO_x allowances available under subsection (j) remain in the respective account.

(3) The NO_x authorized account representative for each compliance account may identify by serial number the NO_x allowances to be deducted from the unit's compliance account under this section. The identification shall be made in the compliance certification report submitted in accordance with sections *[sic., section]* 8(a) through 8(c) of this rule.

(4) The U.S. EPA will deduct NO_x allowances for an ozone control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO_x allowances by serial number under subdivision (3), or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

(A) Those NO_x allowances that were allocated for the ozone control period to the unit under section 9 or 13 of this rule.

(B) Those NO_x allowances that were allocated for the ozone control period to any unit and transferred and recorded in the account pursuant to section 11 of this rule, in order of their date of recordation.

(C) Those NO_x allowances that were allocated for a prior ozone control period to the unit under section 9 or 13 of this rule.

(D) Those NO_x allowances that were allocated for a prior ozone control period to any unit and transferred and recorded in the account pursuant to section 11 of this rule, in order of their date of recordation.

(5) After making the deductions for compliance under subdivisions (1) and (2), the U.S. EPA will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO_x allowances, allocated for an ozone control period after the ozone control period in which the unit has excess emissions, equal to three (3) times the number of the unit's excess emissions.

(6) If the compliance account or overdraft account does not contain sufficient NO_x allowances, the U.S. EPA will deduct the required number of NO_x allowances, regardless of the ozone control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(7) Any allowance deduction required under subdivision (5) shall not affect the liability of the owners and operators of the NO_x budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or applicable state law. The following guidelines shall be followed in assessing fines, penalties, or other obligations:

(A) For purposes of determining the number of days of violation, if a NO_x budget unit has excess emissions for an ozone control period, each day in the ozone control period, one hundred fifty-three (153) days, constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

(B) Each ton of excess emissions is a separate violation.

(8) In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with 40 CFR 75, Subpart H*, the following shall apply:

(A) The NO_x authorized account representative of the units may identify the percentage of NO_x allowances to be deducted from each unit's compliance account to cover the unit's share of NO_x emissions from the common stack for an ozone control period. The identification shall be made in the compliance certification report submitted in accordance with section 8(a) through 8(c) of this rule.

(B) Notwithstanding subdivision (2)(A), the U.S. EPA will deduct NO_x allowances for each unit, in accordance with subdivision (1), until the number of NO_x allowances deducted equals either of the following:

(i) The unit's identified percentage of the number of tons of NO_x emissions, as determined in accordance with 40 CFR 75, Subpart H*, from the common stack for the ozone control period for which compliance is being determined.

(ii) If no percentage is identified, an equal percentage for each unit.

(9) The U.S. EPA will record in the appropriate compliance account or overdraft account all deductions from an account pursuant to this section.

(l) The U.S. EPA may at its own discretion and on its own

motion correct any error in any NO_x allowance tracking system account. Within ten (10) business days of making the correction, the U.S. EPA will notify the NO_x authorized account representative for the account.

(m) The NO_x authorized account representative of a general account may instruct the U.S. EPA to close the account by submitting a statement requesting deletion of the account from the NO_x allowance tracking system and by correctly submitting for recordation under section 11(a) of this rule, an allowance transfer of all NO_x allowances in the account to one (1) or more other NO_x allowance tracking system accounts.

(n) If a general account shows no activity for a period of one (1) year or more and does not contain any NO_x allowances, the U.S. EPA may notify the NO_x authorized account representative for the account that the account shall be closed and deleted from the NO_x allowance tracking system following twenty (20) business days after the notice is sent. The account shall be closed after the twenty (20) business day period unless before the end of the twenty (20) business day period the U.S. EPA receives a correctly submitted transfer of NO_x allowances into the account under section 11(a) of this rule or a statement submitted by the NO_x authorized account representative demonstrating to the satisfaction of the U.S. EPA good cause as to why the account should not be closed.

***These documents are incorporated by reference, and copies may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 10-4-10; filed Aug 17, 2001, 3:45 p.m.: 25 IR 38)*

326 IAC 10-4-11 NO_x allowance transfers

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 11. (a) The NO_x authorized account representatives seeking recordation of a NO_x allowance transfer shall submit the transfer to the U.S. EPA. To be considered correctly submitted, the NO_x allowance transfer shall include the following elements in a format specified by the U.S. EPA:

(1) The numbers identifying both the transferor and transferee accounts.

(2) A specification by serial number of each NO_x allowance to be transferred.

(3) The printed name and signature of the NO_x authorized account representative of the transferor account and the date signed.

(b) Within five (5) business days of receiving a NO_x allowance transfer, the U.S. EPA will record a NO_x allowance transfer by moving each NO_x allowance from the transferor account to the transferee account as specified by the request, provided the following:

(1) The transfer is correctly submitted under subsection (a).

(2) The transferor account includes each NO_x allowance identified by serial number in the transfer.

(3) The transfer meets all other requirements of this section.

A NO_x allowance transfer that is submitted for recordation following the NO_x allowance transfer deadline and that includes any NO_x allowances allocated for an ozone control period prior to, or the same as, the ozone control period to which the NO_x allowance transfer deadline applies shall not be recorded until after completion of the process of recordation of NO_x allowance allocations in section 10(h) of this rule.

(c) Where a NO_x allowance transfer submitted for recordation fails to meet the requirements of subsection (b), the U.S. EPA will not record the transfer.

(d) The following notification requirements shall apply to NO_x allowance transfers:

(1) Within five (5) business days of recordation of a NO_x allowance transfer under subsection (b), the U.S. EPA will notify each party to the transfer. Notice shall be given to the NO_x authorized account representatives of both the transferor and transferee accounts.

(2) Within ten (10) business days of receipt of a NO_x allowance transfer that fails to meet the requirements of subsection (b), the U.S. EPA will notify the NO_x authorized account representatives of both the transferor and transferee accounts subject to the transfer of the following:

(A) A decision not to record the transfer.

(B) The reasons for nonrecordation.

(e) Nothing in this section shall preclude the submission of a NO_x allowance transfer for recordation following notification of nonrecordation. *(Air Pollution Control Board; 326 IAC 10-4-11; filed Aug 17, 2001, 3:45 p.m.: 25 IR 42)*

326 IAC 10-4-12 NO_x monitoring and reporting requirements

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 12. (a) The owners and operators, and to the extent applicable, the NO_x authorized account representative of a NO_x budget unit, shall comply with the monitoring and reporting requirements as provided in this rule and in 40 CFR 75, Subpart H*. For purposes of complying with the requirements, the definitions in section 2 of this rule and 40 CFR 72.2* shall apply, and the terms affected unit, designated representative, and continuous emission monitoring system (CEMS) in 40 CFR 75* shall be replaced by the

terms NO_x budget unit, NO_x authorized account representative, and continuous emission monitoring system (CEMS), respectively, as defined in section 2 of this rule.

(b) The owner or operator of each NO_x budget unit and a unit for which an application for a NO_x budget opt-in permit is submitted and not denied or withdrawn, as provided in section 13 of this rule, must meet the following requirements:

(1) Install all monitoring systems required under this section for monitoring NO_x mass. This includes all systems required to monitor NO_x emission rate, NO_x concentration, heat input rate, and stack flow rate, in accordance with 40 CFR 75.71* and 40 CFR 75.72*.

(2) Install all monitoring systems for monitoring heat input, if required under subsection (q) for developing NO_x allowance allocations.

(3) Successfully complete all certification tests required under subsections (e) through (k) and meet all other provisions of this section and 40 CFR 75* applicable to the monitoring systems under subdivisions (1) and (2).

(4) Record, report, and quality assure the data from the monitoring systems under subdivisions (1) and (2).

(c) The owner or operator must meet the requirements of subsections *[sic., subsection]* (b)(1) through (b)(3) on or before the following dates and must record, report, and quality assure the data from the monitoring systems on and after the following dates:

(1) NO_x budget units for which the owner or operator intends to apply for early reduction credits under section 15(c) of this rule must comply with the requirements of this section by May 1 of the year prior to the year in which early reduction credits will be generated.

(2) Except for NO_x budget units under subdivision (1), NO_x budget units that commence operation before January 1, 2003, must comply with the requirements of this section by May 1, 2003.

(3) NO_x budget units that commence operation on or after January 1, 2003, and that report on an annual basis under subsection (o)(4) must comply with the requirements of this section by the later of the following dates:

(A) May 1, 2003.

(B) The earlier of:

(i) one hundred eighty (180) days after the date on which the unit commences operation; or

(ii) for electricity generating units, ninety (90) days after the date that the unit commences commercial operation.

(4) NO_x budget units that commence operation on or after January 1, 2003, and that report on a control season basis under subsection (o)(4) must comply with the requirements of this section by the later of the following dates:

(A) The earlier of:

(i) one hundred eighty (180) days after the date on which the unit commences operation; or

(ii) for electricity generating units, ninety (90) days after the date on which the unit commences commercial operation.

(B) If the applicable deadline under clause (A) does not occur during an ozone control period, May 1 immediately following the date determined in accordance with clause (A).

(5) For a NO_x budget unit with a new stack or flue for which construction is completed after the applicable deadline under subdivision (1), (2), or (3) or section 13 of this rule, compliance by the later of the following dates:

(A) Ninety (90) days after the date that emissions first exit to the atmosphere through the new stack or flue.

(B) If the unit reports on a control season basis under subsection (o)(4) and the applicable deadline under clause (A) does not occur during the ozone control period, May 1 immediately following the applicable deadline in clause (A).

(6) For a unit for which an application for a NO_x budget opt-in permit is submitted and not denied or withdrawn, the compliance dates specified under section 13 of this rule.

(d) The owner or operator of a NO_x budget unit that misses the certification deadline under subsection (c)(1):

(1) is not eligible to apply for early reduction credits under section 15 of this rule; and

(2) becomes subject to the certification deadline under subsection (c)(2).

(e) The owner or operator of a NO_x budget under subsection (c)(3) or (c)(4) must determine, record, and report NO_x mass, heat input rate, if required for purposes of allocations, and any other values required to determine NO_x mass, for example, NO_x emission rate and heat input rate or NO_x concentration and stack flow rate, using the provisions of 40 CFR 75.70(g)*, from the date and hour that the unit starts operating until the date and hour that the continuous emission monitoring system, excepted monitoring system under 40 CFR 75, Appendix D* or E*, or excepted monitoring methodology under 40 CFR 75.19* is provisionally certified.

(f) The following shall apply to any monitoring system, alternative monitoring system, alternative reference method, or any other alternative for a CEMS required under this rule:

(1) No owner or operator of a NO_x budget unit or a non-NO_x budget unit monitored under 40 CFR 75.72(b)(2)(ii)* shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with subsection (p).

(2) No owner or operator of a NO_x budget unit or a non-NO_x budget unit monitored under 40 CFR 75.72(b)(2)(ii)* shall operate the unit so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without accounting for all the emissions in accordance with the applicable provisions of this rule and 40 CFR 75*, except as provided for in 40 CFR 75.74*.

(3) No owner or operator of a NO_x budget unit or a non-NO_x budget unit monitored under 40 CFR 75.72(b)(2)(ii)* shall disrupt the CEMS, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_x mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this rule and 40 CFR 75* except as provided for in 40 CFR 75.74*.

(4) No owner or operator of a NO_x budget unit or a non-NO_x budget unit monitored under 40 CFR 75.72(b)(2)(ii)* shall retire or permanently discontinue use of the CEMS, any component thereof, or any other approved emission monitoring system under this section, except under one (1) of the following circumstances:

(A) During the period that the unit is covered by a retired unit exemption under section 3 of this rule.

(B) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this rule and 40 CFR 75*, by the department for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system.

(C) The NO_x authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with subsection (h)(2).

(g) The owner or operator of a NO_x budget unit that is subject to an acid rain emissions limitation shall comply with the initial certification and recertification procedures of 40 CFR 75*, except the following:

(1) If, prior to January 1, 1998, the U.S. EPA approved a petition under 40 CFR 75.17(a)* or 40 CFR 75.17(b)* for apportioning the NO_x emission rate measured in a common stack or a petition under 40 CFR 75.66* for an alternative to a requirement in 40 CFR 75.17*, the NO_x authorized account representative shall resubmit the petition to the U.S. EPA under subsection (p)(1) to determine if the approval applies under the NO_x budget trading program.

(2) For any additional CEMS required under the common stack provisions in 40 CFR 75.72*, or for any NO_x concentration CEMS used under the provisions of 40 CFR 75.71(a)(2)*, the owner or operator shall meet the requirements of subsection (h).

(h) The owner or operator of a NO_x budget unit that is not subject to an acid rain emissions limitation shall comply with the following initial certification and recertification procedures, except that the owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19* shall also meet the requirements of subsection (j) and the owner or operator of a unit that qualifies to use an alternative monitoring system under 40 CFR 75, Subpart E* shall also meet the requirements of subsection (k). The owner or operator of a NO_x budget unit that is subject to an acid rain emissions limitation, but requires additional CEMS under the common stack provisions in 40 CFR 75.72*, or that uses a NO_x concentration CEMS under 40 CFR 75.71(a)(2)* also shall comply with the following initial certification and recertification procedures:

(1) The owner or operator shall ensure that each monitoring system required by 40 CFR 75, Subpart H*, that includes the automated data acquisition and handling system, successfully completes all of the initial certification testing required under 40 CFR 75.20*. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in subsection (c). In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this section in a location where no monitoring system was previously installed, initial certification according to 40 CFR 75.20* is required.

(2) Whenever the owner or operator makes a replacement, modification, or change in a certified CEMS that may significantly affect the ability of the system to accurately measure or record NO_x mass emissions or heat input or to meet the requirements of 40 CFR 75.21* or 40 CFR 75, Appendix B*, the owner or operator shall recertify the monitoring system according to 40 CFR 75.20(b)*. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the flow or concentration profile, the owner or operator shall recertify the CEMS according to 40 CFR 75.20(b)*. Examples of changes that require recertification include replacement of the analyzer, change in location or orientation of the sampling probe or site, or changing of flow rate monitor polynomial coefficients.

(3) Requirements for the certification approval process for initial certifications and recertification are as follows:

(A) The NO_x authorized account representative shall submit to the appropriate U.S. EPA regional office and the department a written notice of the dates of certification in accordance with subsection (n).

(B) The NO_x authorized account representative shall submit to the department a certification application for each CEMS required under 40 CFR 75, Subpart H*. A complete certification application shall include the information specified in 40 CFR 75, Subpart H*.

(C) Except for units using the low mass emission excepted methodology under 40 CFR 75.19*, the provisional certification date for a monitor shall be determined using the procedures set forth in 40 CFR 75.20(a)(3)*. A provisionally certified monitor may be used under the NO_x budget trading program for a period of time not to exceed one hundred twenty (120) days after receipt by the department of the complete certification application for the CEMS or associated component thereof under clause (B). Data measured and recorded by the provisionally certified CEMS or associated component thereof, in accordance with the requirements of 40 CFR 75*, shall be considered valid quality assured data, retroactive to the date and time of provisional certification, provided that the department does not invalidate the provisional certification by issuing a notice of disapproval within one hundred twenty (120) days of receipt of the complete certification application by the department.

(D) The department shall issue a written notice of approval or disapproval of the certification application to the owner or operator within one hundred twenty (120) days of receipt of the complete certification application under clause (B). In the event the department does not issue a notice within the one hundred twenty (120) day period, each CEMS that meets the applicable performance requirements of 40 CFR 75* and is included in the certification application shall be deemed certified for use under the NO_x budget trading program. The issuance of notices shall be as follows:

(i) If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR 75*, then the department shall issue a written notice of approval of the certification application within one hundred twenty (120) days of receipt.

(ii) A certification application shall be considered complete when all of the applicable information required to be submitted under clause (B) has been received by the department. If the certification application is not complete, then the department shall issue a written notice of incompleteness that sets a reasonable date by which the NO_x authorized account representative must submit the additional information required to complete the certification application. If the NO_x authorized account representative does not comply with the notice of incompleteness by the specified date, then the department may issue a notice of disapproval under item (iii).

(iii) If the certification application shows that any CEMS or associated component thereof does not meet the performance requirements of this rule, or if the certification application is incomplete and the requirement for disapproval under item (ii) has been met, the department shall issue a written notice of disapproval of the certification application. Upon issuance of the notice of disapproval, the provisional certification is invalidated by the department and the data measured and recorded by each uncertified CEMS or associated component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in subsection (i) for each CEMS or associated component thereof which is disapproved for initial certification.

(iv) The department may issue a notice of disapproval of the certification status of a monitor in accordance with subsection (m).

(i) If the department issues a notice of disapproval of a certification application under subsection (h)(3)(D)(iii) or a notice of disapproval of certification status under subsection (h)(3)(D)(iv), then the following shall apply:

(1) The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data specified in 40 CFR 75.20(a)(4)(iii)*, 40 CFR 75.20(b)(5)*, 40 CFR 75.20(h)(4)*, or 40 CFR 75.21(e)* and continuing until the date and hour specified under 40 CFR 75.20(a)(5)(i)*:

(A) For units that the owner or operator is monitoring or intending to monitor for NO_x emission rate and heat input rate or intends to use or is using the low mass emission excepted methodology under 40 CFR 75.19*:

(i) the maximum potential NO_x emission rate; and

(ii) the maximum potential hourly heat input of the unit.

(B) For units monitoring or intending to monitor for NO_x mass emissions using a NO_x pollutant concentration monitor and a flow monitor:

(i) the maximum potential concentration of NO_x; and

(ii) the maximum potential flow rate of the unit under 40 CFR 75, Appendix A, Section 2*.

(2) The NO_x authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with subsections *[sic., subsection]* **(h)(3)(A) and (h)(3)(C).**

(3) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the department's notice of disapproval, no later than thirty (30) unit operating days after the date of issuance of the notice of disapproval.

(j) The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under 40 CFR 75.19* and not subject to an acid rain program emissions limitation under 40 CFR 72* shall meet the applicable general operating requirements of 40 CFR 75.10*, the applicable requirements of 40 CFR 75.19*, and the applicable certification requirements of subsections (h)

and (i), except that the excepted methodology shall be deemed provisionally certified for use under the NO_x budget trading program, as of the following dates:

(1) For a unit that does not have monitoring equipment initially certified or recertified as of the date on which the NO_X authorized account representative submits the certification application under 40 CFR 75.19* for the unit, starting on the date of such submission until the completion of the period for the department's review.

(2) For a unit that has monitoring equipment initially certified or recertified as of the date on which the NO_X authorized account representative submits the certification application under 40 CFR 75.19* for the unit and that reports data on an annual basis under 40 CFR 97.74(d)*, starting January 1 of the year after the year of the certification application submission until the completion of the period for the department's review.

(3) For a unit that has monitoring equipment initially certified or recertified as of the date on which the NO_X authorized account representative submits the certification application under 40 CFR 75.19* for the unit and that reports on a control season basis under 40 CFR 97.74(d)*, starting May 1 of the ozone control period after the year of such submission until the completion of the period for the department's review.

(k) The NO_x authorized account representative representing the owner or operator of each unit applying to monitor using an alternative monitoring system approved by the U.S. EPA and, if applicable, the department under 40 CFR 75, Subpart E* shall apply to the department for certification prior to use of the system under the NO_x trading program. The NO_x authorized account representative shall apply for recertification following a replacement, modification, or change according to the procedures in subsection (h). The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification according to the procedures specified in subsection (h)(3) and 40 CFR 75.20(f)*.

(l) Whenever any monitoring system fails to meet the quality assurance requirements of 40 CFR 75*, data shall be substituted using the applicable procedures in:

(1) 40 CFR 75, Subpart D*;

(2) 40 CFR 75, Appendix D*; or

(3) 40 CFR 75, Appendix E*.

(m) Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system or associated component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under subsections (e) through (k) or the applicable provisions of 40 CFR 75*, both at the time of the initial certification or recertification application submission and at the time of the audit, the department shall issue a notice of disapproval of the certification status of the system or associated component. For the purposes of this subsection, an audit shall be either a field audit or an audit of any information submitted to the U.S. EPA or the department. By issuing the notice of disapproval, the department revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests. The owner or operator shall follow the initial certification or recertification procedures in subsections (e) through (k) for each disapproved system or component.

(n) The NO_x authorized account representative for a NO_x budget unit shall submit written notice to the department, the U.S. EPA, and the appropriate U.S. EPA Regional Office in accordance with 40 CFR 75.61*, except that if the unit is not subject to an acid rain emissions limitation, the notification is only required to be sent to the department.

(o) The NO_x authorized account representative shall comply with all record keeping and reporting requirements in this subsection and with the requirements of section 6(e) of this rule as follows:

(1) If the NO_x authorized account representative for a NO_x budget unit subject to an acid rain emission limitation who signed and certified any submission that is made under 40 CFR 75, Subpart F* or 40 CFR 75, Subpart G* and that includes data and information required under this section or 40 CFR 75, Subpart H* is not the same person as the designated representative or the alternative designated representative for the unit under 40 CFR 72*, the submission must also be signed by the designated representative or the alternative designated representative.

(2) The owner or operator of a NO_x budget unit shall comply with the following monitoring plan requirements:

(A) The owner or operator of a unit subject to an acid rain emissions limitation shall comply with requirements of 40 CFR 75.62*, except that the monitoring plan shall also include all of the information required by 40 CFR 75, Subpart H*.

(B) The owner or operator of a unit that is not subject to an acid rain emissions limitation shall comply with requirements of 40 CFR 75.62*, except that the monitoring plan is only required to include the information required by 40 CFR 75, Subpart H*.

(3) The NO_x authorized account representative shall submit an application to the department within forty-five (45) days after completing all initial certification or recertification tests required under subsections (e)

through (k), including the information required under 40 CFR 75, Subpart H*.

(4) The NO_x authorized account representative shall submit quarterly reports as follows:

(A) If a unit is subject to an acid rain emission limitation or if the owner or operator of the NO_x budget unit chooses to meet the annual reporting requirements of this section, the NO_x authorized account representative shall submit a quarterly report for each calendar quarter beginning with:

(i) the units that elect to comply with the early reduction credit provisions under section 15 of this rule, the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C) or (j). Data shall be reported from the date and hour corresponding to the date and hour of provisional certification;

(ii) the units commencing operation prior to May 31, 2004, that are not required to certify monitors by May 1 prior to the year in which early reduction credits are generated under subsection (c)(1), the earlier of the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C) or (j) or, if the certification tests are not completed by May 1, 2003, the partial calendar quarter from May 1, 2003, through June 30, 2003. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2003; or

(iii) for a unit that commences operation after May 1, 2003, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation.

(B) If a NO_x budget unit is not subject to an acid rain emission limitation, then the NO_x authorized account representative shall do either the following:

(i) Meet all of the requirements of 40 CFR 75* related to monitoring and reporting NO_x mass emissions during the entire year and meet the reporting deadlines specified in clause (A)(i).

(ii) Submit quarterly reports covering the period May 1 through September 30 of each year and including the data described in 40 CFR 75.74(c)(6)*. The NO_x authorized account representative shall submit a quarterly report for each calendar quarter, beginning with:

(AA) The units that elect to comply with the early reduction credit provisions under section 15 of this rule, the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C) or (j). Data shall be reported from the date and hour corresponding to the date and hour of provisional certification.

(BB) The units commencing operation prior to May 1, 2003, that are not required to certify monitors by May 1, 2002, under subsection (c)(1), the earlier of the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C), or if the certification tests are not completed by May 1, 2003, the partial calendar quarter from May 1, 2003 through June 30, 2003. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1, 2003.

(CC) For units that commence operation after May 1, 2003, during the ozone control period, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation.

(DD) For units that commence operation after May 1, 2003, and before May 1 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C) or (j) or, if the certification tests are not completed by May 1 of the year in which the unit commences operation, May 1 of the year in which the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.

(EE) For units that commence operation after May 1, 2003, and after September 30 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C) or (j) or, if the certification tests are not completed by May 1 of the year after the unit commences operation, May 1 of the year after the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.

(C) The NO_x authorized account representative shall submit each quarterly report to the U.S. EPA within thirty (30) days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in 40 CFR 75, Subpart H* and 40 CFR 75.64* and the following:

(i) For units subject to an acid rain emissions limitation, quarterly reports shall include all of the data and information required in 40 CFR 75, Subpart H* for each NO_x budget unit, or group of units using a common stack, as well as information required in 40 CFR 75, Subpart G*.

(ii) For units not subject to an acid rain emissions limitation, quarterly reports are only required to include all of the data and information required in 40 CFR 75, Subpart H* for each NO_x budget unit, or group of units using a common stack.

(D) The NO_x authorized account representative shall submit to the department and the U.S. EPA a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state the following:

(i) The monitoring data submitted were recorded in accordance with the applicable requirements of this section and 40 CFR 75*, including the quality assurance procedures and specifications.

(ii) For a unit with add-on NO_x emission controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1)*, the add-on emission controls were operating within the range of parameters listed in the quality assurance and quality control program under 40 CFR 75, Appendix B* and the substitute values do not systematically underestimate NO_x emissions.

(iii) For a unit that is reporting on an ozone control period basis under this subdivision, the NO_x emission rate and NO_x concentration values substituted for missing data under 40 CFR 75, Subpart D* are calculated using only values from an ozone control period and do not systematically underestimate NO_x emissions.

(p) A petition requesting approval of alternatives to any requirement of this section may be made as follows:

(1) The NO_x authorized account representative of a NO_x budget unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66* to the U.S. EPA requesting approval to apply an alternative to any requirement of this section as follows:

(A) Application for an alternative to any requirement of this section is in accordance with this subsection only to the extent that the petition is approved by the U.S. EPA, in consultation with the department.

(B) Notwithstanding this subdivision, if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72*, the petition is governed by subdivision (2).

(2) The NO_x authorized account representative of a NO_x budget unit that is not subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66* to the department and the U.S. EPA requesting approval to apply an alternative to any requirement of this section as follows:

(A) The NO_x authorized account representative of a NO_x budget unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66* to the department and the U.S. EPA requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72* or a NO_x concentration CEMS used under 40 CFR 75.71(a)(2)*.

(B) Application of an alternative to any requirement of this section is in accordance with this section only to the extent the petition under this subsection is approved by both the department and the U.S. EPA.

(q) The following applies to the monitoring and reporting of NO_x mass emissions:

(1) The owner or operator of a unit that elects to monitor and report NO_x mass emissions using a NO_x concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR 75* for any source that has source allocations based upon heat input.

(2) The owner or operator of a unit that monitors and reports NO_x mass emissions using a NO_x concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR 75* for any source that is applying for early reduction credits under section 15(b) of this rule.

*These documents are incorporated by reference, and copies may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 10-4-12; filed Aug 17, 2001, 3:45 p.m.: 25 IR 42)*

326 IAC 10-4-13 Individual opt-ins

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 13. (a) A unit may qualify to become a NO_x budget opt-in source under this section if the unit meets the following requirements:

(1) Is not a NO_x budget unit under section 1 of this rule.

(2) Has all of its emissions vented to a stack.

(3) Is currently operating.

A unit that is a NO_x budget unit, is covered by an exemption under section 1(b) of this rule or a retired unit exemption under section 3 of this rule, or is not operating is not eligible to become a NO_x budget opt-in source.

(b) Except otherwise as provided in this rule, a NO_x budget opt-in source shall be treated as a NO_x budget unit for purposes of applying sections 1 through 12 and 14 of this rule.

(c) A unit for which an application for a NO_x budget opt-

in permit is submitted and not denied or withdrawn, or a NO_x budget opt-in source, located at the same source as one (1) or more NO_x budget units, shall have the same NO_x authorized account representative as the NO_x budget units.

(d) In order to apply for an initial NO_x budget opt-in permit, the NO_x authorized account representative of a unit qualified under subsection (a) may submit an application to the department at any time, except as provided under subsection (g), that includes the following:

(1) A complete NO_x budget permit application under section 7(c) of this rule.

(2) A monitoring plan submitted in accordance with section 12 of this rule.

(3) A complete account certificate of representation under section 6(h) of this rule, if no NO_x authorized account representative has been previously designated for the unit.

The NO_x authorized account representative of a NO_x budget opt-in source shall submit a complete NO_x budget permit application under section 7(c) of this rule to renew the NO_x budget opt-in permit in accordance with sections *[sic., section]* **7(b)(1)(C) and 7(b)(2)(C) of this rule and, if applicable, an updated monitoring plan in accordance with section 12 of this rule.**

(e) The department shall issue or deny a NO_x budget opt-in permit for a unit for which an initial application for a NO_x budget opt-in permit under subsection (d) is submitted, in accordance with section 7(a) of this rule and the following:

(1) The department shall determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NO_x budget opt-in permit under subsection (d). A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input of the unit are monitored and reported in accordance with section 12 of this rule. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.

(2) If the department determines that the unit's monitoring plan is sufficient under subdivision (1) and after completion of monitoring system certification under 40 CFR 75, Subpart H* and section 12 of this rule, the NO_x emissions rate and the heat input of the unit shall be monitored and reported in accordance with 40 CFR 75, Subpart H* and section 12 of this rule for one (1) full ozone control period during which percent monitor data availability is not less than ninety percent (90%) and during which the unit is in full compliance with any applicable state or federal NO_x emissions or emissions-related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a NO_x budget unit prior to issuance of a NO_x budget opt-in permit covering the unit.

(3) Based on the information monitored and reported under subdivision (2), the unit's baseline heat rate shall be calculated as the unit's total heat input, in million British thermal units, for the ozone control period and the unit's baseline NO_x emissions rate shall be calculated as the unit's total NO_x mass emissions, in pounds, for the ozone control period divided by the unit's baseline heat rate.

(4) After calculating the baseline heat input and the baseline NO_x emissions rate for the unit under subdivision (3), the department shall serve a draft NO_x budget opt-in permit on the NO_x authorized account representative of the unit.

(5) Within twenty (20) days after the issuance of the draft NO_x budget opt-in permit, the NO_x authorized account representative of the unit must submit to the department a confirmation of the intention to opt in the unit or a withdrawal of the application for a NO_x budget opt-in permit under subsection (d). The department shall treat the failure to make a timely submission as a withdrawal of the NO_x budget opt-in permit application.

(6) If the NO_x authorized account representative confirms the intention to opt in the unit under subdivision (5), the department shall issue the draft NO_x budget opt-in permit in accordance with section 7(a) of this rule.

(7) Notwithstanding subdivisions (1) through (6), if at any time before issuance of a draft NO_x budget opt-in permit for the unit, the department determines that the unit does not qualify as a NO_x budget opt-in source under subsection (a), the department shall issue a draft denial of a NO_x budget opt-in permit for the unit in accordance with section 7(a) of this rule.

(8) A NO_x authorized account representative of a unit may withdraw its application for a NO_x budget opt-in permit under subsection (d) at any time prior to the issuance of the final NO_x budget opt-in permit. Once the application for a NO_x budget opt-in permit is withdrawn, a NO_x authorized account representative wanting to reapply must submit a new application for a NO_x budget permit under subsection (d).

(9) The effective date of the initial NO_x budget opt-in permit shall be May 1 of the first ozone control period starting after the issuance of the initial NO_x budget opt-in permit by the department. The unit shall be a NO_x budget opt-in source and a NO_x budget unit as of the effective date of the initial NO_x budget opt-in permit.

(f) The following shall apply to the content of a NO_x budget opt-in permit:

(1) Each NO_x budget opt-in permit, including any draft or proposed NO_x budget opt-in permit, if applicable, shall contain all elements required for a complete NO_x budget opt-in permit application under section 7(c) of this rule.

(2) Each NO_x budget opt-in permit is deemed to incorporate automatically the definitions of terms under section 2 of this rule and, upon recordation by the U.S. EPA

under this section and sections 10 and 11 of this rule, every allocation, transfer, or deduction of NO_x allowances to or from the compliance accounts of each NO_x budget opt-in source covered by the NO_x budget opt-in permit or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located.

(g) The following requirements must be satisfied in order to withdraw an opt-in unit from the NO_x budget trading program:

(1) The NO_x authorized account representative of a NO_x budget opt-in source shall submit to the department a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than ninety (90) days prior to the requested effective date of withdrawal.

(2) Before a NO_x budget opt-in source covered by a request under subdivision (1) may withdraw from the NO_x budget trading program and the NO_x budget opt-in permit may be terminated under subdivision (6), the following conditions must be met:

(A) For the ozone control period immediately before the withdrawal is to be effective, the NO_x authorized account representative must submit or must have submitted to the department an annual compliance certification report in accordance with section 8 of this rule.

(B) If the NO_x budget opt-in source has excess emissions for the ozone control period immediately before the withdrawal is to be effective, the U.S. EPA will deduct or have deducted from the NO_x budget opt-in source's compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located, the full amount required under sections *[sic., section]* **10(k)(5) through 10(k)(7) of this rule for the ozone control period.**

(C) After the requirements for withdrawal under this subdivision and subdivision (1) are met, the U.S. EPA will deduct from the NO_x budget opt-in source's compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located, NO_x allowances equal in number to, and allocated for, the same or a prior ozone control period as any NO_x allowances allocated to that source under subsection (i) for any ozone control period for which the withdrawal is to be effective. The U.S. EPA will close the NO_x budget opt-in source's compliance account and shall establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO_x budget opt-in source. The NO_x authorized account representative for the NO_x budget opt-in source shall become the NO_x authorized account representative for the general account.

(3) A NO_x budget opt-in source that withdraws from the NO_x budget trading program shall comply with all requirements under the NO_x budget trading program concerning all years for which the NO_x budget opt-in source was a NO_x budget opt-in source, even if the requirements arise or must be complied with after the withdrawal takes effect.

(4) After the requirements for withdrawal under subdivisions (1) and (2) are met, including deduction of the full amount of NO_x allowances required, the department shall issue a notification to the NO_x authorized account representative of the NO_x budget opt-in source of the acceptance of the withdrawal of the NO_x budget opt-in source as of a specified effective date that is after the requirements have been met and that is prior to May 1 or after September 30.

(5) If the requirements for withdrawal under subdivisions (1) and (2) are not met, the department shall issue a notification to the NO_x authorized account representative of the NO_x budget opt-in source that the NO_x budget opt-in source's request to withdraw is denied. If the NO_x budget opt-in source's request to withdraw is denied, the NO_x budget opt-in source shall remain subject to the requirements for a NO_x budget opt-in source.

(6) After the department issues a notification under subdivision (4) that the requirements for withdrawal have been met, the department shall revise the NO_x budget permit covering the NO_x budget opt-in source to terminate the NO_x budget opt-in permit as of the effective date specified under subdivision (1). A NO_x budget opt-in source shall continue to be a NO_x budget opt-in source until the effective date of the termination.

(7) If the department denies the NO_x budget opt-in source's request to withdraw, the NO_x authorized account representative may submit another request to withdraw in accordance with subdivisions (1) and (2).

Once a NO_x budget opt-in source withdraws from the NO_x budget trading program and its NO_x budget opt-in permit is terminated under this section, the NO_x authorized account representative may not submit another application for a NO_x budget opt-in permit under subsection (d) for the unit prior to the date that is four (4) years after the date on which the terminated NO_x budget opt-in permit became effective.

(h) When a NO_x budget opt-in source becomes a NO_x budget unit under section 1 of this rule, the NO_x authorized account representative shall notify the department and the U.S. EPA in writing of the change in the NO_x budget opt-in source's regulatory status, within thirty (30) days of the change. If there is a change in the regulatory status, the department and the U.S. EPA will take the following actions concerning a NO_x budget opt-in source:

(1) When the NO_x budget opt-in source becomes a NO_x budget unit under section 1 of this rule, the department shall revise the NO_x budget opt-in source's NO_x budget opt-in permit to meet the requirements of a NO_x budget

permit under sections *[sic., section]* 7(d) and 7(e) of this rule as of an effective date that is the date on which the NO_x budget opt-in source becomes a NO_x budget unit under section 1 of this rule.

(2) The U.S. EPA will deduct from the compliance account for the NO_x budget unit under subdivision (1), or the overdraft account of the NO_x budget source where the unit is located, NO_x allowances equal in number to, and allocated for, the same or a prior ozone control period as follows:

(A) Any NO_x allowances allocated to the NO_x budget unit, as a NO_x budget opt-in source, under subsection (i) for any ozone control period after the last ozone control period during which the unit's NO_x budget opt-in permit was effective.

(B) If the effective date of the NO_x budget permit revision under subdivision (1) is during an ozone control period, the NO_x allowances allocated to the NO_x budget unit, as a NO_x budget opt-in source, under subsection (i) for the ozone control period multiplied by the ratio of the number of days, in the ozone control period, starting with the effective date of the permit revision under subdivision (1), divided by the total number of days in the ozone control period.

(3) The NO_x authorized account representative shall ensure that the compliance account of the NO_x budget unit under subdivision (1), or the overdraft account of the NO_x budget source where the unit is located, includes the NO_x allowances necessary for completion of the deduction under subdivision (2). If the compliance account or overdraft account does not contain sufficient NO_x allowances, the U.S. EPA will deduct the required number of NO_x allowances, regardless of the ozone control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(4) For every ozone control period during which the NO_x budget permit revised under subdivision (1) is effective, the following shall apply:

(A) The NO_x budget unit under subdivision (1) shall be treated, solely for the purposes of NO_x allowance allocations under sections *[sic., section]* 9(c) through 9(e) of this rule, as a unit that commenced operation on the effective date of the NO_x budget permit revision under subdivision (1) and shall be allocated NO_x allowances under sections *[sic., section]* 9(c) through 9(e) of this rule.

(B) Notwithstanding clause (A), if the effective date of the NO_x budget permit revision under subdivision (1) is during an ozone control period, the following number of NO_x allowances shall be allocated to the NO_x budget unit. The number of NO_x allowances otherwise allocated to the NO_x budget unit under sections *[sic., section]* 9(c) through 9(e) of this rule for the ozone control period multiplied by the ratio of the number of days, in the ozone control period, starting with the effective date of the permit revision under subdivision (1), divided by the total number of days in the ozone control period.

(5) When the NO_x authorized account representative of a NO_x budget opt-in source does not renew its NO_x budget opt-in permit under subsection (d), the U.S. EPA will deduct from the NO_x budget opt-in unit's compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located, NO_x allowances equal in number to and allocated for the same or a prior ozone control period as any NO_x allowances allocated to the NO_x budget opt-in source under subsection (i) for any ozone control period after the last ozone control period for which the NO_x budget opt-in permit is effective. The NO_x authorized account representative shall ensure that the NO_x budget opt-in source's compliance account or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located includes the NO_x allowances necessary for completion of the deduction. If the compliance account or overdraft account does not contain sufficient NO_x allowances, the U.S. EPA will deduct the required number of NO_x allowances, regardless of the ozone control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(6) After the deduction under subdivision (5) is completed, the U.S. EPA will close the NO_x budget opt-in source's compliance account. If any NO_x allowances remain in the compliance account after completion of the deduction and any deduction under sections *[sic., section]* 10(j) and 10(k) of this rule, the U.S. EPA will close the NO_x budget opt-in source's compliance account and will establish, and transfer any remaining allowances to a new general account for the owners and operators of the NO_x budget opt-in source. The NO_x authorized account representative for the NO_x budget opt-in source shall become the NO_x authorized account representative for the general account.

(i) The department shall allocate NO_x allowances to NO_x budget opt-in sources as follows:

(1) By December 31 immediately before the first ozone control period for which the NO_x budget opt-in permit is effective, the department shall allocate NO_x allowances to the NO_x budget opt-in source and submit to the U.S. EPA the allocation for the ozone control period in accordance with subdivision (3).

(2) By no later than December 31, after the first ozone control period for which the NO_x budget opt-in permit is in effect, and December 31 of each year thereafter, the department shall allocate NO_x allowances to the NO_x budget opt-in source, and submit to the U.S. EPA allocations for the next ozone control period, in accordance with subdivision (3).

(3) For each ozone control period for which the NO_x

budget opt-in source has an approved NO_x budget opt-in permit, the NO_x budget opt-in source shall be allocated NO_x allowances according to the following procedures:

(A) The heat input, in million British thermal units, used for calculating NO_x allowance allocations shall be the lesser of the following:

(i) The NO_x budget opt-in source's baseline heat input determined pursuant to subsection (e)(3).

(ii) The NO_x budget opt-in source's heat input, as determined in accordance with section 12 of this rule, for the ozone control period in the year prior to the year of the ozone control period for which the NO_x allocations are being calculated.

(B) The department shall allocate NO_x allowances to the NO_x budget opt-in source in an amount equaling the heat input, in million British thermal units, determined under clause (A) multiplied by the lesser of the following:

(i) The NO_x budget opt-in source's baseline NO_x emissions rate, in pounds per million British thermal units, determined pursuant to subsection (e)(3).

(ii) The most stringent state or federal NO_x emissions limitation applicable to the NO_x budget opt-in source during the ozone control period.

*These documents are incorporated by reference, and copies may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 10-4-13; filed Aug 17, 2001, 3:45 p.m.: 25 IR 48)*

326 IAC 10-4-14 NO_x allowance banking

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 14. (a) NO_x allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account as follows:

(1) Any NO_x allowance that is held in a compliance account, an overdraft account, or a general account shall remain in the account unless and until the NO_x allowance is deducted or transferred under:

(A) section 8(d), 8(e), 10(j), 10(k), 11, or 13 of this rule; or

(B) subsection (b).

(2) The U.S. EPA will designate, as a banked NO_x allowance, any NO_x allowance that remains in a compliance account, an overdraft account, or a general account after the U.S. EPA has made all deductions for a given ozone control period from the compliance account or overdraft account pursuant to sections *[sic., section]* 10(j) and 10(k) of this rule, 40 CFR 97*, a state NO_x budget trading program established pursuant to 40 CFR 51.121*and approved and administered by the U.S. EPA, or a federal implementation plan and that was allocated for that ozone control period or a ozone control period in a prior year.

(b) Each year starting in 2005, after the U.S. EPA has completed the designation of banked NO_x allowances under subsection (a)(2) and before May 1 of the year, the U.S. EPA will determine the extent that banked NO_x allowances may be used for compliance in the ozone control period for the current year as follows:

(1) The U.S. EPA will determine the total number of banked NO_x allowances held in compliance accounts, overdraft accounts, or general accounts.

(2) If the total number of banked NO_x allowances determined, under subdivision (1), to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to ten percent (10%) of the sum of the trading program budget for the ozone control period, any banked NO_x allowance may be deducted for compliance in accordance with section 10(k) of this rule.

(3) If the total number of banked NO_x allowances determined, under subdivision (1), to be held in compliance accounts, overdraft accounts, or general accounts exceeds ten percent (10%) of the sum of the trading program budget for the ozone control period, any banked allowance may be deducted for compliance in accordance with section 10(k) of this rule, except as follows:

(A) The U.S. EPA will determine the following ratio:

(i) One-tenth (0.10) multiplied by the sum of the trading program budget for the ozone control period.

(ii) Divided by the total number of banked NO_x allowances determined, under subdivision (1), to be held in compliance accounts, overdraft accounts, or general accounts.

(B) The U.S. EPA will multiply the number of banked NO_x allowances in each compliance account or overdraft account by the ratio determined under clause (A). The resulting product is the number of banked NO_x allowances in the account that may be deducted for compliance in accordance with section 10(k) of this rule. Any banked NO_x allowances in excess of the resulting product may be deducted for compliance in accordance with section 10(k) of this rule, except that, if these NO_x allowances are used to make a deduction, two (2) NO_x allowances must be deducted for each deduction of one (1) NO_x allowance required under section 10(k) of this rule.

*These documents are incorporated by reference, and copies may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 10-4-14; filed Aug 17, 2001, 3:45 p.m.: 25 IR 52)*

326 IAC 10-4-15 Compliance supplement pool

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 15. (a) The department may allow sources required to implement NO_x emission control measures by May 31, 2004, and subject to this rule, to demonstrate compliance in the 2004 and 2005 ozone control periods using credit issued from a compliance supplement pool in accordance with this section. A source may not use credit from the compliance supplement pool to demonstrate compliance after the 2005 ozone control period.

(b) The department may distribute NO_x allocations from the compliance supplement pool to NO_x budget units that are required to implement control measures using one (1) or both of the following mechanisms:

(1) The department may issue credits to NO_x budget units that implement emissions reductions beyond all applicable requirements from May 1 through and including September 30 in any year in 2001 through 2003 according to the following provisions:

(A) The department shall complete the issuance process the year after the control measures were implemented as follows:

(i) For sources subject to 40 CFR 97*, no later than March 31, 2003.

(ii) For sources not subject to 40 CFR 97*, no later than March 31, 2004.

(B) The emissions reduction may not be required by Indiana's state implementation plan (SIP), state law or rule, or be otherwise required by the Clean Air Act (CAA).

(C) The emissions reduction must be verified by the source as actually having occurred from May 1 through and including September 30 in any year in 2001 through 2003.

(D) Each NO_x budget unit for which the owner or operator requests any early reduction credits under this section shall monitor NO_x emissions in accordance with 40 CFR 75, Subpart H* starting in the ozone control period prior to the ozone control period for which the early reduction credits are requested and for each ozone control period for which the early reduction credits are requested. The unit's percent monitor data availability shall be not less than ninety percent (90%) during the ozone control period prior to the ozone control period for which the early reduction credits are requested, and the unit must be in compliance with any applicable state or federal NO_x emissions or emissions-related requirements during the ozone control period for which the early reduction credits are requested.

(E) The emissions reduction must be quantified according to procedures set forth in 40 CFR 75, Subpart H*.

(F) The NO_x authorized account representative of a NO_x budget unit that meets the requirements of clauses (B) through (D) may submit to the department a request for early reduction credits for the unit based on NO_x emission rate reductions made by the unit in the ozone control period for any year in 2001 through 2003. The request shall include the following:

(i) In the early reduction credit request, the NO_x authorized account may request early reduction credits for the ozone control period in an amount equal to the unit's heat input for the ozone control period multiplied by the difference between the following:

(AA) the unit's actual average NO_x emission rate in the ozone control period prior to the first ozone control period for which the early reduction credits are requested;

(BB) the unit's NO_x emission rate for the ozone control period in which the early reductions occurred;

divided by two thousand (2,000) pounds per ton, and rounded to the nearest ton.

(ii) The early reduction credit request must be submitted, in a format specified by the department, by October 31 of the year in which the NO_x emission rate reductions on which the request is based are made or a later date approved by the department.

(G) The department shall allocate NO_x allowances from the compliance supplement pool, to NO_x budget units meeting the requirements of this subdivision, in accordance with the following procedures:

(i) Upon receipt of each early reduction credit request, the department shall accept the request only if the requirements of clauses (B) through (D) and (F)(ii) are met and, if the request is accepted, shall make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirement of clauses (B) through (D).

(ii) If the compliance supplement pool has an amount of NO_x allowances equal to or greater than the number of early reduction credits in all accepted early reduction credit requests for any year in 2001 through 2003, as adjusted under item (i), the department shall allocate to each NO_x budget unit covered by the accepted requests one (1) allowance for each early reduction credit requested, as adjusted under item (i).

(iii) If the compliance supplement pool has an amount of NO_x allowances less than the number of early reduction credits in all accepted early reduction credit requests for any year in 2001 through 2003, as adjusted under item (i), the department shall allocate NO_x allowances to each NO_x budget unit covered by the accepted requests according to the formula, A NO_x budget unit's allocated early reduction credits = ((NO_x budget unit's adjusted early reduction credits) ÷ (total adjusted early reduction credits requested by all NO_x budget units)) × (available NO_x allowances

from the compliance supplement pool) where:

(AA) A NO_x budget unit's adjusted early reduction credits is the number of early reduction credits for the unit for any year in 2001 through 2003 in accepted early reduction credit requests, as adjusted under item (i).

(BB) Total adjusted early reduction credits requested by all NO_x budget units is the number of early reduction credits for all NO_x budget units for any year in 2001 through 2003 in accepted early reduction credit requests, as adjusted under item (i).

(CC) Available NO_x allowances from the compliance supplement pool is the number of NO_x allowances in the compliance supplement pool and available for early reduction credits for 2001 through 2003.

(H) By March 31 of the year following the request, the department shall submit to the U.S. EPA the allocations of NO_x allowances determined under clause (G). The U.S. EPA will record the allocations to the extent that they are consistent with the requirements of clauses (B) through (G).

(I) NO_x allowances recorded under clause (H) may be deducted for compliance under section 10(k) *[of this rule]* for the ozone control periods in 2003 through 2005, except that no more than two thousand four hundred fifty-four (2,454) tons shall be available for use in 2003. Notwithstanding section 14(a) of this rule, the U.S. EPA will deduct as retired any NO_x allowance that is recorded under clause (G) and is not deducted for compliance in accordance with section 10(k) of this rule for the ozone control period in 2004 or 2005.

(J) NO_x allowances recorded under clause (G) are treated as banked allowances in 2005 for the purposes of sections *[sic., section]* 14(a) and 14(b) of this rule.

(K) Sources that receive credit according to the requirements of this section may trade the credit to other sources or persons according to the provisions in this rule.

(2) The department may issue to NO_x budget units that demonstrate a need for an extension of the May 31, 2004, compliance deadline according to the following provisions:

(A) The department shall initiate the issuance process by the later date of September 30, 2002, or after the department issues credit according to the procedures in subdivision (1).

(B) The department shall complete the issuance process by no later than May 31, 2004.

(C) The department shall issue credit to a source only if the source demonstrates the following:

(i) For electricity generating units, compliance with the applicable control measures under this rule by May 31, 2004, would create undue risk for the reliability of the electricity supply. This demonstration must include a showing that it would not be feasible to import electricity from other electricity generation systems during the installation of control technologies necessary to comply with this rule.

(ii) For large affected units, compliance with the applicable control measures under this rule by May 31, 2004, would create undue risk for the source or its associated industry to a degree that is comparable to the risk described in item (i).

(iii) For a unit subject to this rule and subdivision (1) that allows for early reduction credits, it was not possible for the source to comply with applicable control measures by generating early reduction credits or acquiring early reduction credits from other sources.

(iv) For a unit subject to an approved emissions trading program under this rule, it was not possible to comply with applicable control measures by acquiring sufficient credit from other sources or persons subject to the emissions trading program.

(D) The department shall ensure the public an opportunity, through a public hearing process, to comment on the appropriateness of allocating compliance supplement pool credits to a NO_x budget unit under clause (C).

(c) The total number of NO_x allowances available from the compliance supplement pool shall not exceed nineteen thousand nine hundred fifteen (19,915) tons of NO_x, except that no more than two thousand four hundred fifty-four (2,454) tons shall be available for use in 2003. No more than fifty percent (50%) of the compliance supplement pool shall be allocated in 2003 for early reductions implemented in 2001 and 2002. The remainder of the compliance supplement pool shall be allocated in 2004 for early reductions implemented in 2003 and any demonstrations of need. Any NO_x allowances that remain in the compliance supplement pool after the 2005 ozone control period shall be retired.

***These documents are incorporated by reference, and copies may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 10-4-15; filed Aug 17, 2001, 3:45 p.m.: 25 IR 53)*

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NO_x Control Technologies for the Cement Industry, Final Report, September 19, 2000; Section 502(C) of the Clean Air Act; 40 CFR 97, NO_x Budget Trading Program; 40 CFR 51.121; 40 CFR 60; 40 CFR 72; 40 CFR 75, Appendix A; Appendix B; Appendix D; Appendix E; Appendix F, Sections 2 and 3; Subpart D, Subpart E, Subpart F, Subpart G, Subpart H.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #00-249(F)

DIGEST

Amends 405 IAC 1-10.5-1, 405 IAC 1-10.5-2, 405 IAC 1-10.5-3, and 405 IAC 1-10.5-4 to add level-of-care reimbursement for long term care hospitals; adds an annual adjustment to DRG relative weights; removes date requirement for adjusting the number of residents in computing facility-specific medical education rates; and provides requirements for out-of-state hospitals requesting a medical education rate and, for out-of-state children's hospitals, a separate base amount. Repeals 405 IAC 1-9, 405 IAC 1-10, and 405 IAC 1-11. Effective 30 days after filing with the secretary of state.

405 IAC 1-9
405 IAC 1-10
405 IAC 1-10.5-1
405 IAC 1-10.5-2
405 IAC 1-10.5-3
405 IAC 1-10.5-4
405 IAC 1-11

SECTION 1. 405 IAC 1-10.5-1 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-10.5-1 Policy; scope
Authority: IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-15-15-1

Sec. 1. ~~(a)~~ Reimbursement for inpatient hospital services, as defined by 42 CFR 440.10, is available to providers enrolled by the office of Medicaid policy and planning (office) as Medicaid providers and who are in good standing. Continued participation in the Medicaid program and payment of inpatient hospital services are contingent upon maintenance of state licensure and conformance with the office's provider agreement. ~~405 IAC 1-6-9~~ **405 IAC 5-17** and ~~405 IAC 1-7-15~~ **405 IAC 5-28** establish criteria for providing inpatient hospital services to Medicaid recipients and set forth the types of services for which Medicaid reimbursement may be available.

~~(b) In accordance with federal law, reimbursement for inpatient hospital services provided to eligible recipients will be made through the use of rates that are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.~~

~~(c) For general acute and rehabilitation inpatient hospital claims with dates of service prior to November 4, 1994, the interim reimbursement policy established by 405 IAC 1-10 applies. For state mental health institutions covered by this rule, reimbursement for claims with dates of service prior to implementation of this rule shall be made under 405 IAC 1-9. For non-state mental health facilities covered by this rule, reimbursement for claims with dates of service prior to June 2, 1995, shall be made under 405 IAC 1-9.~~ *(Office of the Secretary of Family and Social Services; 405 IAC 1-10.5-1; filed Oct 5, 1994, 11:10 a.m.: 18 IR 243; filed Dec 19, 1995, 3:00 p.m.: 19 IR 1082; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Aug 31, 2001, 9:53 a.m.: 25 IR 55)*

SECTION 2. 405 IAC 1-10.5-2 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-10.5-2 Definitions
Authority: IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-15-15-1; IC 12-24-1-3; IC 12-25; IC 16-21

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Allowable costs" means Medicare allowable costs as defined by 42 U.S.C. 1395(f).

(c) "All patient DRG grouper" refers to a classification system used to assign inpatient stays to DRGs.

(d) "Base amount" means the rate per Medicaid stay which is multiplied by the relative weight to determine the DRG rate.

(e) "Base period" means the fiscal years used for calculation of the prospective payment rates, including base amounts and relative weights.

(f) "Capital costs" are costs associated with the capital costs of the facility. Capital costs include, but are not limited to, the following:
(1) Depreciation.
(2) Interest.
(3) Property taxes.
(4) Property insurance.

(g) "Children's hospital" means ~~an inpatient~~ **a freestanding general acute care** hospital ~~facility, as defined in subsection (p)(1) whose primary specialty is providing short term acute care medical services for children and newborns.~~ **licensed under IC 16-21 that:**

(1) is designated by the Medicare program as a children's hospital; or

(2) furnishes services to inpatients who are predominantly individuals under the age of eighteen (18), as determined using the same criteria used by the Medicare program to determine whether a hospital's services are

furnished to inpatients who are predominantly individuals under the age of eighteen (18).
"Freestanding" does not mean a wing or specialized unit within a general acute care hospital.

(h) "Cost outlier case" means a Medicaid stay that exceeds a predetermined threshold, defined as the greater of twice the DRG rate or a fixed dollar amount established by the office. The initial fixed dollar amount for the threshold is twenty-five thousand dollars ($25,000). This amount may be changed at the time the relative weights are adjusted.

(i) "Diagnosis-related group" or "DRG" means a classification of an inpatient stay according to the principal diagnosis, procedures performed, and other factors that reflect clinically cohesive groupings of inpatient hospital stays utilizing similar hospital resources. Classification is made through the use of the all patient (AP) DRG grouper.

~~(j) "Direct medical education costs" means the costs that are associated with the salaries and benefits of medical interns and residents and paramedical education programs.~~

~~(k)~~ **(j)** "Discharge" means the release of a patient from an acute care facility. Patients may be discharged to their home, another health care facility, or due to death. Transfers from one (1) unit in a hospital to another unit in the same hospital shall not be considered a discharge unless one (1) of the units is paid according to the level-of-care approach.

~~(l)~~ **(k)** "DRG daily rate" means the per diem payment amount for a stay classified into a DRG calculated by dividing the DRG rate by the average length of stay for all stays classified into the DRG.

~~(m)~~ **(l)** "DRG rate" means the product of the relative weight multiplied by the base amount. It is the amount paid to reimburse hospitals for routine and ancillary costs of providing care for an inpatient stay.

~~(n)~~ **(m)** "Hospital Market Basket Index" means the DRI-Type Hospital Market Basket Index, published quarterly by DRI/McGraw-Hill in "Health Care Costs".

~~(o)~~ **(n)** "Inpatient" means a patient who was admitted to a medical facility on the recommendation of a physician and who received room, board, and professional services in the facility.

~~(p)~~ **(o)** "Inpatient hospital facility" means:
(1) a general acute hospital licensed under IC 16-21;
(2) a mental health institution licensed under IC 12-25;
(3) a state mental health institution under IC 12-24-1-3; or
(4) a rehabilitation inpatient facility.

~~(q)~~ **(p)** "Less than one-day stay" means a medical stay of less than twenty-four (24) hours that is paid according to a DRG rate.

~~(r)~~ **(q)** "Level-of-care case" means a medical stay, as defined by the office, that is not part of the DRG reimbursement system. Level-of-care cases include psychiatric cases, rehabilitation cases, and certain burn cases.

~~(s)~~ **(r)** "Level-of-care rate" means a per diem rate that is paid for treatment of a diagnosis or performing a procedure that is not paid through the DRG payment system.

(s) "Long term care hospital" means a freestanding general acute care hospital licensed under IC 16-21 that:
(1) is designated by the Medicare program as a long term hospital; or
(2) has an average inpatient length of stay greater than twenty-five (25) days as determined using the same criteria used by the Medicare program to determine whether a hospital's average length of stay is greater than twenty-five (25) days.
"Freestanding" does not mean a wing or specialized unit within a general acute care hospital.

(t) "Medicaid day" means any part of a day, including the date of admission, for which a patient enrolled with the Indiana Medicaid program is admitted as an inpatient and remains overnight. The day of discharge is not considered a Medicaid day.

(u) "Medicaid stay" means an episode of care provided in an inpatient setting that includes at least one (1) night in the hospital and is covered by the Indiana Medicaid program.

(v) "Medical education costs" means the direct costs associated with the salaries and benefits of medical interns and residents and paramedical education programs.

~~(v)~~ **(w)** "Office" means the office of Medicaid policy and planning of the family and social services administration.

~~(w)~~ **(x)** "Outlier payment amount" means the amount reimbursed in addition to the DRG rate for certain inpatient stays that exceed cost thresholds established by the office.

~~(x)~~ **(y)** "Per diem" means an all-inclusive rate per day that includes routine and ancillary costs and capital costs.

~~(y)~~ **(z)** "Principal diagnosis" means the diagnosis, as described by ICD-9-CM code, for the condition established after study to be chiefly responsible for occasioning the admission of the patient for care.

~~(z)~~ **(aa)** "Readmission" means that a patient is admitted into the hospital within fifteen (15) days following a previous hospital admission and discharge for a related condition as defined by the office.

~~(aa)~~ **(bb)** "Rebasing" means the process of adjusting the base

amount ~~based upon~~ **using** more recent claims data, cost report data, and other information relevant to hospital reimbursement.

~~(bb)~~ **(cc)** "Relative weight" means a numeric value which reflects the relative resource consumption for the DRG to which it is assigned. Each relative weight is multiplied by the base amount to determine the DRG rate.

~~(cc)~~ **(dd)** "Routine and ancillary costs" means costs that are incurred in providing services exclusive of medical education and capital costs.

~~(dd)~~ **(ee)** "Transfer" means a situation in which a patient is admitted to one (1) hospital and is then released to another hospital during the same episode of care. Movement of a patient from one (1) unit to another unit within the same hospital will not constitute a transfer unless one (1) of the units is paid under the level-of-care reimbursement system.

~~(ee)~~ **(ff)** "Transferee hospital" means that hospital that accepts a transfer from another hospital.

~~(ff)~~ **(gg)** "Transferring hospital" means the hospital that initially admits and then discharges the patient to another hospital. *(Office of the Secretary of Family and Social Services; 405 IAC 1-10.5-2; filed Oct 5, 1994, 11:10 a.m.: 18 IR 244; filed Dec 19, 1995, 3:00 p.m.: 19 IR 1082; filed Dec 27, 1996, 12:00 p.m.: 20 IR 1514; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Aug 31, 2001, 9:53 a.m.: 25 IR 55)*

SECTION 3. 405 IAC 1-10.5-3 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-10.5-3 Prospective reimbursement methodology
Authority: IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-15-15-1

Sec. 3. (a) The purpose of this section is to establish a prospective, cost-based reimbursement methodology for services provided by inpatient hospital facilities that are covered by the state of Indiana Medicaid program. The methodology for reimbursement described in this section shall be a prospective system wherein a payment rate for each hospital stay will be established according to a DRG reimbursement methodology or a level-of-care reimbursement methodology. Prospective payment shall constitute full reimbursement. There shall be no year-end cost settlement payments.

(b) Rebasing of the DRG and level-of-care methodologies will apply information from the most recent available cost report that has been filed and audited by the office or its contractor.

~~(b)~~ **(c)** Payment for inpatient stays reimbursed according to the DRG methodology shall be equal to the sum of the DRG rate, the capital rate, the medical education rate, and, if applicable, the outlier payment amount.

~~(c)~~ **(d)** Payment for inpatient stays reimbursed as level-of-care cases shall be equal to the sum of the per diem rate for each Medicaid day, the capital rate, ~~and~~ the medical education rate, **and, if applicable, the outlier payment amount (burn cases only).**

~~(d)~~ **(e)** Inpatient stays reimbursed according to the DRG methodology shall be assigned to a DRG using the all patient DRG grouper.

~~(e)~~ **(f)** The DRG rate is equal to the product of the relative weight and the base amount.

~~(f)~~ **(g)** Initial relative weights were calculated using Indiana Medicaid claims data for inpatient stays with dates of admission within state fiscal years 1990, 1991, and 1992 and cost report data from facilities' fiscal year 1990 cost reports. Relative weights will be reviewed ~~annually~~ by the office and adjusted no more often than ~~every second year~~ **annually** by using the most recent reliable claims data and cost report data to reflect changes in treatment patterns, technology, and other factors that may change the relative use of hospital resources. **Interim adjustments to the relative weights will not be made except in response to legislative mandates affecting Medicaid participating hospitals. Each legislative mandate will be evaluated individually to determine whether an adjustment to the relative weights will be made.** DRG average length of stay values and outlier thresholds will be revised when relative weights are adjusted.

~~(g)~~ **(h)** Initial base amounts were calculated using cost report data from facilities' fiscal year 1990 as-settled cost reports. Cost report data were inflated to the midpoint of the state fiscal year 1995 using the DRI/McGraw-Hill Hospital Market Basket Index available at the end of the 1993 calendar year. Base amounts will be reviewed annually by the office and adjusted no more often than every second year by using the most recent reliable claims data and cost report data to reflect changes in treatment patterns, technology, and other factors that may change the cost of efficiently providing hospital services. In the absence of rebasing, base amounts will be inflated annually according to the Hospital Market Basket Index published in the second quarter of the current year.

(i) The office may establish **a** separate base ~~amounts~~ **amount** for children's hospitals to the extent necessary to reflect significant differences in cost. **Each children's hospital will be evaluated individually for eligibility for the separate base amount. Children's hospitals with a case mix adjusted cost per discharge greater than one (1) standard deviation above the mean cost per discharge for DRG services will be eligible to receive the separate base amount established under this subsection. The separate base amount is equal to one hundred and twenty percent (120%) of the statewide base amount for DRG services.**

~~(h)~~ **(j)** Initial level-of-care payment rates were calculated using Indiana Medicaid claims data for inpatient stays with dates of admission within state fiscal years 1990, 1991, and 1992 and cost report data from facilities' fiscal year 1990 cost reports. Cost report data was inflated to the midpoint of the state fiscal year 1995 using the DRI/McGraw-Hill Hospital Market Basket Index. Level-of-care rates will be reviewed annually by the office and adjusted no more often than every second year by using the most recent reliable claims data and cost report data to reflect changes in treatment patterns, technology, and other factors that may change the cost of efficiently providing hospital services. In the absence of rebasing, level-of-care rates will be inflated annually according to the Hospital Market Basket Index published in the second quarter of the current year. The office ~~may establish~~ **shall not set** separate level-of-care rates for ~~children's hospitals to the extent necessary to reflect significant differences in cost.~~ **different categories of facilities, except as specifically noted in this section.**

(k) Level-of-care cases are categorized as DRG numbers 424–428, 429 (excluding diagnosis code 317.XX–319.XX), 430–432, 456–459, 462, and 472, as defined and grouped using the all patient DRG grouper, version 14.1. These DRG numbers represent burn, psychiatric, and rehabilitative care.

(l) In addition to the burn level-of-care rate, the office may establish an enhanced burn level-of-care rate for hospitals with specialized burn facilities, equipment, and resources for treating severe burn cases. In order to be eligible for the enhanced burn rate, facilities must be designated by the *[Indiana]* **state department of health as offering a burn intensive care unit.**

(m) The office may establish separate level-of-care rates for children's hospitals to the extent necessary to reflect significant differences in cost. Each children's hospital will be evaluated individually for eligibility for the separate level-of-care rate. Children's hospitals with a cost per day greater than one (1) standard deviation above the mean cost per day for level-of-care services will be eligible to receive the separate base amount. Determinations will be made for each level-of-care category. The separate base amount is equal to one hundred twenty percent (120%) of the statewide level-of-care rate.

(n) The office may establish separate level-of-care rates, policies, billing instructions, and frequency for long term care hospitals to the extent necessary to reflect differences in treatment patterns for patients in such facilities. Hospitals must meet the definition of long term hospital set forth in this rule to be eligible for the separate level-of-care rate.

~~(i)~~ **(o)** Capital payment rates shall be prospectively determined and shall constitute full reimbursement for capital costs. The initial flat, statewide per diem capital rate was calculated using cost report data from facilities' fiscal year 1990 cost reports, inflated to the midpoint of state fiscal year 1995 using the DRI/McGraw-Hill Hospital Market Basket Index and adjusted to reflect a minimum occupancy level for non-nursery beds of eighty percent (80%). Capital per diem rates will be reviewed annually by the office and adjusted no more often than every second year by using the most recent reliable claims data and cost report data to reflect changes in treatment patterns, technology, and other factors that may change the capital costs associated with efficiently providing hospital services. In the ~~absent~~ **absence** of rebasing, the per diem capital rate will be inflated annually using the Hospital Market Basket Index published in the second quarter of the current year.

~~(j)~~ **(p)** The capital payment amount for Medicaid stays reimbursed under the DRG methodology shall be equal to the product of the per diem capital rate and the average length of stay for all cases within the particular DRG. Medicaid stays reimbursed under the level-of-care methodology will be paid the per diem capital rate for each covered day of care. **The office shall not set separate capital per diem rates for different categories of facilities, except as specifically noted in this rule.**

~~(k)~~ **(q)** Medical education rates shall be prospective, hospital-specific per diem amounts. The medical education payment amount for stays reimbursed under the DRG methodology shall be equal to the product of the medical education per diem rate and the average length of stay for the DRG. Payment amounts for medical education for stays reimbursed under the level-of-care methodology shall be equal to the medical education per diem rate for each covered day of care.

~~(l)~~ **(r)** Facility-specific, per diem medical education rates shall be based on costs per resident per day multiplied by the number of residents reported by the facility. Initial costs per resident per day were determined according to each facility's fiscal year 1990 cost report. In subsequent years, but no more often than every second year, the office will use the most recent cost report data to determine a cost per resident per day that more accurately reflects the cost of efficiently providing hospital services. The number of residents will be determined according to the most recent available cost report **that has been** filed ~~on or before April 1 of the current fiscal year.~~ **and audited by the office or its contractor.** In the absence of rebasing, the medical education per diem will be inflated annually using the Hospital Market Basket Index published in the second quarter of the current year.

~~(m)~~ **(s)** Medical education payments will only be available to hospitals that continue to operate medical education programs. Hospitals ~~that discontinue medical education programs~~ must ~~promptly~~ notify the office **within thirty (30) days following discontinuance of their medical education program.**

~~(n)~~ **(t)** For hospitals with new medical education programs, the medical education per diem will be effective no earlier than two (2) months prior to notification to the office that the program has been implemented. The medical education per diem shall be based on the most recent reliable claims data and cost report data.

~~(o)~~ **(u)** Cost outlier cases are determined according to a threshold established by the office. For purposes of establishing outlier payment amounts, prospective determination of costs per inpatient stay shall be calculated by multiplying a cost-to-charge ratio by submitted and approved charges. Outlier payment amounts shall be equal to a percentage of the difference between the prospective cost per stay and the outlier threshold amount. **Cost outlier payments are not available for cases reimbursed using the level-of-care methodology, except for burn cases that exceed the established threshold.**

~~(p)~~ **(v)** Readmissions will be treated as separate stays for payment purposes, but will be subject to medical review. If it is determined that a discharge is premature, payment made as a result of the discharge or readmission may be subject to recoupment.

~~(q)~~ **(w)** Special payment policies shall apply to transfer cases. The transferee, or receiving, hospital is paid according to the DRG methodology or level-of-care methodology. The transferring hospital is paid the sum of the following:

(1) A DRG daily rate for each Medicaid day of the recipient's stay, not to exceed the appropriate full DRG payment, or the level-of-care per diem payment rate for each Medicaid day of care provided.

(2) The capital per diem rate.

(3) The medical education per diem rate. Certain DRGs are established to specifically include only transfer cases; for these DRGs, reimbursement shall be equal to the DRG rate.

~~(r)~~ **(x)** Special payment policies shall apply to less than one-day stays that are paid according to a DRG rate. For less than one-day stays, hospitals will be paid a DRG daily rate, the capital per diem rate for one (1) day of stay, and the medical education per diem rate for one (1) day of stay, if applicable. *(Office of the Secretary of Family and Social Services; 405 IAC 1-10.5-3; filed Oct 5, 1994, 11:10 a.m.: 18 IR 245; filed Nov 16, 1995, 3:00 p.m.: 19 IR 664; filed Dec 19, 1995, 3:00 p.m.: 19 IR 1083; filed Dec 27, 1996, 12:00 p.m.: 20 IR 1515; errata filed Mar 21, 1997, 9:45 a.m.: 20 IR 2116; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Aug 31, 2001, 9:53 a.m.: 25 IR 57)*

SECTION 4. 405 IAC 1-10.5-4 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-10.5-4 Reimbursement for new providers and out-of-state providers

Authority: IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-15-15-1

Sec. 4. (a) The purpose of this section is to establish payment rates for inpatient hospital facilities that commenced participation in the state Medicaid program after fiscal year 1990 and for out-of-state hospital providers participating in the Indiana Medicaid program.

(b) Payment for inpatient stays reimbursed according to the DRG methodology shall be equal to the sum of the DRG rate, the capital rate calculated using the statewide median capital rate, the medical education rate, and, if applicable, the outlier payment calculated using the statewide median cost-to-charge ratio.

(c) Payment for inpatient stays reimbursed as level-of-care cases shall be equal to the sum of the per diem rate for each Medicaid day, the capital rate calculated using the statewide median capital rate, and the medical education rate.

(d) Outlier payments for inpatient stays reimbursed under subsection (b) shall be determined according to the methodology described in section ~~3(o)~~ **3** of this rule; however, for purposes of estimating costs, the statewide cost-to-charge ratio shall be used.

(e) To be eligible for a facility-specific per diem medical education rate, out-of-state providers must be located in a city listed in 405 IAC 5-5-2(a)(3) through 405 IAC 5-5-2(a)(4) or have a minimum of sixty (60) Indiana Medicaid inpatient days. Providers must submit annually an Indiana Medicaid hospital cost report to be eligible for this reimbursement.

(f) To be considered for a separate base amount for children's hospitals, out-of-state children's hospitals must be located in a city listed in 405 IAC 5-5-2(a)(3) through 405 IAC 5-5-2(a)(4) or have a minimum of sixty (60) Indiana Medicaid inpatient days. Providers must submit annually an Indiana Medicaid hospital cost report to be eligible for a separate base amount. *(Office of the Secretary of Family and Social Services; 405 IAC 1-10.5-4; filed Oct 5, 1994, 11:10 a.m.: 18 IR 246; filed Dec 19, 1995, 3:00 p.m.: 19 IR 1084; filed Dec 27, 1996, 12:00 p.m.: 20 IR 1517; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Aug 31, 2001, 9:53 a.m.: 25 IR 59)*

SECTION 5. THE FOLLOWING ARE REPEALED: 405 IAC 1-9; 405 IAC 1-10; 405 IAC 1-11.

LSA Document #00-249(F)
Notice of Intent Published: 24 IR 699
Proposed Rule Published: February 1, 2001; 24 IR 1381
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Approved by Attorney General: August 23, 2001
Approved by Governor: August 30, 2001
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Incorporated Documents Filed with Secretary of State: None

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #01-22(F)

DIGEST

Amends 405 IAC 5-24-4 and 405 IAC 5-24-6 to revise reimbursement policy for pharmacy services in the Medicaid program. Effective 30 days after filing with the secretary of state.

405 IAC 5-24-4
405 IAC 5-24-6

SECTION 1. 405 IAC 5-24-4 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-24-4 Reimbursement for legend drugs
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

Sec. 4. (a) The office shall reimburse pharmacy providers for covered legend drugs at the lowest of the following:

(1) The estimated acquisition cost (EAC) of the drug as of the date of dispensing, plus any applicable Medicaid dispensing fee.

(2) The maximum allowable cost (MAC) of the drug as determined by the Health Care Financing Administration under 42 CFR 447.332 as of the date of dispensing, plus any applicable Medicaid dispensing fee.

(3) The provider's submitted charge, representing the provider's usual and customary charge for the drug, as of the date of dispensing.

(b) For purposes of this section, the Indiana Medicaid EAC is ~~ninety~~ **eighty-seven** percent ~~(90%)~~ **(87%)** of the average wholesale price for each National Drug Code according to the Medicaid contractor's drug database file. *(Office of the Secretary of Family and Social Services; 405 IAC 5-24-4; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3345; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Aug 29, 2001, 9:50 a.m.: 25 IR 60)*

SECTION 2. 405 IAC 5-24-6 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-24-6 Dispensing fee
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

Sec. 6. (a) For purposes of this rule, the Indiana Medicaid dispensing fee maximum is ~~four~~ **three** dollars ~~($4)~~ **($3)** per legend drug.

(b) A maximum of one (1) dispensing fee per month is allowable per recipient per drug order for legend drugs provided to Medicaid recipients residing in Medicaid certified long term care facilities.

(c) The practice of split billing of legend drugs, defined as the dispensing of less than the prescribed amount of drug solely for the purpose of collecting more dispensing fees than would otherwise be allowed, is prohibited. In cases in which the pharmacist's professional judgment dictates that a quantity less than the amount prescribed be dispensed, the pharmacist should contact the prescribing practitioner for authorization to dispense a lesser quantity. The pharmacist must document the result of the contact and the pharmacist's rationale for dispensing less than the amount prescribed on the prescription or in the pharmacist's records. *(Office of the Secretary of Family and Social Services; 405 IAC 5-24-6; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3345; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Aug 29, 2001, 9:50 a.m.: 25 IR 60)*

LSA Document #01-22(F)
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Incorporated Documents Filed with Secretary of State: None

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #01-59(F)

DIGEST

Amends 405 IAC 5-13-12 to eliminate neuropsychological and psychological testing from the prior authorization exception following a recipient's discharge from inpatient hospital care. Amends 405 IAC 5-20-8 to limit the number of units of psychiatric diagnostic interviews per provider, per recipient, per 12 month period of time, to one unit. All additional units require prior authorization. Two units of psychiatric diagnostic interview per provider, per recipient, per 12 month period of time, is permitted without prior authorization if the recipient is separately evaluated by both a physician or health service provider in psychology and a midlevel practitioner. The amendment also adds the requirement for prior authorization for all units of neuropsychological and psychological testing when provided by a physician or a health service provider in psychology. Effective 30 days after filing with the secretary of state.

405 IAC 5-3-12
405 IAC 5-20-8

SECTION 1. 405 IAC 5-3-12 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-3-12 Prior authorization; exceptions
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. 12. Notwithstanding any other provision of this rule, prior review and authorization by the office is not required under the following circumstances:

(1) When a service is provided to a Medicaid recipient as an emergency service, "emergency service" means a service provided after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the patient's health in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any bodily organ or part.

(2) When a recipient's physician determines that an inpatient hospital setting is no longer necessary, but that Medicaid covered services should continue after the recipient is discharged from inpatient hospital care, such services may continue for a period not to exceed one hundred twenty (120) hours within thirty (30) calendar days of discharge without prior review and authorization, if the physician has specifically ordered such services in writing upon discharge from the hospital. Services provided under this section are subject to all appropriate limitations set out in this rule. This exemption does not apply to durable medical equipment, **neuropsychological and psychological testing,** or out-of-state medical services. Prior review and authorization by the office must be obtained for reimbursement beyond the one hundred twenty (120) hours within thirty (30) calendar days of discharge period. Physical, speech, respiratory, and occupational therapies may continue for a period not to exceed thirty (30) hours, sessions, or visits in thirty (30) calendar days without prior approval if the physician has specifically ordered such services in writing upon discharge or transfer from the hospital. Prior review and authorization by the office must be obtained for reimbursement beyond the thirty (30) hours, sessions, or visits in the thirty (30) calendar day period for physical, speech, respiratory, and occupational therapies.

(Office of the Secretary of Family and Social Services; 405 IAC 5-3-12; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3305; filed Sep 27, 1999, 8:55 a.m.: 23 IR 309; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Aug 28, 2001, 9:56 a.m.: 25 IR 60)

SECTION 2. 405 IAC 5-20-8 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-20-8 Outpatient mental health services

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. 8. Medicaid reimbursement is available for outpatient mental health services provided by licensed physicians, psychiatric hospitals, psychiatric wings of acute care hospitals, outpatient mental health facilities, and psychologists endorsed as a health service provider in psychology (HSPP). Outpatient mental health services rendered by a medical doctor, doctor of osteopathy, or HSPP are subject to the following limitations:

(1) Outpatient mental health services rendered by a medical doctor or doctor of osteopathy are subject to the limitations set out in 405 IAC 5-25.

(2) Subject to prior authorization by the office or its designee, Medicaid will reimburse physician or HSPP directed outpatient mental health services for group, family, and individual outpatient psychotherapy when such services are provided by one (1) of the following practitioners:

(A) A licensed psychologist.

(B) A licensed independent practice school psychologist.

(C) A licensed clinical social worker.

(D) A licensed marital and family therapist.

(E) A licensed mental health counselor.

(F) A person holding a master's degree in social work, marital and family therapy, or mental health counseling.

(G) An advanced practice nurse who is a licensed, registered nurse with a master's degree in nursing with a major in psychiatric or mental health nursing from an accredited school of nursing.

(3) The physician, psychiatrist, or HSPP is responsible for certifying the diagnosis and for supervising the plan of treatment described as follows:

(A) The physician, psychiatrist, or HSPP is responsible for seeing the recipient during the intake process or reviewing the medical information obtained by the practitioner listed in subdivision (2) within seven (7) days of the intake process. This review by the physician, psychiatrist, or HSPP must be documented in writing.

(B) The physician, psychiatrist, or HSPP must again see the patient or review the medical information and certify medical necessity on the basis of medical information provided by the practitioner listed in subdivision (2) at intervals not to exceed ninety (90) days. This review must be documented in writing.

(4) Medicaid will reimburse for evaluation ~~psychological testing,~~ and group, family, and individual psychotherapy when provided by a psychologist endorsed as an HSPP.

(5) Subject to prior authorization by the office or its designee, Medicaid will reimburse for neuropsychological and psychological testing when provided by a physician or an HSPP.

~~(5)~~ **(6)** Prior authorization is required for mental health services provided in an outpatient or office setting that exceed twenty (20) units per recipient, per provider, per rolling twelve (12) month period of time, **except neuropsychological and psychological testing, which is subject to prior authorization as stated in section (5) of this rule (405 IAC 5-20-8(5))** *[subdivision (5)]***.**

~~(6)~~ **(7)** The following are services that are not reimbursable by the Medicaid program:

(A) Day care.

(B) Hypnosis.

(C) Biofeedback.

(D) Missed appointments.

(E) Partial hospitalization, except as set out in 405 IAC 5-21.

~~(7)~~ **(8)** All outpatient services rendered must be identified and itemized on the Medicaid claim form. Additionally, the length of time of each therapy session must be indicated on the claim form. The medical record documentation must identify the services and the length of time of each therapy session. This information must be available for audit purposes.

~~(8)~~ **(9)** A current plan of treatment and progress notes, as to the necessity and effectiveness of therapy, must be attached to the prior authorization form and available for audit purposes.

(10) For psychiatric diagnostic interview examinations, Medicaid reimbursement is available for one (1) unit per recipient, per provider, per rolling twelve (12) month period of time, except as follows:

(A) A maximum of two (2) units per rolling twelve (12) month period of time per recipient, per provider, may be reimbursed without prior authorization, when a recipient is separately evaluated by both a physician or HSPP and a midlevel practitioner.

(B) Of the two (2) units allowed without prior authorization, as stated in (a) *[clause (A)]***, one (1) unit must be provided by the physician or HSPP and one (1) unit must be provided by the midlevel practitioner.**

(C) All additional units require prior authorization.

(Office of the Secretary of Family and Social Services; 405 IAC 5-20-8; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3335; filed Sep 27, 1999, 8:55 a.m.: 23 IR 315; filed Jun 9, 2000, 9:55 a.m.: 23 IR 2707; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Aug 28, 2001, 9:56 a.m.: 25 IR 61)

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TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

LSA Document #00-215(F)

DIGEST

Adds 460 IAC 2-4 to establish the Indiana Randolph-Sheppard Business Enterprise Program authorized by IC 12-12-5 and 20 U.S.C. 107 et seq. (the Randolph-Sheppard Vending Stand Act) and currently known as the Vending Program for the Blind. The new rule establishes the program, defines terms, and sets standards for the following: state agency functions, program participants, licensing requirements, selection of facility locations, assignment of facilities, financial matters, operation of facilities, business performance, rights and responsibilities of program participants, grievance procedures, disciplinary procedures, administrative review procedures, and the Indiana committee of licensed managers. Repeals 460 IAC 2-1. Effective 30 days after filing with the secretary of state.

460 IAC 2-1
460 IAC 2-4

SECTION 1. 460 IAC 2-4 IS ADDED TO READ AS FOLLOWS:

Rule 4. Blind and Visually Impaired Services—Indiana Randolph-Sheppard Business Enterprise Program

460 IAC 2-4-1 Purpose
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 1. The Indiana Randolph-Sheppard Business Enterprise Program (BEP) is established to provide blind persons with remunerative employment and to enlarge the economic opportunities for blind persons. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-1; filed Aug 23, 2001, 2:30 p.m.: 25 IR 62)*

460 IAC 2-4-2 Definitions
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-9-1-1; IC 12-12-1-2; IC 12-12-5; 20 U.S.C. 107; 34 CFR 395.1

Sec. 2. The following definitions apply throughout this rule:

(1) "Abandoned" means that a BEP facility is unattended or unoperated after an operator has failed to:

(A) notify the state licensing agency of the operator's absence; and

(B) meet contractual obligations for the facility, including the requirement for continuous operation.

(2) "Active participation" means an ongoing process of good faith negotiation between the state licensing agency and the Indiana committee of licensed managers to achieve joint planning of rules, policies, standards, and practices prior to implementation by the state licensing agency. Active participation shall not supersede the final authority of the division to adopt program policy and to administer the BEP.

(3) "Agreement" means a written contract between the state licensing agency and an operator for the operation of a BEP facility.

(4) "Applicant" means a person who has applied to or has been referred to the BEP, but who has not been accepted as a manager trainee.

(5) "BEP" means the Indiana Randolph-Sheppard Business Enterprise Program authorized by 20 U.S.C. 107 and IC 12-12-5.

(6) "BEP facility" means automatic vending machines,

cafeterias, snack bars, cart services, shelters, counters, and other appropriate auxiliary equipment that may be used for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, including the vending or exchange of chances for any lottery authorized by state law and conducted by an agency of the state within the state.

(7) "Blind and visually impaired services" or "BVIS" means the unit of services for the blind and visually impaired, established in IC 12-12-1-2(1) as a unit of the rehabilitation services bureau of DDARS, family and social services administration.

(8) "Business days" means regular business days recognized by the state. Regular business days do not include Saturday, Sunday, legal holidays as defined by state statute, or a day when state offices are closed during regular business hours.

(9) "Business Enterprise Program" or "BEP" means the Indiana Randolph-Sheppard Business Enterprise Program authorized by 20 U.S.C. 107 and IC 12-12-5.

(10) "Committee" means the Indiana committee of licensed managers established pursuant to 20 U.S.C. 107b-1.

(11) "Committee of licensed managers" means the committee established pursuant to 20 U.S.C. 107b-1.

(12) "Custodial authority" means the person or entity authorized to contract for the services at a site or facility.

(13) "DDARS" means the division of disability, aging, and rehabilitative services established in IC 12-9-1-1.

(14) "Director" means the director of DDARS.

(15) "Division" means DDARS established in IC 12-9-1-1.

(16) "Division of disability, aging, and rehabilitative services" means the division of disability, aging, and rehabilitative services established in IC 12-9-1-1.

(17) "Federal property" means any building, land, or other real property owned, leased, or occupied by any department, agency, or instrumentality of the United States.

(18) "Legal blindness" or "legally blind" means either of the following:

(A) Visual acuity of not more than 20/200 in the better eye with best corrective lenses.

(B) A limitation to the field of vision in the better eye such that the widest diameter of visual field subtends an angle of no greater than twenty (20) degrees.

(19) "License" means a written instrument that:

(A) is issued by DDARS to a blind person; and

(B) authorizes that person to operate a BEP facility as a licensed manager under this rule.

(20) "Licensed manager" means an individual who has a license issued by DDARS to operate a BEP facility under this rule.

(21) "Management services" means supervision, inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided by the state licensing agency on a systematic basis to support and improve the operations of BEP facilities. Management services do not include those services or costs that pertain to the ongoing operation of an individual BEP facility after the initial establishment period.

(22) "Manager" means a licensed manager.

(23) "Manager trainee" means a blind individual who has applied for and been found eligible for vocational rehabilitation services and has been accepted for training in the business enterprise program, but who has not received a license from the state licensing agency.

(24) "Net proceeds" means gross sales less the allowable expenses set out in section 34 of this rule that an operator has paid for the operation of the BEP facility, excluding any salary paid to the operator.

(25) "Operator" means a licensed manager, a manager trainee, or a temporary operator who has an agreement with the state licensing agency to operate a BEP facility.

(26) "Other property" has the meaning set out in 34 CFR 395.1(n).

(27) "Permit" means the official approval given to the state licensing agency by a department, agency, or instrumentality in control of the maintenance, operation, and protection of federal property, or person in control of other property, whereby the state licensing agency is authorized to establish a BEP facility under 20 U.S.C. 107.

(28) "Placement list" means an index of licensed managers and manager trainees eligible to bid on an available BEP facility.

(29) "Primary facility" means a licensed manager's BEP facility location with the greatest amount of gross sales as determined annually on June 30 of the most recently complete state fiscal year.

(30) "Probationary period" is the period of time from a manager trainee's placement at a BEP facility until the manager trainee is licensed under this rule.

(31) "Seniority" has the following meaning:

(A) For a licensed manager, seniority is determined from the date a licensed manager is licensed to operate a BEP facility and continues to accrue as long as the licensed manager holds a valid agreement with the state licensing agency to operate a BEP facility.

(B) For a manager trainee, seniority is determined from the date that BVIS received the manager trainee referral from vocational rehabilitation services.

(32) "Set aside funds" means funds accruing to the state licensing agency from:

(A) a uniform assessment against the net proceeds of assigned BEP facilities; or

(B) vending machines on federal property under 34 CFR 395.8.

(33) "State licensing agency" means DDARS.

(34) "Temporary operator" means a licensed manager, a

manager trainee, or any sighted or blind person who enters into an agreement with the state licensing agency to operate a BEP facility on a temporary basis when a licensed manager or manager trainee is not available.

(35) "Ultimate authority" means the director of DDARS.

(36) "Vocational rehabilitation services" means the unit of vocational rehabilitation established in IC 12-12-1-2(2) as a unit of the rehabilitation services bureau in DDARS.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-2; filed Aug 23, 2001, 2:30 p.m.: 25 IR 62)

460 IAC 2-4-3 State licensing agency functions

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 3. The state licensing agency shall:

(1) have the ultimate responsibility for the administration of the BEP under 20 U.S.C. 107 and IC 12-12-5;

(2) carry out the duties of planning programs and setting policies, standards, and procedures with the active participation of the Indiana committee of licensed managers;

(3) select and develop suitable locations for BEP facilities in properties owned, leased in whole or in part, or operated by:

(A) the United States government;

(B) the state;

(C) a county;

(D) a township;

(E) a city;

(F) a town; or

(G) a private entity;

(4) determine the criteria for suitable locations for BEP facility, with the criteria to include the income potential of potential locations;

(5) designate a specific location or locations as a BEP facility;

(6) take reasonable steps to improve the profitability of each BEP facility, including determining whether other locations or sites should be added as part of the facility;

(7) select and supervise licensed managers for BEP facilities, giving preference to blind persons who are in need of employment;

(8) require that all aspects of a licensed manager's operations, including fiscal matters, are in compliance with business enterprise program rules and procedures;

(9) make suitable BEP equipment and adequate initial stock available to operators;

(10) coordinate the state's business enterprise program with the state's vocational rehabilitation program to provide:

(A) initial training in aspects of BEP facility operation;

(B) upward mobility training, including further education, additional training, or retraining for improved work opportunities; and

(C) services after licensing to assure that the maximum vocational potential of each licensed manager is achieved;

(11) provide access in Braille, large print, recorded tape, or computer disk, if reasonably possible, to all financial data of the state licensing agency relevant to the operation of the business enterprise program, including quarterly and annual financial reports, provided that disclosure does not violate applicable federal or state laws pertaining to the disclosure of confidential information;

(12) develop forms and written procedures necessary to implement and carry out the provisions of this rule;

(13) conduct a biennial election of the Indiana committee of licensed managers, with no direct involvement of staff of the state licensing agency in the outcome of the election process;

(14) meet regularly with the Indiana committee of licensed managers to ensure the committee's active participation regarding major administrative decisions, policy, and program development decisions; and

(15) notify the Indiana committee of licensed managers in writing of decisions made or actions taken that are different from the recommendations of the committee, and the reason for the difference or differences.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-3; filed Aug 23, 2001, 2:30 p.m.: 25 IR 64)

460 IAC 2-4-4 Program participants; nondiscrimination

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107; 34 CFR 395.1

Sec. 4. No licensed manager or manager trainee in, or applicant for, the business enterprise program shall be discriminated against on the basis of sex, age, disability, race, creed, color, national origin, organizational affiliation, or political affiliation. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-4; filed Aug 23, 2001, 2:30 p.m.: 25 IR 64)*

460 IAC 2-4-5 Qualifications of applicant

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 5. In order to be accepted for training in the business enterprise program, an applicant must:

(1) be legally blind;

(2) be at least eighteen (18) years of age;

(3) be a United States citizen;

(4) hold a high school diploma or equivalent;

(5) be a client of vocational rehabilitation services;

(6) be referred for the business enterprise program by vocational rehabilitation services;

(7) have adequate orientation and mobility skills to travel independently;

(8) have skills sufficient to communicate with the public in a courteous manner and the ability to develop and maintain working relationships with others;

(9) be able to maintain required records and reports;
(10) have mathematical skills sufficient to operate a small business; and
(11) have independent daily living skills sufficient to allow the applicant to meet personal care and facility maintenance needs.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-5; filed Aug 23, 2001, 2:30 p.m.: 25 IR 64)

460 IAC 2-4-6 Effect of nonqualification for the business enterprise program

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 4-21.5; IC 12-12-5; 20 U.S.C. 107

Sec. 6. (a) If the state licensing agency determines that an applicant does not meet the qualifications set out in section 5 of this rule and does not accept the applicant as a manager trainee, the provisions in this section apply.

(b) The state licensing agency shall refer the applicant to the office of vocational rehabilitation services for other services.

(c) The state licensing agency shall notify an applicant in writing of the following:
(1) The specific grounds for the agency's determination that the applicant:
(A) does not meet the qualifications set out in section 5 of this rule; and
(B) is not accepted as a manager trainee in the business enterprise program.
(2) The applicant's right to a full evidentiary hearing, under the provisions of IC 4-21.5, the Administrative Orders and Procedures Act, on the agency's determinations upon filing a written request with the deputy director of blind and visually impaired services within fifteen (15) business days of service of the notice.

(d) The applicant has the right to a full evidentiary hearing, under the provisions of IC 4-21.5, the Administrative Orders and Procedures Act, on the state licensing agency's determination that an applicant does not meet the qualifications set out in section 5 of this rule and is not accepted as a manager trainee in the BEP. For purposes of conducting a full evidentiary hearing, the procedures established in sections 29 and 30 of this rule apply; provided, however, that the provisions of section 30(w)(4) of this rule do not apply to this subsection. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-6; filed Aug 23, 2001, 2:30 p.m.: 25 IR 65)*

460 IAC 2-4-7 Manager trainees; training requirements

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 7. (a) Except as provided in section 8 of this rule, a manager trainee must successfully complete training for the BEP before being licensed as a manager.

(b) Training for the BEP includes the following:
(1) Classroom training in the skills necessary for the general operation of any type of BEP facility, including such topics as:
(A) accounting;
(B) banking;
(C) business administration;
(D) cash handling;
(E) communication;
(F) customer service;
(G) machine training;
(H) sanitation;
(I) marketing and inventory control; and
(J) orientation to all types of BEP facility operations.
(2) Training on specific types of BEP facilities.
(3) On-the-job training with a licensed manager or at a facility approved by the state licensing agency.
(4) Training on business enterprise program rules, requirements, policies, and procedures.
(5) Training on the application of federal, state, and local laws relating to operating a facility.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-7; filed Aug 23, 2001, 2:30 p.m.: 25 IR 65)

460 IAC 2-4-8 Waiver or modification of training requirements

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 8. (a) A manager trainee may submit a written request to the state licensing agency for a waiver, in whole or in part, or a modification of the training requirements described in this rule. A manager trainee must also submit supporting documentation required by the state licensing agency.

(b) With the active participation of the Indiana committee of licensed managers, the state licensing agency may waive, in whole or in part, or modify the training requirements for a manager trainee on the basis of the manager trainee's previous work experience, knowledge, skills, or training.

(c) The probationary period for a manager trainee required under section 9 of this rule shall not be waived.

(d) If a manager trainee has received a waiver or modification of training requirements under this section, the manager trainee's ranking on the placement list shall be determined by the date when BVIS received the manager trainee referral from vocational rehabilitation services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-8; filed Aug 23, 2001, 2:30 p.m.: 25 IR 65)*

460 IAC 2-4-9 Manager trainee; probationary period

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 9. (a) A manager trainee must successfully complete a probationary period before being licensed as a manager in the business enterprise program.

(b) The purpose of the probationary period is to improve the performance of the manager trainee by:

(1) assisting the manager trainee to achieve the most effective adjustment to the business enterprise program and to the assigned facility;

(2) assuring that the manager trainee is aware of and complies with:

(A) the rules and requirements of the BEP; and

(B) the terms of the permit for, or the agreement between the state licensing agency and the custodial authority of, the BEP facility to which the manager trainee is assigned;

(3) evaluating the manager trainee's performance in the work setting or at an assigned BEP facility; and

(4) referring a manager trainee in need of other or additional services to the office of vocational rehabilitation services.

(c) The probationary period begins when a manager trainee is placed in a BEP facility.

(d) The probationary period continues for at least ninety (90) calendar days after a manager trainee is placed in a BEP facility. In addition, the state licensing agency may extend the probationary period for a maximum of sixty (60) calendar days in order to:

(1) provide the manager trainee with additional or remedial training; or

(2) achieve any purpose described in subsection (b).

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-9; filed Aug 23, 2001, 2:30 p.m.: 25 IR 65)

460 IAC 2-4-10 Manager trainees; disciplinary procedures

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 10. (a) This section applies to a manager trainee who is:

(1) receiving initial training, including classroom or on-the-job training; or

(2) in the probationary period.

(b) A manager trainee receiving initial training may be subject to disciplinary action as set out in this section for a violation of, or failure to comply with, a written rule or regulation of the training institution.

(c) A manager trainee in the probationary period may be subject to disciplinary action as set out in this section for a violation of, or failure to comply with:

(1) the provisions of this rule applicable to a licensed manager;

(2) the terms of an agreement between the state licensing agency and the manager trainee for operation of a BEP facility; or

(3) the terms of the permit for, or the agreement between the state licensing agency and the custodial authority of, the BEP facility to which the manager trainee is assigned.

(d) Documentation of disciplinary action shall be kept in the individual's personnel file.

(e) Disciplinary actions shall include the following:

(1) Formal counseling.

(2) Written action plan.

(3) Suspension from training.

(4) Termination of training and participation in the BEP.

(f) Disciplinary action will progress through the steps listed in subsection (e) for:

(1) the first violation or noncompliance under subsection (b) or (c);

(2) a failure to correct a violation or noncompliance under subsection (b) or (c); or

(3) a repeated violation or noncompliance under subsection (b) or (c).

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-10; filed Aug 23, 2001, 2:30 p.m.: 25 IR 66)

460 IAC 2-4-11 Termination of manager trainee's participation in the business enterprise program

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 11. (a) The state licensing agency may terminate a manager trainee's participation in the BEP for cause in accordance with 460 IAC 2-4-10 *[section 10 of this rule]***.**

(b) The state licensing agency may terminate a manager trainee's participation in the BEP at any of the following times:

(1) During training.

(2) During the probationary period.

(3) At the end of the probationary period and before licensing.

(c) If the state licensing agency determines that the participation of a manager trainee should be terminated, the following apply:

(1) The state licensing agency shall refer the manager trainee to the office of vocational rehabilitation services for other services.

(2) The state licensing agency shall notify the manager trainee, in writing, of the following:

(A) The specific grounds for the agency's determination that the manager trainee's participation in the BEP should be terminated.

(B) The manager trainee's right to a full evidentiary

hearing on the agency's determination by filing a written request with the deputy director of blind and visually impaired services within fifteen (15) business days of service of the notice.

(3) The manager trainee has the right to a full evidentiary hearing on the state licensing agency's determination that the manager trainee's participation in the BEP should be terminated.

(4) For purposes of conducting a full evidentiary hearing, the procedures established in sections 29 and 30 of this rule apply; provided, however, that the provisions of section 30(w)(4) of this rule do not apply to this section.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-11; filed Aug 23, 2001, 2:30 p.m.: 25 IR 66)

460 IAC 2-4-12 Issuance of license

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 12. (a) The state licensing agency shall issue a license to a manager trainee in the BEP who has successfully completed training and a probationary period.

(b) Upon licensing, a manager trainee becomes a licensed manager in the BEP.

(c) A license is issued for an indefinite period of time, but is subject to suspension or termination, after affording the licensed manager an opportunity for a full evidentiary hearing, except as provided in section 24 of this rule.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-12; filed Aug 23, 2001, 2:30 p.m.: 25 IR 67)

460 IAC 2-4-13 Determination of visual status

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 13. (a) The state licensing agency has the right to request and to obtain from a licensed manager periodic visual evaluations in order to determine continuing compliance with visual requirements.

(b) Agency request for current evidence of visual status include the following:

(1) Upon the written request of the state licensing agency, a licensed manager must provide the state licensing agency with current ophthalmologic or optometric evidence documenting the manger's visual status within sixty (60) days of the agency's request. As used in this subdivision, "current" means evidence of an examination no more than six (6) months old from the date of submitting the evidence to the state licensing agency.

(2) A licensed manager who does not provide the requested ophthalmologic or optometric evidence is presumed not to be legally blind. Action must be taken under section 20(b)(1) of this rule to terminate the manager's license.

(3) If a licensed manager is determined to be not legally blind on the basis of the submitted evidence, action must be taken under section 20(b)(1) of this rule to terminate the manager's license.

(4) A licensed manager shall pay the cost of obtaining ophthalmologic or optometric evidence required by this subsection.

(5) A licensed manager may enter as an allowable expense on the monthly financial report submitted to the state licensing agency, the cost of obtaining ophthalmologic or optometric evidence required by this subsection.

(c) The agency's right to obtain a second opinion as to visual acuity includes the following:

(1) Upon the written request of the state licensing agency, a licensed manager must submit to a visual acuity examination by an optometrist or physician selected by the state licensing agency, if the agency has information that a manager's vision has improved or does not meet the requirements of section 2(18) of this rule.

(2) The cost of an examination under this subsection shall be paid by the state licensing agency.

(3) A copy of all records of an examination under this subsection shall be provided to the licensed manager.

(4) If a licensed manager is determined to be not legally blind after an examination under this subsection, the provisions of section 20(b)(1) of this rule apply.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-13; filed Aug 23, 2001, 2:30 p.m.: 25 IR 67)

460 IAC 2-4-14 Selection of business enterprise program facility locations

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 14. (a) Determination of BEP facility locations include the following:

(1) The state licensing agency may establish a BEP facility at a particular location only if establishment of a facility at that location is likely to:

(A) contribute to the development of significant economic opportunities for blind persons; and

(B) provide for the productive use of program assets.

(2) The state licensing agency's determination under subsection (a) shall be made on the basis of an evaluation of relevant factors in a survey of the location. Factors to be evaluated include the following:

(A) Population.

(B) Traffic.

(C) Competition.

(D) Continued availability of the location.

(E) Type of premises.

(F) Potential return on investment.

(b) If the sales productivity of a BEP facility is adversely affected by factors beyond the control of the state licensing

agency or of the operator, the state licensing agency must review and determine whether the location remains suitable for a BEP facility or for the current type of operation. The state licensing agency shall evaluate all relevant factors, including those set out in subsection (a)(2) in a review of the location. On the basis of this review, the state licensing agency may close a BEP facility or convert the existing facility to another type of operation. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-14; filed Aug 23, 2001, 2:30 p.m.: 25 IR 67)*

460 IAC 2-4-15 Assignment of a business enterprise program facility

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 15. (a) The assignment of a BEP facility shall be made by the state licensing agency with the active participation of the Indiana committee of licensed managers. A bidding process is used to promote upward mobility and to assign available BEP facilities.

(b) When a BEP facility becomes available, the state licensing agency will solicit bids for the facility from eligible persons on the placement list.

(c) Except as provided in subsection (d), the following persons will be placed on the placement list for the assignment of an available BEP facility and are eligible to bid for an available BEP facility:

(1) A licensed manager who has been operating the manager's current BEP facility for a minimum of one (1) year as of the date the bid on an available facility is due.

(2) A manager trainee who has successfully completed the training specified at section 7 of this rule, subject to the provisions of section 8 of this rule.

(3) A licensed manager who submits a letter requesting placement to the state licensing agency during an approved leave of absence.

(d) The following persons will not be placed on the placement list for the assignment of an available BEP facility and are not eligible to bid for an available BEP facility:

(1) A licensed manager who has been operating the manager's current BEP facility for less than one (1) year as of the date the bid on an available facility is due.

(2) A licensed manager or manager trainee who:

(A) accepts the award or assignment of a BEP facility; and

(B) subsequently refuses placement at, or withdraws acceptance of the award or assignment of, that BEP facility;

is not eligible to bid for another BEP facility for a period of one (1) year from the date of acceptance; provided, however, that a licensed manager or manager trainee who has been awarded and has accepted a BEP facility, but who has not been placed in that facility through no fault of his or her own, will be placed on the placement list and is eligible to bid on an available BEP facility.

(e) Eligible bidders shall be evaluated by the state licensing agency, with the active participation of the Indiana committee of licensed managers, according to the following criteria and scoring system:

(1) Fifty percent (50%) of the bidder's seniority as defined in section 2(31) of this rule.

(2) Add twenty-five percent (25%) of the bidder's seniority if, during the ten (10) month period ending on the date the bid is due:

(A) the bidder has not been on a disciplinary action plan; or

(B) the bidder's license has not been suspended.

(3) Add one percent (1%) of the bidder's seniority for any monthly financial report that is submitted to the state licensing agency when due during the ten (10) month period ending on the date the bid is due, for a maximum addition of ten percent (10%) of the bidder's seniority.

(4) Add ten percent (10%) of the bidder's seniority if, during the ten (10) month period ending on the date the bid is due:

(A) the custodial authority of the bidder's BEP facility has not made a written complaint to the state licensing agency or to BVIS concerning the operations of the bidder's BEP facility; or

(B) all of the following have occurred:

(i) The custodial authority of the bidder's BEP facility has made a written complaint to the state licensing agency or to BVIS alleging that the bidder has violated the terms of the permit, or contract between the custodial authority and the state licensing agency, for the bidder's BEP facility.

(ii) The state licensing agency or BVIS has given the bidder written notice of the complaint.

(iii) The bidder has corrected, or taken reasonable steps to correct, the alleged violation.

(iv) The state licensing agency or BVIS has given the bidder written notice that the problem has been corrected or resolved, or in the alternative, the state licensing agency or BVIS has not taken disciplinary action against the bidder as a result of the complaint.

(5) Add five percent (5%) of the bidder's seniority if the bidder has attended or participated in a training activity or conference sponsored in whole or in part, or approved in advance, by the state licensing agency during the ten (10) month period ending on the date the bid is due.

(f) The state licensing agency or BVIS shall offer the assignment of the facility to the eligible bidder with the highest numeric score. The state licensing agency or BVIS shall notify the successful bidder in writing of the offer of an available facility position to that bidder. By 3 p.m. on the

tenth business day after receipt of the agency's letter, the successful bidder must notify the state licensing agency or BVIS, in writing, that the offer is accepted or refused. Refusal of an offer is final and irrevocable. A failure to respond within the required time period is deemed a refusal of an offer.

(g) If the bidder with the highest numeric score does not accept the assignment of the facility, the state licensing agency or BVIS shall continue to offer the assignment of the facility to eligible bidders in declining numeric order from the highest numeric score until:

(1) an eligible bidder accepts the assignment; or

(2) all eligible bidders have been offered the assignment.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-15; filed Aug 23, 2001, 2:30 p.m.: 25 IR 68)

460 IAC 2-4-16 Temporary operators; assignment of temporary location

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 16. (a) The state licensing agency, with the active participation of the Indiana committee of licensed managers, may place a temporary operator in a BEP facility under any of the following circumstances:

(1) No eligible person bids on a BEP facility.

(2) No eligible person accepts the assignment of a BEP facility.

(3) An operator for a BEP facility is not otherwise available.

(b) If a BEP facility is temporarily not assigned to a licensed manager or manager trainee, or if a temporary operator is needed for a BEP facility, the following priorities will be used in assigning a temporary operator to the facility:

(1) A licensed manager displaced from the manager's facility through no fault of the manager, for example, due to the permanent or temporary closing of a BEP facility, is given first priority on any unassigned temporary location. If more than one (1) displaced licensed manager is eligible, selection will be based on seniority.

(2) If a displaced licensed manager is not available for placement or does not accept the placement, the location will be offered next to eligible manager trainees. If more than one (1) manager trainee is eligible, the manager trainee with the most seniority will be selected.

(3) If a manager trainee is not available for placement or does not accept the placement, the location will be offered next to the licensed manager whose legal residence is closest in physical proximity to the unassigned temporary location. If more than one (1) licensed manager meets the proximity requirement, the licensed manager with the most seniority will be selected.

(4) In selecting a temporary operator, the state licensing agency shall give priority to qualified blind persons. A qualified sighted person may be placed as a temporary operator only after the state licensing agency determines that a qualified blind person is not available.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-16; filed Aug 23, 2001, 2:30 p.m.: 25 IR 69)

460 IAC 2-4-17 Operator agreement

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 17. An operator must enter into a written agreement with the state licensing agency for the operation of an assigned BEP facility. A new agreement must be executed each time an operator moves or transfers to another BEP facility. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-17; filed Aug 23, 2001, 2:30 p.m.: 25 IR 69)*

460 IAC 2-4-18 Leave of absence

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 18. (a) A licensed manager may request and take an approved leave of absence for a period up to twenty-four (24) months for the following purposes:

(1) Medical leave for a licensed manager's own serious health condition that prevents the licensed manager from performing any of the essential functions at the manager's assigned BEP facility.

(2) Medical leave to care for the licensed manager's spouse, parent, child, or other legal dependent, who has a serious health condition and who is dependent on the manager for care.

(3) Leave in conjunction with the birth or placement of a child for adoption or foster care, as long as the leave concludes within twelve (12) months following the birth or placement.

(4) Vision rehabilitation.

(b) At least fifteen (15) business days in advance, the licensed manager shall submit a written notice to the state licensing agency of the following:

(1) Manager's intent to take a leave of absence.

(2) The purpose of the leave.

(3) The dates and expected duration of the leave.

If fifteen (15) business days' notice is not possible, the manager shall give notice as soon as practicable. The state licensing agency shall send a written response to the manager and shall indicate whether the leave is approved as requested. Upon request from the state licensing agency, the licensed manager shall provide medical documentation of the need for the leave and concerning the duration of the leave.

(c) If a leave of absence is for six (6) months or less, a licensed manager has the right to retain the assigned BEP facility throughout the period of the leave. A licensed

manager must select an individual, approved in advance by the state licensing agency, to operate the facility in the manager's absence. During the leave, the licensed manager shall remain responsible for the submission of monthly reports and all related duties of the licensed manager. If the licensed manager requests an extension of a leave beyond six (6) months from the beginning of the approved leave, the provisions of subsection (d) shall apply.

(d) Leave of absence for a period greater than six (6) months and up to two (2) years. If the leave of absence is for a period greater than six (6) months, a licensed manager shall not have the right to retain the manager's assigned BEP facility, and the following requirements apply:

(1) The state licensing agency shall assign a temporary operator to the BEP facility until the bidding and assignment process set out in section 15 of this rule is completed.

(2) At any time before the end of an approved leave period, the licensed manager may submit to the state licensing agency a written request for reinstatement in the business enterprise program and for assignment to a BEP facility. At the manager's written request, the state licensing agency shall place the licensed manager's name on the placement list for assignment to an available BEP facility.

(3) The licensed manager must notify the state licensing agency, in writing, at least thirty (30) days before the end of the approved leave period of the following:

(A) That the manager requests to be placed on the placement list for assignment to a BEP facility.

(B) That the manager does not wish to participate in the business enterprise program and agrees to the termination of the manager's license.

(e) The manager's license may be suspended for thirty (30) days according to disciplinary procedures under any of the following circumstances:

(1) The manager fails to return to the facility upon completion of the leave.

(2) The manager fails to comply with subsection (d)(3).

(3) The manager fails to obtain prior approval from the state licensing agency for a leave extension allowable under this section.

(f) The state licensing agency may require specific training of a licensed manager upon returning from a leave of absence of one (1) year or more.

(g) After a leave of absence, a licensed manager requesting assignment to a BEP facility may request additional training, subject to the provisions of section 19 of this rule concerning continuing education. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-18; filed Aug 23, 2001, 2:30 p.m.: 25 IR 69)*

460 IAC 2-4-19 Continuing education

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 19. (a) In-service training activities will be conducted for licensed managers to:

(1) develop business management and marketing skills; and

(2) enhance their ability to run a profitable facility.

(b) Training requests may be approved by the state licensing agency based on:

(1) the availability of training resources; and

(2) a licensed manager's need to receive requested training.

(c) If training is provided to a licensed manager at the manager's request, the licensed manager has the right to retain the assigned BEP facility upon the completion of training.

(d) Specific training may be required of the licensed manager in any of the following situations:

(1) The assigned BEP facility changes or expands to include management responsibilities in which the licensed manager is not qualified or has not had experience or training within the past one (1) year period.

(2) Equipment is placed in the location with which the licensed manager has had no training or experience within the past one (1) year period.

(3) A licensed manager is transferred to a new location that includes management responsibilities in which the licensed manager has not had experience within the past one (1) year period.

(4) A licensed manager returns from a leave of absence of one (1) year or more.

(5) Training is required by the state licensing agency under a written action plan.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-19; filed Aug 23, 2001, 2:30 p.m.: 25 IR 70)

460 IAC 2-4-20 Termination of manager's license

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 20. (a) A manager's license terminates automatically, without further notice, if any of the following occur:

(1) Death of a licensed manager.

(2) A licensed manager's resignation or withdrawal from the business enterprise program.

(3) A licensed manager's retirement from the business enterprise program.

(b) A manager's license will be terminated if:

(1) the manager's vision improves to the extent that the manager is no longer legally blind; or

(2) extended illness or incapacity of the manager prevents the manager's personal operation of the facility, when

there is no reasonable expectation, based on medical evidence, that the manager will be able to return to work.

(c) A manager's license may be terminated for cause as set out in section 27 of this rule. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-20; filed Aug 23, 2001, 2:30 p.m.: 25 IR 70)*

460 IAC 2-4-21 Disciplinary procedures for licensed managers

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 21. (a) Disciplinary actions shall include the following:
(1) Formal counseling.
(2) Written action plan.
(3) Immediate suspension without notice.
(4) Disciplinary suspension.
(5) Loss of assigned BEP facility.
(6) Termination of license.

(b) At any time discipline is imposed, a licensed manager shall be informed of the right to file a grievance under section 28 of this rule.

(c) Except as provided in section 24 of this rule (immediate suspension), a licensed manager shall be advised of the opportunity for a full evidentiary hearing before:
(1) disciplinary suspension;
(2) loss of the manager's facility; or
(3) termination of the manager's license.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-21; filed Aug 23, 2001, 2:30 p.m.: 25 IR 71)

460 IAC 2-4-22 Disciplinary procedures; formal counseling

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 22. (a) Formal counseling is a discussion, in person or by telephone, between a licensed manager and a business counselor or other staff of the state licensing agency. The discussion must be documented, in writing, in the state licensing agency's file for the manager.

(b) In formal counseling, a licensed manager will be advised of the following:
(1) That the discussion is a formal counseling session under the state licensing agency disciplinary procedures.
(2) The specific nature of the action or violation complained of.
(3) The corrective action required.
(4) The date when corrective action must be completed.
(5) The consequences of failure to comply with corrective action.
(6) The consequences of repeated violation.

(c) Formal counseling shall be used for the first violation of a rule, policy, or the terms of an agreement or permit for a BEP facility, except for any of the following, for which a higher level of discipline may result:
(1) The state licensing agency reasonably determines that public health, safety, or welfare is in danger due to the manager's operations.
(2) The state licensing agency reasonably determines that the permit for a BEP facility is in jeopardy due to the manager's operations.
(3) The state licensing agency reasonably determines that a BEP facility contract between the custodial authority of the facility and the state licensing agency is in jeopardy due to the manager's operations.

(d) The state licensing agency staff member conducting a formal counseling session shall send a written report of the session to the licensed manager. The report shall be in an accessible format designated by the licensed manager. The report shall include the information required in subsection (b). A copy of the report will be kept in the manager's file in the state licensing agency.

(e) A licensed manager shall have the right to submit written comments regarding the report to the state licensing agency. If the manager does so, the written comments will be kept in the manager's file in the state licensing agency.

(f) An action or violation that results in formal counseling may be the basis for a written action plan if the action or violation:
(1) is not corrected as requested in the formal counseling report; or
(2) that is the basis for formal counseling is repeated.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-22; filed Aug 23, 2001, 2:30 p.m.: 25 IR 71)

460 IAC 2-4-23 Disciplinary procedures; written action plan

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 23. (a) A written action plan must notify a licensed manager of the following:
(1) The specific nature of the action or violation complained of.
(2) The corrective action required.
(3) The date for completing corrective action.
(4) The consequence of failure to correct the problem.
(5) The consequence of a repeated violation.

(b) A written action plan shall be presented to a licensed manager in a meeting between the licensed manager and a business counselor or the business enterprise program director of the state licensing agency. The licensed manager may be represented at this meeting at the manager's expense.

(c) The licensed manager will be required to correct the action or violation within a specific, reasonable time period.

(d) The licensed manager must remain free of the action or violation complained of in the written action plan for a period of one hundred eighty (180) days from the date in the action plan when corrective action must be completed.

(e) A licensed manager who receives three (3) written action plans within a twelve (12) month period may be subject to disciplinary suspension.

(f) An action or violation that results in an action plan may be the basis for disciplinary suspension if the action or violation is:

(1) not corrected in accordance with the action plan; or

(2) repeated or occurs again.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-23; filed Aug 23, 2001, 2:30 p.m.: 25 IR 71)

460 IAC 2-4-24 Disciplinary procedures; immediate suspension

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 4-21.5-4; IC 12-12-5; 20 U.S.C. 107

Sec. 24. (a) The state licensing agency may seek from the director of the division the authority, pursuant to IC 4-21.5-4, to immediately suspend an operator agreement between the state licensing agency and a licensed manager, without a hearing prior to suspension, if the state licensing agency reasonably determines that:

(1) the public health, safety, or welfare is in danger due to the manager's operations;

(2) the permit for the BEP facility is in jeopardy due to the manager's operations;

(3) the BEP facility contract between the custodial authority of the facility and the state licensing agency is in jeopardy due to the manager's operations; or

(4) a licensed manager has abandoned the manager's assigned BEP facility.

(b) Pursuant to such authorization, the licensed manager's operation of the facility shall be suspended immediately. The manager shall cease operation of the facility during the period of suspension. The operation of the facility shall continue under the authority of the state licensing agency.

(c) The state licensing agency shall promptly notify the licensed manager of the immediate suspension of the operator agreement by certified mail or personal service. The notice of suspension shall inform the licensed manager of the following:

(1) The effective date of the suspension.

(2) The duration of the suspension.

(3) The violation or action that is the basis for the suspension.

(4) The consequence of failure to correct the violation or action after the suspension.

(5) The consequence of a repeated violation after the suspension.

(6) The manager's right to:

(A) file a grievance or to appeal the state licensing agency's action; and

(B) a full evidentiary hearing.

(d) An immediate inventory of all stock, equipment, and documents shall be taken and recorded. The state licensing agency shall provide a copy of the inventory to the manager whose operator agreement has been suspended.

(e) The state licensing agency, with the active participation of the Indiana committee of licensed managers, shall select and place a temporary operator in the facility. The costs of a temporary operator will be charged to, and paid from, the facility's gross sales.

(f) The net proceeds from the facility shall be paid on a monthly basis to the manager whose operator agreement has been suspended.

(g) After an immediate suspension of an operator agreement under this section, the manager shall have the right to a full evidentiary hearing under section 30 of this rule. To exercise that right, the manager must file a written request with the director of the division for a full evidentiary hearing. The written request must be filed within fifteen (15) business days after service of the written notice of immediate suspension of the operator agreement.

(h) If an immediate suspension under this section is found to be contrary to law after a full evidentiary hearing and after formal administrative review is complete, the licensed manager shall be reimbursed for the costs of the temporary operator.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-24; filed Aug 23, 2001, 2:30 p.m.: 25 IR 72)

460 IAC 2-4-25 Disciplinary procedures; disciplinary suspension

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 25. (a) Disciplinary suspension of a licensed manager's operation of an assigned BEP facility for a minimum of thirty (30) calendar days may result from any of the following:

(1) Failure to comply with a written action plan.

(2) An action or a violation that is the basis of a written action plan is repeated following the written action plan.

(3) A licensed manager receives three (3) action plans within a period of twelve (12) months.

(4) A licensed manager is imprisoned after conviction of a criminal offense.

(5) A licensed manager fails, without reasonable justification, to:

(A) give the notice required section 18 of this rule, regarding the end of a leave of absence;

(B) return to the manager's facility upon completion of an approved leave of absence; or

(C) obtain prior approval from the state licensing agency for an extension of a leave of absence allowable under section 18 of this rule.

(b) The state licensing agency shall promptly notify by certified mail or personal service a licensed manager whose license is proposed to be suspended. The notice of proposed suspension shall inform the licensed manager of the following:

(1) The action or violation that forms the basis for the proposed suspension.

(2) The duration of the proposed suspension.

(3) The consequence of a failure to correct the violation or action after the proposed suspension.

(4) The consequence of repeated violations after the proposed suspension.

(5) The manager's right to a full evidentiary hearing before suspension of the manager's license.

(c) Except as provided in section 24 of this rule (immediate suspension without notice), a licensed manager must be afforded an opportunity for a full evidentiary hearing before suspension of the manager's license.

(d) If a licensed manager's operations are suspended after a full evidentiary hearing, the manager shall cease operation of the facility during the period of suspension. The operation of the facility shall continue under the authority of the state licensing agency.

(e) An immediate inventory of all stock, equipment, and documents shall be taken and recorded. The state licensing agency shall provide the suspended manager with a copy of the inventory.

(f) The state licensing agency, with the active participation of the Indiana committee of licensed managers, shall select and place a temporary operator in the facility. The costs of a temporary operator will be charged to, and paid by, the suspended manager from the facility's gross sales.

(g) The net proceeds from the facility shall be paid to the suspended manager on a monthly basis. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-25; filed Aug 23, 2001, 2:30 p.m.: 25 IR 72)*

460 IAC 2-4-26 Disciplinary procedures; loss of facility

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 26. (a) A licensed manager shall lose the manager's assigned BEP facility, and the facility agreement between the manager and the state licensing agency shall be terminated and canceled, if any of the following occurs:

(1) An action or violation resulted in a suspension and was not corrected.

(2) An action or violation resulted in a suspension, and the action or violation was repeated.

(3) A licensed manager has a repeated violation or failure to comply with the terms of a:

(A) permit for a BEP facility assigned to the licensed manager; or

(B) contract between the state licensing agency and the custodial authority of a BEP facility assigned to the licensed manager.

(b) The state licensing agency shall promptly notify a licensed manager by certified mail or personal service if the agency proposes to terminate the manager's operations in the manager's assigned BEP facility under this section. The notice of proposed loss of facility shall inform the licensed manager of the following:

(1) The action or violation that forms the basis for the proposed loss of the manager's assigned BEP facility.

(2) The consequence of a repeated violation after the manager's loss of the assigned BEP facility.

(3) The manager's right to a full evidentiary hearing before loss of the manager's assigned BEP facility.

(c) A licensed manager must be afforded an opportunity for a full evidentiary hearing before loss of the assigned BEP facility under this rule.

(d) The loss of a facility by a licensed manager under this section shall not restrict the manager from bidding on another available facility; however, the manager shall not be awarded the facility that was lost under this section. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-26; filed Aug 23, 2001, 2:30 p.m.: 25 IR 73)*

460 IAC 2-4-27 Disciplinary procedures; termination of license

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 27. (a) The state licensing agency may terminate a manager's license for any of the following reasons:

(1) An action or violation that resulted in a loss of a licensed manager's BEP facility is not corrected.

(2) An action or violation that resulted in a loss of a licensed manager's BEP facility is repeated.

(3) Violation of the BEP facility agreement between the state licensing agency and a licensed manager.

(4) Violation of the terms of the permit issued to the state licensing agency by the custodial authority of the BEP facility for the manager's assigned BEP facility.

(5) Violation of the terms of the BEP facility agreement

between the state licensing agency and the custodial authority of the BEP facility for the manager's assigned BEP facility.
(6) Violation of this rule.
(7) Inability of a licensed manager to substantially comply with this rule for any reason.
(8) Conviction of a felony or misdemeanor that involves fraud, deceit, or misrepresentation.
(9) Continuing violation of state or local government health codes or laws, or failure to correct a violation of the health codes or laws.

(b) The state licensing agency shall promptly notify a licensed manager of a proposed license termination by certified mail or personal service. The notice shall inform a licensed manager of the following:
(1) The action or violation that is the basis for the proposed termination.
(2) The licensed manager's right to a full evidentiary hearing before termination of the manager's license.

(c) A licensed manager will be afforded an opportunity for a full evidentiary hearing before termination of the manager's license.

(d) If a manager's license is terminated, the state licensing agency shall refer the manager to the office of vocational rehabilitation services for other services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-27; filed Aug 23, 2001, 2:30 p.m.: 25 IR 73)*

460 IAC 2-4-28 Grievance procedures for licensed managers
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 4-21.5-5; IC 12-12-5; 20 U.S.C. 107

Sec. 28. (a) At the time of licensing, a manager shall be informed of the right to, and the procedures for obtaining, administrative review, including a full evidentiary hearing, regarding a decision of the state licensing agency. A licensed manager shall be given access to this information in the manager's choice of Braille, large print, computer disk, or recorded tape.

(b) If a licensed manager disagrees with an action taken by the state licensing agency arising from the operation or administration of the BEP facility program, the licensed manager may file a written grievance with the deputy director of blind and visually impaired services within fifteen (15) business days of notification of the agency action complained of. The grievance must be filed in accordance with the procedures established in this section.

(c) Upon receiving a written grievance, the deputy director of blind and visually impaired services shall conduct informal administrative review under section 29 of this rule.

(d) If the aggrieved party is dissatisfied with the outcome of informal administrative review, the aggrieved party may file a written request with the director of DDARS for a full evidentiary hearing. The written request must be filed within fifteen (15) business days after service of the written notice of the decision from informal administrative review. The hearing must be held before an impartial hearing officer appointed by the director or the director's delegate. The hearing officer shall conduct proceedings under IC 4-21.5 and file a recommended order with the parties and the director of DDARS under section 30 of this rule.

(e) If a party is dissatisfied with the recommended order of a hearing officer, a party may file written objections with the director of DDARS within fifteen (15) business days of service of the hearing officer's recommended order. The director shall conduct proceedings and enter a final order under section 30 of this rule.

(f) If the aggrieved party is dissatisfied with the final order of the director of DDARS under subsection (e), the aggrieved party may either:
(1) request that an arbitration panel be convened by filing a written complaint with the secretary of the United States Department of Education, as authorized by 20 U.S.C. 107d-1 and 34 CFR 395.13; or
(2) seek judicial review of the final order under IC 4-21.5-5.

(g) This section applies only to licensed managers. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-28; filed Aug 23, 2001, 2:30 p.m.: 25 IR 74)*

460 IAC 2-4-29 Informal administrative review
Authority: IC 12-8-8-4 IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 29. (a) A licensed manager may file a written grievance with the deputy director of blind and visually impaired services within fifteen (15) business days of notification of the agency action complained of. The deputy director or deputy director's designee must hold an informal conference with the licensed manager within fifteen (15) business days of the receipt of the request, or within such other period of time agreed to by the licensed manager and the deputy director.

(b) Transportation, reader, or other communication services, if needed and requested, must be arranged for the licensed manager by the state licensing agency.

(c) The deputy director of blind and visually impaired services, or the deputy director's designee, shall file a written decision from the informal conference on the licensed manager within ten (10) business days of the conference.

(d) If the licensed manager disagrees with the written

decision from the informal conference with the deputy director of blind and visually impaired services, or the deputy director's designee, the licensed manager may request a full evidentiary hearing. The request must be:

(1) made in writing; and

(2) filed with the director of DDARS within fifteen (15) days after service of the deputy director's decision in subsection (c).

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-29; filed Aug 23, 2001, 2:30 p.m.: 25 IR 74)

460 IAC 2-4-30 Formal administrative review; full evidentiary hearing procedures

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 4-21.5-3; IC 12-8-8-5; IC 12-12-5; 20 U.S.C. 107

Sec. 30. (a) This section controls proceedings governed by IC 4-21.5 for which the director of DDARS is the ultimate authority.

(b) An affected person who is aggrieved by a determination of the deputy director of BVIS, or the deputy director's delegate, under section 29 of this rule may request formal administrative review and a full evidentiary hearing under IC 4-21.5 and this rule.

(c) The director of DDARS is the ultimate authority for the state licensing agency and DDARS under IC 4-21.5, under IC 12-8-8-5.

(d) As soon as practicable after the initiation of administrative review under this subsection, the director of DDARS shall appoint a hearing officer to conduct proceedings under IC 4-21.5 and this rule. The hearing officer shall be an impartial and qualified person who has no involvement either with the agency action at issue in the proceeding or with the administration or operation of the state licensing agency.

(e) A licensed manager has the right to be represented by counsel at the manager's own expense.

(f) Transportation, reader, or other communication services, if needed and requested, must be arranged for the licensed manager by the state licensing agency.

(g) The hearing shall be held during regular business hours at the state licensing agency, or at such other location as the parties agree. The hearing shall be open to the public.

(h) The hearing officer shall notify the parties, in writing, of the time and place of the hearing. The hearing officer shall also notify the licensed manager of the manager's right to be represented by counsel at his or her own expense.

(i) If the issues in the proceeding are not otherwise resolved, the hearing officer shall conduct a full evidentiary hearing. The hearing officer shall govern the conduct of a hearing and the order of proof.

(j) The hearing officer shall avoid delay, maintain order, and make sufficient record of the proceedings for a full and true disclosure of the facts and issues. To accomplish these ends, the hearing officer shall have all powers authorized by law and may make all procedural and evidentiary rulings necessary for the conduct of the hearing. Unless inconsistent with IC 4-21.5 or this rule, the hearing officer may apply the Indiana Rules of Trial Procedure or the Indiana Rules of Evidence.

(k) Both the licensed manager and the state licensing agency are entitled to present oral or documentary evidence, to submit rebuttal evidence, and to conduct such examination and cross-examination of witnesses as may be necessary for a full and true disclosure of all facts bearing on the issues.

(l) All papers and documents introduced into evidence at the hearing shall be filed with the hearing officer at the hearing, and a copy shall be provided to the other party. All such documents and other evidence submitted shall be open to examination by the parties, and opportunities shall be given to refute facts and arguments advanced on either side of the issues.

(m) A transcript shall be made of the oral evidence and shall be made available to the parties. The state licensing agency shall pay all transcript costs and shall provide the manager with one (1) copy of the transcript.

(n) The record required to be kept by a hearing officer under IC 4-21.5-3-14 commences when a proceeding is initiated and includes the items described in IC 4-21.5-3-33.

(o) The hearing officer shall issue a written recommended order within thirty (30) business days after the receipt of the official transcript. The recommended order shall be mailed promptly to the licensed manager, the state licensing agency, and the ultimate authority of the agency.

(p) The recommended order of the hearing officer shall set forth the principal issues and relevant facts adduced at the hearing, and the applicable provisions in law, regulation, and agency policy. The order and decision shall contain findings of fact and conclusions with respect to each of the issues, and the reasons and basis therefor. The decision shall also set forth any remedial action necessary to resolve the issues in dispute.

(q) Subject to the provisions of subsections (s) through (u), after a hearing officer issues a recommended order under this section, the director or the director's designee

shall issue a final order within thirty (30) business days. The final order shall:

(1) affirm;

(2) modify; or

(3) dissolve;

the hearing officer's order. The director or the director's designee may remand the matter, with or without instructions, to the hearing officer for further proceedings.

(r) In the absence of a party's objection or notice from the director of intent to review any issue related to the order under subsection (s) or (t), the director or the director's designee shall affirm the order.

(s) To preserve an objection to an order of a hearing officer for judicial review, a party who is dissatisfied with the order must not be in default under IC 4-21.5 and must object to the order, in writing, that:

(1) identifies the basis of the objection with reasonable particularity; and

(2) is filed with the director responsible for reviewing the order within fifteen (15) days after the order is served on the party.

(t) If an objection is filed, the director of DDARS or the director's designee will conduct proceedings to issue a final order. In these proceedings, the director or the director's designee shall afford each party an opportunity to present briefs. The director or the director's designee may:

(1) afford each party an opportunity to present oral argument;

(2) exercise the powers of a hearing officer to hear additional evidence under IC 4-21.5-3-25 and IC 4-21.5-3-26; or

(3) allow nonparties to participate in the proceeding in accordance with IC 4-21.5-3-25.

(u) If no objection to the order of the hearing officer is filed, the director of DDARS or the director's designee may serve written notice of the director's intent to review any issue related to the order within thirty (30) days of service of the hearing officer's recommended order. The notice shall be served on all parties. The notice must identify the issues that the director or the director's designee intends to review. In these proceedings, the director or the director's designee shall afford each party an opportunity to present briefs. The director or the director's designee may:

(1) afford each party an opportunity to present oral argument;

(2) exercise the powers of a hearing officer to hear additional evidence under IC 4-21.5-3-25 and IC 4-21.5-3-26; or

(3) allow nonparties to participate in the proceeding in accordance with IC 4-21.5-3-25.

(v) A final order disposing of the proceeding, or an order remanding an order to the hearing officer for further proceedings shall be issued within thirty (30) days after the latter of:

(1) the date that the hearing officer's order was issued;

(2) the receipt of briefs or written comments; or

(3) the close of oral arguments.

After remand of an order to a hearing officer under this subsection, the hearing officer's subsequent order is also subject to review under this section.

(w) The final order of the director of DDARS or the director's designee must:

(1) identify any differences between the director's final order and the recommended order issued by the hearing officer;

(2) include findings of fact or incorporate the findings of fact in the hearing officer's recommended order by express reference to the recommended order;

(3) inform a licensed manager that, if the licensed manager is dissatisfied with the final order issued by the director of DDARS or the director's designee, the licensed manager may request that an arbitration panel be convened by filing a complaint with the Secretary of the Department of Education, as authorized by 20 U.S.C. 107d-1 and 34 CFR 395.13; and

(4) inform a party of the right to seek judicial review of the final order pursuant to IC 4-21.5-5.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-30; filed Aug 23, 2001, 2:30 p.m.: 25 IR 75)

460 IAC 2-4-31 Business enterprise program facility equipment and inventory

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 31. (a) Requirements concerning inventory and equipment are as follows:

(1) Start-up inventory purchased by the state licensing agency as part of the vocational rehabilitation plan is the property of the licensed manager.

(2) The state is the owner of the BEP facility equipment purchased by the state licensing agency for BEP facilities under 20 U.S.C. 107b and 34 CFR 395.4.

(3) The use of BEP equipment is limited to the purposes designated by the state licensing agency for the business enterprise program.

(b) Requirements for the repair of facility equipment are as follows:

(1) A licensed manager is responsible for the periodic maintenance of equipment furnished by the state licensing agency and shall provide the care necessary to maintain the equipment in good condition and repair, excluding ordinary wear.

(2) A licensed manager who fails to maintain the BEP facility and equipment in good repair will be subject to disciplinary action.

(3) The state licensing agency shall give written notice to a licensed manager to perform or to make arrangements for, necessary maintenance or repairs within a specific, reasonable period of time. If the manager does not comply with the notice, the state licensing agency shall make arrangements for necessary maintenance or repairs.

(4) If the state licensing agency has arranged for necessary maintenance or repairs under subdivision (3), the licensed manager shall reimburse the state for the costs thereof within:

(A) thirty (30) days of the manager's receipt of the bill; or

(B) a longer time period agreed to by the licensed manager and the state licensing agency.

(c) Requirements for the replacement of facility equipment are as follows:

(1) The state licensing agency will replace worn out, severely damaged, or obsolete equipment in a BEP facility, subject to the requirements of subdivision (2).

(2) Replacement of equipment described in subdivision (1) will be based on consideration of all of the following criteria:

(A) The need for equipment replacement as determined by the state licensing agency.

(B) If requested, the manager's providing the state licensing agency with written documentation of the need for equipment replacement.

(C) A request from the custodial authority of the BEP facility.

(D) The approval of the custodial authority of the BEP facility if the equipment is not listed among the equipment allowed under the permit for the facility or the contract between the state licensing agency and the custodial authority.

(E) The availability of funding.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-31; filed Aug 23, 2001, 2:30 p.m.: 25 IR 76)

460 IAC 2-4-32 Relocation, installation, renovation of a business enterprise program facility

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 32. (a) The installation, modification, relocation, removal, or renovation of a BEP facility shall be subject to the prior approval and supervision of the state licensing agency and the custodial authority responsible for the property on which the facility is located, in consultation with the licensed manager.

(b) The cost of relocation initiated by the state licensing agency shall be paid by the state licensing agency.

(c) The cost of relocation initiated by the custodial authority shall be paid by that entity, subject, however, to the terms of the permit for the BEP facility, or to the terms of the facility agreement entered into by the custodial authority and the state licensing agency. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-32; filed Aug 23, 2001, 2:30 p.m.: 25 IR 77)*

460 IAC 2-4-33 Set-aside funds

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 33. (a) Operator-assessed set-aside funds accrue for use in the BEP for only the following purposes:

(1) Maintenance and replacement of equipment.

(2) The purchase of new equipment.

(3) Management services, including administrative costs of the Indiana committee of licensed managers.

(4) Assuring a fair minimum return to licensed managers.

(5) The establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time, if a majority vote of managers licensed by the state licensing agency determines that funds should be set aside for such purposes.

(b) Every operator of a BEP facility, including licensed managers, manager trainees, and temporary operators, must set aside a portion of the net proceeds from the operator's assigned BEP facility or facilities in accordance with the following:

(1) The percentage of net proceeds to be set aside will be determined and reviewed annually by the state licensing agency with the active participation of Indiana committee of licensed managers in accordance with 34 CFR 395.9.

(2) The percent of net proceeds required to be set aside will be based on the estimated amount of revenue needed by the state licensing agency to fund only the following:

(A) The maintenance and replacement of equipment.

(B) The purchase of new equipment, subject, however, to the requirement that the state licensing agency will use funds from the office of vocational rehabilitation to purchase new equipment whenever possible.

(C) Management services performed by the state licensing agency.

(D) Assuring a fair minimum return to licensed managers.

(E) The establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time if a majority vote of managers licensed by the state licensing agency determines that funds should be set aside for the purposes set out in this clause.

(3) The percentage determined in subdivision (2) shall become effective upon:

(A) approval by the Secretary of the United States Department of Education; and

(B) written notification to all operators of the approval by the Secretary of the United States Department of Education.

(4) The percentage approved under this subsection will remain in effect until changed in accordance with this section.

(c) Each operator shall pay the approved set-aside to the state licensing agency for any given month by the fifteenth of the following month, if assessed in accordance with this section.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-33; filed Aug 23, 2001, 2:30 p.m.: 25 IR 77)

460 IAC 2-4-34 Allowable business expenses

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 34. (a) Each operator must file with the state licensing agency a written monthly report of the gross income, the allowable business expenses paid by the operator, and the net proceeds of the assigned BEP facility or facilities. The report must be filed in a form set by the state licensing agency.

(b) Allowable business expenses are expenses that are:
(1) paid by an operator for the operation of a BEP facility;
(2) allowed by the Internal Revenue Service; and
(3) in an amount allowed by the Internal Revenue Service.

(c) Allowable business expenses include the following expenses:
(1) The cost of goods sold. "Goods" means stock or merchandise purchased for resale in a BEP facility.
(2) Supplies, which means expendable items that are necessary for day-to-day facility operation, but are not for resale.
(3) Merchandise delivery charge, which means an additional cost, above the cost of stock or supplies, assessed for making a delivery to a BEP facility.
(4) Pest exterminating service.
(5) Janitorial service, which means a commercial firm or independent contractor to clean the facility or to remove trash. Such costs are deductible unless the state licensing agency or the custodial authority assigns this responsibility to someone other than the operator.
(6) Bookkeeping and bank fees directly related to the facility operation.
(7) Required business licenses.
(8) Telephone charges, which means the cost for any reasonably necessary business telephone service, including long distance telephone calls for BEP facility business and in fulfillment of BEP committee responsibilities.
(9) Purchase, rental, or laundry costs for uniforms and linens used in the BEP facility provided that the costs for uniforms are allowed if uniforms are worn only for work at the BEP facility.
(10) Business advertising not to exceed, in a calendar year, the greater of:
(A) one percent (1%) of the facility's gross annual income for the prior year; or
(B) three hundred dollars ($300).
(11) Premiums for insurance coverage for BEP business operations and liability for property damage and bodily injury, except that insurance premiums for state-owned equipment shall not be deductible.
(12) Rent if required by contract for space.
(13) Utilities for the facility when not included in rent.
(14) Wages, paid leave time, and other fringe benefits for an employee who is not a party to an agreement or a temporary operator agreement with the state licensing agency.
(15) Coverage for Social Security, workers' compensation, and unemployment compensation, as required by law for an employee who is not a party to an operator agreement with the state licensing agency.
(16) Sales taxes.
(17) Business-related legal fees.
(18) Short term training expenses of reasonable cost for operators and employees if the training is directly related to the job.
(19) Temporary operator fees paid in accordance with this rule.
(20) Travel expenses if required for BEP business purposes.
(21) Air conditioner filter service and fire extinguisher service.
(22) A vision exam if required in accordance with section 13(b) of this rule.
(23) Payments to the custodial authority of the assigned BEP facility if the payments are required under:
(A) the permit issued to the state licensing agency for the BEP facility; or
(B) the facility agreement between the state licensing agency and the custodial authority of the BEP facility.
(24) Payment of an expense that is the responsibility of the state licensing agency with the prior approval of the BEP business counselor or program director. The person giving such approval shall document the approval, in writing, in the facility file.
(25) Personal property taxes assessed by a governmental entity.
(26) Business dues not to exceed, in a calendar year, the greater of:
(A) one percent (1%) of the facility's gross annual income for the prior year; or
(B) three hundred dollars ($300).
(27) Charitable contributions, grants, and other donations to 501(c)(3) organizations.
(28) Entertainment expenses directly related to BEP facility operations.
(29) Postage expenses required to support BEP facility operations.
(30) Cost of equipment repairs or maintenance.

(31) Any other reasonable, necessary, and allocable expense the state licensing agency approves in writing.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-34; filed Aug 23, 2001, 2:30 p.m.: 25 IR 78)

460 IAC 2-4-35 Distribution and use of income from vending machines not designated as part of a manager's facility on federal property

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 35. (a) The state licensing agency shall disburse income received from vending machines on federal property, when those machines are not designated as part of a BEP facility, in accordance with the requirements in this section.

(b) The state licensing agency shall disburse that income to a licensed manager or managers operating a BEP facility on the same federal property. However, the total amount of income disbursed to a licensed manager shall not exceed the maximum amount allowed under 34 CFR 395.32 and 34 CFR 395.8(a).

(c) If the income from such vending machines exceeds the maximum amount that may be disbursed to a licensed manager under subsection (a), the additional income shall accrue to the state licensing agency for the following purposes:

(1) The income shall be used first for:

(A) the establishment and maintenance of retirement or pension plans;

(B) health insurance contributions; or

(C) the provision of paid sick leave and vacation time for licensed managers in the state;

if a majority vote of managers licensed by the state licensing agency determines that funds should be used for such purposes.

(2) Any vending machine income not necessary for the purposes set out in subdivision (1), shall be used by the state licensing agency for the following purposes:

(A) The maintenance and replacement of equipment.

(B) The purchase of new equipment.

(C) Management services.

(D) Assuring a fair minimum return to licensed vendors.

(3) Any assessment or set-aside charged to licensed managers shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

(d) If there is no licensed manager operating a BEP facility on the same federal property, the income shall accrue to the state licensing agency for the purposes set out in subsection (c).

(e) The state licensing agency shall disburse vending machine income under this section on at least a quarterly basis. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-35; filed Aug 23, 2001, 2:30 p.m.: 25 IR 79)*

460 IAC 2-4-36 Operation of facility; business requirements

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 36. (a) A licensed manager must comply with the business requirements set forth in this section. Failure to comply with these business requirements will result in disciplinary action under section 21 of this rule.

(b) A licensed manager and the manager's employees shall not discriminate against any person in furnishing, or by refusing to furnish, to such person the use of any BEP facility, including any and all goods, services, privileges, accommodations and activities provided by the facility, on the basis of sex, race, age, creed, color, national origin, physical or mental disability, or political affiliation.

(c) A licensed manager is responsible for the operations and profitability of the assigned BEP facility.

(d) A licensed manager must comply with the terms of:

(1) the agreement between the state licensing agency and the licensed manager; and

(2) either:

(A) the permit issued to the state licensing agency for the BEP facility; or

(B) the facility agreement between the custodial authority of the facility and the state licensing agency.

(e) A licensed manager is a self-employed person and must comply with all applicable federal, state, and local laws, regulations, and ordinances, including, but not limited to, those applicable to taxes, worker's compensation, unemployment insurance, and Social Security.

(f) A licensed manager must operate the BEP facility in compliance with applicable health, sanitation, and building codes and ordinances.

(g) The accounting records for a BEP facility shall be kept separate from the accounting records for any other business venture.

(h) A BEP facility shall not be used for the operation of any business venture except a business operated under IC 12-12-5, this rule, or the facility agreement between the licensed manager and the state licensing agency. BEP money, product, equipment, and assets shall not be used in, or commingled with the assets of, any other business venture.

(i) A licensed manager must:

(1) accurately complete all reports and forms approved

by the state licensing agency and developed with the active participation of the Indiana committee of licensed managers; and

(2) submit the reports and forms to the state licensing agency within established time frames.

(j) A licensed manager must file the following reports with the state licensing agency on forms prescribed by BVIS:

(1) A written monthly report of the gross income, the allowable business expenses paid, and the net income of the assigned BEP facility or facilities. The report for any month is due and must be filed with the state licensing agency by the close of business on the fifteenth day of the following month, except that, if the fifteenth day is on a Saturday, a Sunday, a legal holiday as defined by state statute, or a day when state offices are closed during regular business hours, the report shall be due on the following business day.

(2) Each January, a detailed annual inventory of facility merchandise, submitted with the monthly operating report required in subsection (j)(1) above. Unless it is a first inventory for a manager at a facility, the inventory must be reconciled with the facility inventory of the year before. Opening inventory will usually be the same as the closing inventory of the year before. Any difference must be explained in an attachment to the inventory.

(k) A licensed manager must establish procedures to:

(1) maintain inventory control;

(2) maintain adequate inventory; and

(3) ensure correct charges by the suppliers of articles sold at the BEP facility.

(l) Because one (1) purpose of the business enterprise program is to demonstrate the competence of blind persons, a licensed manager must maintain a physical presence and personal involvement in the daily management and operation of the BEP facility.

(m) A licensed manager shall employ other persons as necessary for the following purposes:

(1) The effective and efficient operation of the BEP facility.

(2) Compliance with all contractual obligations.

(3) Maintaining continuous operation of the facility.

(n) A licensed manager must assure that the terms of employment of any employee are commensurate with the terms of employment of other persons engaged in similar work in the local economy.

(o) A licensed manager is responsible for the conduct of the manager's employees and must ensure that any employee is aware of and complies with the business practices set out in this rule. The manager is responsible for correcting actions of an employee and enforcing the business practices that apply to an employee.

(p) If a licensed manager becomes or is unable to personally operate the BEP facility and to perform under provisions of the agreement between the manager and the state licensing agency, the manager must:

(1) notify the state licensing agency promptly; and

(2) select an individual, approved in advance by the state licensing agency, and make arrangements for that individual, to operate the facility in the operator's absence.

If a manager fails or is unable to comply with this subsection, the state licensing agency shall have the right to place a temporary operator in the BEP facility and to assess the costs of the temporary operator to the manager.

(q) A licensed manager shall:

(1) obtain each policy of insurance required, in the amount required, pursuant to the operating agreement with the state licensing agency;

(2) upon approval of the state licensing agency, obtain any additional policies of insurance considered necessary for the BEP facility;

(3) ensure that each policy of insurance names DDARS as an additional insured;

(4) provide the state licensing agency with a copy of each policy of insurance, if requested; and

(5) immediately notify the state licensing agency if either an insurer or the licensed manager cancels any required insurance.

(r) A licensed manager must ensure that each BEP facility will be open during the days and hours:

(1) specified in:

(A) the permit issued to the state licensing agency for the BEP facility; or

(B) the agreement between the state licensing agency and the custodial authority of the BEP facility; or

(2) otherwise agreed upon by the state licensing agency, the manager, and the custodial authority of the BEP facility.

(s) Articles sold at a BEP facility may consist of newspapers, periodicals, publications, confections, tobacco products, foods, beverages, and any other articles or services suitable for a particular location as determined by the state licensing agency, in consultation with the custodial authority and the licensed manager. However, the state licensing agency, in consultation with the custodial authority and the licensed manager, may exclude the sale of various types of merchandise or products at a particular site.

(t) A licensed manager has the right to make the ultimate decision as to particular brands of articles sold.

(u) A licensed manager shall select suppliers of merchandise to be sold at the assigned BEP facility.

(v) A licensed manager has full responsibility for all financial arrangements necessary to obtain merchandise for the BEP facility, except for the initial stock.

(w) A licensed manager must pay all bills, including purchases for goods or services, in a timely manner.

(x) The possession, consumption, or use of alcoholic beverages or illegal drugs at a BEP facility by a licensed manager or by an employee of the manager is not permitted. A licensed manager or an employee of a manager shall not work under the influence of alcohol or illegal drugs at a BEP facility. No alcoholic beverages or illegal drugs shall be allowed at a BEP facility.

(y) A licensed manager must maintain fresh stock and must not sell out-of-date product.

(z) A licensed manager must assure that services are provided to customers and the public in a courteous and professional manner at all times. Any contact with the custodial authority or management of the BEP facility must be conducted in a professional and courteous manner. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-36; filed Aug 23, 2001, 2:30 p.m.: 25 IR 79)*

460 IAC 2-4-37 Business performance of a business enterprise program facility

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 37. (a) A BEP facility must produce a reasonable amount of net proceeds in order to:

(1) provide a significant economic opportunity for a licensed manager or manager trainee;

(2) provide for a productive use of program assets; and

(3) be suitable as a BEP facility.

(b) The state licensing agency, with the active participation of the Indiana committee of licensed managers, shall select criteria to determine whether a BEP facility produces a reasonable amount of net proceeds. The criteria includes, but is not limited to, the following:

(1) The criteria set out in section 14(a)(2) of this rule.

(2) An operator's need for assistance in performing any operational responsibility under this rule.

(c) The state licensing agency will perform periodic evaluations of each BEP facility to determine whether a facility is producing a reasonable amount of net proceeds. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-37; filed Aug 23, 2001, 2:30 p.m.: 25 IR 81)*

460 IAC 2-4-38 Indiana committee of licensed managers

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 38. (a) The Indiana committee of licensed managers shall be fully representative, to the extent possible, of all licensed managers in the Indiana program on the basis of geography, facility type, and designation as a federal or nonfederal facility. The committee shall consist of a total of nine (9) members selected from the following categories in the number or numbers indicated:

(1) By geographic location of a licensed manager's primary facility primary facility located:

(A) north of I-70 and west of US 31, one (1) committee member;

(B) north of I-70 and east of US 31, one (1) committee member; and

(C) south of I-70, one (1) committee member.

(2) By facility type of a licensed manager's primary facility:

(A) highway vending, one (1) committee member;

(B) non-highway vending, one (1) committee member;

(C) snack bar, cafeteria, and other type of facility, one (1) committee member.

(3) By designation of a licensed manager's primary facility as a federal or nonfederal facility:

(A) federal facility, one (1) committee member; and

(B) nonfederal facility, two (2) committee members.

(b) Requirements for the election of committee members are as follows:

(1) All members of the committee shall be elected every two (2) years at a conference sponsored by the state licensing agency.

(2) Only licensed managers may nominate, vote for, and elect members to the committee.

(3) A licensed manager may vote for and elect only committee members to serve in the same three (3) categories as the licensed manager's primary facility. For example, if the primary facility of a licensed manager is located south of I-70, is a snack bar, and is a nonfederal facility, the licensed manager may vote for and elect committee members only in those three (3) categories.

(4) The participation of a licensed manager in the election of committee members shall not be conditioned upon the payment of dues or any fees.

(c) The state licensing agency shall notify all licensed managers, in writing, at least thirty (30) days before the election of the committee at a biennial conference. The notice must include the following information:

(1) The date, time, and place of the election of members of the Indiana committee of licensed managers.

(2) The three (3) categories in which a licensed manager may vote as determined from a primary facilities list enclosed in the notice.

(3) The process whereby the manager may contact the state licensing agency within ten (10) days of receipt of the notice if the manager believes that the primary facilities list contains an error concerning the manager's

primary facility or the categories in which the manager may vote.
(4) Notice that a licensed manager may submit written nominations prior to the conference for any position on the committee, and the process for doing so.
(5) Notice that nominations for all positions on the committee will also be taken from the floor at the election.

(d) Official committee action requirements are as follows:
(1) A quorum of the committee shall consist of five (5) members.
(2) Motions shall be passed by a majority of those members present.

(e) The duties of the committee are as follows:
(1) To actively participate with the state licensing agency in major administrative decisions and policy and program development decisions affecting the business enterprise program.
(2) To receive and transmit grievances of licensed managers to the state licensing agency, and to serve as advocate for licensed managers in connection with the grievances.
(3) To actively participate with the state licensing agency in decisions regarding the transfer and promotion of licensed managers.
(4) To actively participate with the state licensing agency in the development of training and retraining programs for licensed managers.
(5) To sponsor meetings and instructional conferences for licensed managers with the state licensing agency.
(6) To keep confidential any confidential information concerning program participants that is disclosed to committee members during the exercise of their duties under this section.

(f) The payment of any expenses incurred by the committee in conjunction with the duties of the committee shall be subject to the prior approval of the state licensing agency. Committee members will be reimbursed in accordance with state travel and administrative policies. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-38; filed Aug 23, 2001, 2:30 p.m.: 25 IR 81)*

460 IAC 2-4-39 Accessibility of written materials
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 39. (a) A licensed manager and a manager trainee may designate a preferred format for receiving access to written materials or communications from the agency. Available formats are as follows:
(1) Braille.
(2) Large print.
(3) Computer disk.
(4) Recorded tape.

(b) If reasonably possible, the state licensing agency shall provide a licensed manager and a manager trainee with access to written materials or communications in the preferred format requested under subsection (a). *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-39; filed Aug 23, 2001, 2:30 p.m.: 25 IR 82)*

SECTION 2. 460 IAC 2-1 IS REPEALED.

LSA Document #00-215(F)
Notice of Intent Published: 24 IR 56
Proposed Rule Published: May 1, 2001; 24 IR 2525
Hearing Held: May 22, 2001; May 22, 2001; May 23, 2001; AND on May 23, 2001
Approved by Attorney General: August 6, 2001
Approved by Governor: August 21, 2001
Filed with Secretary of State: August 23, 2001, 2:30 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 511 INDIANA STATE BOARD OF EDUCATION

LSA Document #00-163(F)

DIGEST

Adds 511 IAC 6.2-4 to establish criteria and procedures for approving professional development programs and determining if a school qualifies for a grant from the department of education to implement its professional development program. Effective 30 days after filing with the secretary of state.

511 IAC 6.2-4

SECTION 1. 511 IAC 6.2, AS ADDED AT 24 IR 3647, SECTION 1, IS AMENDED BY ADDING A NEW RULE TO READ AS FOLLOWS:

Rule 4. Professional Development Program

511 IAC 6.2-4-1 "Program" defined
Authority: IC 20-1-1-6.3; IC 20-1-1-6.5
Affected: IC 20-10.2-3

Sec. 1. As used in this rule, "program" refers to a professional development program developed pursuant to IC 20-1-1-6.3 and IC 20-1-1-6.5. *(Indiana State Board of Education; 511 IAC 6.2-4-1; filed Aug 28, 2001, 11:20 a.m.: 25 IR 82)*

511 IAC 6.2-4-2 Program approval
Authority: IC 20-1-1-6.3; IC 20-1-1-6.5
Affected: IC 20-10.2-3-1

Sec. 2. (a) In approving a program, the board shall consider whether the governing body has done the following:
(1) Approved a school's plan.
(2) Demonstrated the support of the exclusive representative only for the professional development program component of the plan.

(b) The following apply to a program developed under this section:

(1) The program must emphasize improvement of student learning and performance.

(2) The program must be developed by the committee that develops the school's strategic and continuous improvement and achievement plan under IC 20-10.2-3-1 and 511 IAC 6.2-3.

(3) The program must be integrated with the school's strategic and continuous improvement and achievement plan developed under IC 20-10.2-3 and 511 IAC 6.2-3.

(c) The board may approve a school's program only if the program meets the board's core principles for professional development and the following additional criteria:

(1) To ensure high quality professional development, the program:

(A) is school based and collaboratively designed, and encourages participants to work collaboratively;

(B) has a primary focus on state and local academic standards, including a focus on Core 40 subject areas;

(C) enables teachers to improve expertise in subject knowledge and teaching strategies, uses of technologies, and other essential elements in teaching to high standards;

(D) furthers the alignment of standards, curriculum, and assessments; and

(E) includes measurement activities to ensure the transfer of new knowledge and skills to classroom instruction.

(2) A variety of resources, including needs assessments, an analysis of data regarding student learning needs, professional literature, research, and school improvement programs, are used in developing the program.

(3) The program supports professional development for all stakeholders.

(4) The program includes ongoing professional growth experiences that provide adequate time and job embedded opportunities to support school improvement and student learning, including flexible time for professional development that provides professional development opportunities before, during, and after the regular school day and school year.

(5) Under the program, teacher time for professional development sustains instructional coherence, participant involvement, and continuity for students.

(6) The program includes effective, research-based strategies to support ongoing developmental activities.

(7) The program supports experiences to increase the effective use of technology to improve teaching and learning.

(8) The program encourages diverse techniques, including inquiry, reflection, action research, networking, study groups, coaching, and evaluation.

(9) The program includes a means for evaluating the effectiveness of the program and activities under the program.

(Indiana State Board of Education; 511 IAC 6.2-4-2; filed Aug 28, 2001, 11:20 a.m.: 25 IR 82)

511 IAC 6.2-4-3 Core principles of professional development

Authority: IC 20-1-1-6.3; IC 20-1-1-6.5
Affected: IC 20-10.2-3

Sec. 3. The following are core principles of professional development:

(1) Professional development programs will address issues that are relevant to the priorities of education improvement and reflect the knowledge base of the profession by doing the following:

(A) Reflecting research-based approaches to effective adult learning, student learning, and organizational change to support ongoing developmental activities. While tapping educators' life experiences and drawing on the knowledge base from effective research, a variety of modes of learning are used to foster self-directed professional development opportunities.

(B) Integrating education improvement priorities. Consistent and continuous links are made with the school improvement plan, the Indiana professional standards board, and the Indiana state board of education policy.

(C) Incorporating both discipline-specific and interdisciplinary approaches to teaching, assessment, and preparation for the world of work. Professional growth experiences enhance educators' knowledge within and across subject areas and their ability to foster and assess students' problem solving and critical thinking skills.

(D) Including explicit strategies for setting high expectations and meeting the diverse learning needs of all students. Training activities increase educators' capacity to implement developmentally-appropriate practices to establish challenging learning goals and respond to the uniqueness of each student.

(E) Receiving adequate resources. Every public school in Indiana must receive the financial resources and support services needed to provide the most effective professional development program, as described within these principles.

(2) Professional development program will engage educators in an effective learning process that impacts practice by doing the following:

(A) Actively involving participants in program design, delivery, and implementation. Professional growth opportunities reflect educators' needs as determined from multiple data sources grounded in and linked with the school improvement plan. All stakeholders shall be engaged in meaningful job-embedded opportunities to effectively support practice that lead to improved student learning.

(B) Promoting multiple strategies that model recommended strategies. Opportunities for professional development incorporate varied approaches, such as theory, demonstration, reflection, practice, mentoring, technology applications, and peer dialogue and coaching.

(C) Incorporating follow-up activities that are sustained over time and provide educators with ongoing feedback. The professional development program provides a range of opportunities for staff to integrate the new strategies into their work with children through practice, feedback, and reflection.

(D) Continuously evaluating impact on educators' practice and student learning. The effectiveness of professional development is determined by its impact on staff performance and student learning.

(3) Professional development programs will contribute to developing an environment that support educators' professional growth by doing the following:

(A) Fostering collegiality and collaboration. Professional growth opportunities encourage staff to build a community of educators, parents, business, and community partners who exchange ideas for innovation, cooperate in developing curricula, and discuss approaches to strengthening student learning by focusing on the school community as a culture of inquiry.

(B) Building capacity through a continuum of ongoing improvement activities. Professional development activities maintain a focus on the improvement of practices that increase student learning and link to the school improvement plan and the standards developed by the Indiana professional standards board and the Indiana state board of education policy.

(C) Integrating staff development into educators' practice. The professional development program incorporates supports for staff to implement newly acquired strategies and assess them for their impact on student learning.

(D) Encouraging innovation and risk-taking. As a result of staff development activities, the school community recognizes the need for action research which assists educators, leading toward innovations improving student learning.

(Indiana State Board of Education; 511 IAC 6.2-4-3; filed Aug 28, 2001, 11:20 a.m.: 25 IR 83)

511 IAC 6.2-4-4 Grant requirements
Authority: IC 20-1-1-6.3; IC 20-1-1-6.5
Affected: IC 20-10.2-3

Sec. 4. A grant received under IC 20-1-6.5 and this rule:

(1) shall be expended only for the conduct of activities specified in the program; and

(2) shall be coordinated with other professional development programs and expenditures of the school and school corporation.

(Indiana State Board of Education; 511 IAC 6.2-4-4; filed Aug 28, 2001, 11:20 a.m.: 25 IR 84)

LSA Document #00-163(F)
Notice of Intent Published: 23 IR 2790
Proposed Rule Published: March 1, 2001; 24 IR 1915
Hearing Held: April 5, 2001
Approved by Attorney General: August 16, 2001
Approved by Governor: August 27, 2001
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Incorporated Documents Filed with Secretary of State: None

TITLE 511 INDIANA STATE BOARD OF EDUCATION

LSA Document #01-6(F)

DIGEST

Amends 511 IAC 12-2-7 to provide for a waiver of the requirement that summer school classes have an initial enrollment of 15 students to qualify for state reimbursement, if a waiver is necessary to offer developmentally appropriate programs, and eliminate references to the summer ISTEP remediation program, which no longer exists. Effective 30 days after filing with the secretary of state.

511 IAC 12-2-7

SECTION 1. 511 IAC 12-2-7 IS AMENDED TO READ AS FOLLOWS:

511 IAC 12-2-7 Minimum enrollment for reimbursement
Authority: IC 20-10.1-7-12
Affected: IC 20-5-2-1.2

Sec. 7. ~~(a)~~ For reimbursement, classes must have an ~~initial~~ **average** enrollment of fifteen (15) students or more.

~~(b) However, a school corporation may place summer school remediation students under 511 IAC 12-2 in the same class with summer ISTEP remediation students under 511 IAC 12-4. The combined class enrollment may not exceed ten (10) students. The department of education shall reimburse a school corporation that combines classes under this subsection a proportional amount for instructional costs under 511 IAC 12-2-2.~~ *(Indiana State Board of Education; 511 IAC 12-2-7; filed Dec 2, 1987, 11:15 a.m.: 11 IR 1267; filed Jul 13, 1988, 4:00 p.m.: 11 IR 4100; filed Aug 28, 2001, 11:15 a.m.: 25 IR 84)*

LSA Document #01-6(F)
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Approved by Governor: August 27, 2001
Filed with Secretary of State: August 28, 2001, 11:15 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #01-94(F)

DIGEST

Adds 760 IAC 1-67 regarding the treatment of an individual's nonpublic personal information by all licensees of the department of insurance, including notice of privacy policies and practices, conditions for disclosure of nonpublic information to third parties, and methods for an individual to prevent disclosure of nonpublic information. Effective 30 days after filing with the secretary of state.

760 IAC 1-67

SECTION 1. 760 IAC 1-67 IS ADDED TO READ AS FOLLOWS:

Rule 67. Privacy of Consumer Information

760 IAC 1-67-1 Applicability and scope

Authority: IC 27-1-3-7; IC 27-2-20-3
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 1. (a) This rule applies to nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family, or household purposes from licensees of the department of insurance.

(b) This rule does not apply to information about companies or about individuals who:

(1) obtain products or services for business, commercial, or agricultural purposes; or

(2) are claiming benefits under a policy described in subsection (1).

(Department of Insurance; 760 IAC 1-67-1; filed Aug 31, 2001, 9:40 a.m.: 25 IR 85)

760 IAC 1-67-2 Definitions

Authority: IC 27-1-3-7; IC 27-2-20-3
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5-5; IC 27-1-15.6; IC 27-1-15.8; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 2. The following definitions apply throughout this rule:

(1) "Affiliate" means any company that controls, is controlled by, or is under common control with another company.

(2) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice. The following are examples that meet this standard:

(A) A licensee makes its notice reasonably understandable if it does the following:

(i) Presents the information in the notice in clear, concise sentences, paragraphs, and sections.

(ii) Uses short explanatory sentences or bullet lists whenever possible.

(iii) Uses definite, concrete, everyday words and active voice whenever possible.

(iv) Avoids multiple negatives.

(v) Avoids legal and highly technical business terminology whenever possible.

(vi) Avoids explanations that are imprecise and readily subject to different interpretations.

(B) A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee does the following:

(i) Uses a plain-language heading to call attention to the notice.

(ii) Uses a typeface and type size that are easy to read.

(iii) Provides wide margins and ample line spacing.

(iv) Uses boldface or italics for key words.

(v) In a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(C) If a licensee provides a notice on a Web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the Web site, such as text, graphics, hyperlinks, or sound, do not distract attention from the notice, and the licensee does either of the following:

(i) Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted.

(ii) Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

(3) "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(4) "Commissioner" means the commissioner of the Indiana department of insurance.

(5) "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship, or similar organization.

(6) "Consumer" means an individual who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information, or that individual's legal representative, including the following:

(A) An individual provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment, or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.

(B) An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.

(C) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.

(D) An individual is a licensee's consumer if the individual is:

(i) a beneficiary of a life insurance policy underwritten by the licensee;

(ii) a claimant under an insurance policy issued by the licensee;

(iii) an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or

(iv) a mortgagor of a mortgage covered under a mortgage insurance policy;

and the licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under sections 12 through 14 of this rule.

(E) Provided that the licensee provides the initial, annual, and revised notices under sections 3, 4, and 7 of this rule to the plan sponsor, group, or blanket insurance policyholder or group annuity contractholder, and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under sections 12 through 14 of this rule, an individual is not the consumer of the licensee solely because he or she is:

(i) a participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer, or fiduciary; or

(ii) covered under a group or blanket insurance policy or group annuity contract issued by the licensee.

(F) The individuals described in clause (E) are consumers of a licensee if the licensee does not meet all the conditions of this subdivision. In no event shall the individuals, solely by virtue of the status described in clause (E), be deemed to be customers.

(G) An individual is not a licensee's consumer solely because he or she is a beneficiary of a trust for which the licensee is a trustee.

(H) An individual is not a licensee's consumer solely because he or she has designated the licensee as trustee for a trust.

(7) "Consumer reporting agency" has the same meaning as Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(8) "Control" means any of the following:

(A) Ownership, control, or power to vote twenty-five percent (25%) or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one (1) or more other persons.

(B) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company.

(C) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.

(9) "Customer" means a consumer who has a customer relationship with a licensee. A beneficiary or a claimant shall not be deemed a customer solely by virtue of his or her status as a beneficiary or a claimant.

(10) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one (1) or more insurance products or services to the consumer that are to be used primarily for personal, family, or household purposes, including the following:

(A) A consumer has a continuing relationship with a licensee if the consumer:

(i) is a current policyholder of an insurance product issued by or through the licensee; or

(ii) obtains financial, investment, or economic advisory services relating to an insurance product or service from the licensee for a fee.

(B) A consumer does not have a continuing relationship with a licensee in any of the following circumstances:

(i) The consumer applies for insurance but does not purchase the insurance.

(ii) The licensee sells the consumer airline travel insurance in an isolated transaction.

(iii) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

(iv) The consumer is a beneficiary or claimant under a policy and has submitted a claim under a policy choosing a settlement option involving an ongoing relationship with the licensee.

(v) The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option.

(vi) The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than annual privacy notices, material required by law or rule, communication at the direction of a state or federal authority, or promotional materials.

(vii) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity.

(viii) For purposes of this rule, the individual's last known address, according to the licensee's records, is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(11) "Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k). The term does not include any of the following:

(A) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act, 7 U.S.C. 1 et seq.

(B) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971, 12 U.S.C. 2001 et seq.

(C) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights), or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(12) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k). Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(13) "Health information" means any information or data, except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to any of the following:

(A) The past, present, or future physical, mental, or behavioral health or condition of an individual.

(B) The provision of health care to an individual.

(C) Payment for the provision of health care to an individual.

(14) "Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of this state. Insurance service includes a licensee's evaluation, brokerage, or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.

(15) "Licensee" means all licensed insurers, health maintenance organizations, agents, producers, and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered under IC 27. The following requirements apply:

(A) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information set forth in section 1 of this rule, this section, and sections 3 through 15 of this rule if the licensee is an employee, agent, or other representative of another licensee and:

(i) the other licensee otherwise complies with, and provides the notices required by this rule; and

(ii) the licensee does not disclose any nonpublic personal information to any person other than the principal or its affiliates in a manner permitted by this rule.

(B) A licensee also includes an unauthorized insurer that accepts business placed through a licensed surplus lines broker in this state, but only in regard to the surplus lines placements placed pursuant to IC 27-1-15.5-5. A surplus lines broker or surplus lines insurer shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in section 1 of this rule, this section, and sections 3 through 15 of this rule provided the following:

(i) The surplus lines agent or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under section 12 of this rule, except as permitted by section 13 or 14 of this rule.

(ii) The surplus lines agent or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in 16-point type:

PRIVACY NOTICE

NEITHER THE U.S. SURPLUS LINES AGENTS THAT HANDLED THIS INSURANCE NOR THE

INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW.

(16) "Nonaffiliated third party" means any person except a licensee's affiliate or a person employed jointly by a licensee and any company that is not the licensee's affiliate. The term includes either of the following:

(A) The other company that jointly employs the person.

(B) Any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities or insurance company investment activities of the type described in the federal Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(H) and 12 U.S.C. 1843(k)(4)(I).

(17) "Nonpublic personal financial information" means personally identifiable financial information and any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available, including the following:

(A) The term includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(B) The term does not include any of the following:

(i) Health information.

(ii) Publicly available information, except as included on a list described in subdivision (21).

(iii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

(C) The term does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(18) "Nonpublic personal information" means nonpublic personal financial information.

(19) "Personally identifiable financial information" means information a consumer provides to a licensee to obtain an insurance product or service from the licensee, information about a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer, or information the licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer, including the following:

(A) The term includes the following:

(i) Information a consumer provides to a licensee on an application to obtain an insurance product or service.

(ii) Account balance information and payment history.

(iii) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee.

(iv) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer.

(v) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan.

(vi) Any information the licensee collects through an Internet cookie (an information-collecting device from a Web server).

(vii) Information from a consumer report.

(B) The term does not include the following:

(i) Health information.

(ii) A list of names and addresses of customers of an entity that is not a financial institution.

(iii) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers, such as account numbers, names, or addresses.

(20) "Producer" means a person licensed under IC 27-1-15.5, IC 27-1-15.6, or IC 27-1-15.8.

(21) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from federal, state, or local government records, widely distributed media, or disclosures to the general public that are required to be made by federal, state, or local law. The following requirements apply:

(A) A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine that the information is of the type that is available to the general public and whether an individual can direct that the information not be made available to the general public, and, if so, that the licensee's consumer has not done so.

(B) Publicly available information in government records includes information in government real estate records and security interest filings.

(C) Publicly available information from widely distributed media includes information from a:

(i) telephone book;

(ii) television;

(iii) radio program;

(iv) newspaper; or

(v) Web site;

that is available to the general public on an unrestricted

basis. A Web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(D) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(E) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

(Department of Insurance; 760 IAC 1-67-2; filed Aug 31, 2001, 9:40 a.m.: 25 IR 85)

760 IAC 1-67-3 Initial privacy notice to consumers

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11;; IC 27-2-20-3; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13

Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 3. (a) A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to the following:

(1) An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in subsection (e).

(2) A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by sections 13 and 14 of this rule.

(b) A licensee is not required to provide an initial notice to a consumer under subsection (a) in either of the following instances:

(1) The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by sections 13 and 14 of this rule, and the licensee does not have a customer relationship with the consumer.

(2) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

(c) A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship. The following are examples of establishing customer relationship:

(1) The consumer becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance agent, obtains insurance through that licensee.

(2) The consumer agrees to obtain financial, economic, or investment advisory services relating to insurance products or services for a fee from the licensee.

(d) When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, the licensee satisfies the initial notice requirements of subsection (a) if:

(1) the licensee may provide a revised policy notice, under section 7 of this rule, that covers the customer's new insurance product or service; or

(2) the initial, revised, or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under subsection (a).

(e) The following are exceptions that allow subsequent delivery of the required notice:

(1) A licensee may provide the initial notice required by subsection (a)(1) within a reasonable time after the licensee establishes a customer relationship if:

(A) establishing the customer relationship is not at the customer's election; or

(B) providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(2) The following are examples of exceptions:

(A) Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

(B) Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

(C) Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a Web site.

(f) When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according

to section 8 of this rule. If the licensee uses a short-form initial notice for noncustomers according to section 5(d) of this rule, the licensee may deliver its privacy notice according to section 5(d)(3) of this rule. *(Department of Insurance; 760 IAC 1-67-3; filed Aug 31, 2001, 9:40 a.m.: 25 IR 89)*

760 IAC 1-67-4 Annual privacy notice to customers

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11;; IC 27-2-20-3; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13

Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 4. (a) A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship.

(1) As used in this section, "annually" means at least once in any period of twelve (12) consecutive months during which that relationship exists. A licensee may define the twelve (12) consecutive month period, but the licensee shall apply it to the customer on a consistent basis.

(2) A licensee provides a notice annually if it defines the twelve (12) consecutive month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of Year 1, the licensee shall provide an annual notice to that customer by December 31 of Year 2.

(b) A licensee is not required to provide an annual notice to a former customer. As used in this section, "former customer" means an individual with whom a licensee no longer has a continuing relationship and includes the following:

(1) The individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

(2) The individual's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than to provide annual privacy notices, material required by law or rule, or promotional materials.

(3) An individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(4) In the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

(c) When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to section 8 of this rule. *(Department of Insurance; 760 IAC 1-67-4; filed Aug 31, 2001, 9:40 a.m.: 25 IR 90)*

760 IAC 1-67-5 Information to be included in privacy notices

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-2-20-3; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13

Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 5. (a) The initial, annual, and revised privacy notices that a licensee provides under sections 3, 4, and 7 of this rule shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

(1) The categories of nonpublic personal financial information that the licensee collects.

(2) The categories of nonpublic personal financial information that the licensee discloses.

(3) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under sections 13 and 14 of this rule.

(4) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under sections 13 and 14 of this rule.

(5) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under section 12 of this rule (and no other exception in sections 13 and 14 of this rule applies to that disclosure), a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted.

(6) An explanation of the consumer's right under section 9(a) of this rule to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time.

(7) Any disclosures that the licensee makes under Section

603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act, 15 U.S.C. 1681a(d)(2)(A)(iii), regarding the ability to opt out of disclosures of information among affiliates.

(8) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

(9) Any disclosure that the licensee makes under subsection (b).

(b) If a licensee discloses nonpublic personal financial information as authorized under sections 13 and 14 of this rule, the licensee is not required to list those exceptions in the initial or annual privacy notices required by sections 3 and 4 of this rule. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(c) The following are examples:

(1) A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable information:

(A) from the consumer;

(B) about the consumer's transactions with the licensee or its affiliates;

(C) about the consumer's transactions with nonaffiliated third parties; and

(D) from a consumer reporting agency.

(2) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in subdivision (1), as applicable, and provides a few examples to illustrate the types of information in each category. These examples might include the following:

(A) Information from the consumer, including application information, such as assets and income and identifying information, such as name, address, and Social Security number.

(B) Transaction information, such as information about balances, payment history, and parties to the transaction.

(C) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(3) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer. If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

(4) A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

(A) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking, or securities brokerage.

(B) A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

(5) If a licensee discloses nonpublic personal financial information under the exception contained in section 12 of this rule to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of subsection (a)(5) if it:

(A) lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of subsection (a)(2), as applicable; and

(B) states whether the third party is a:

(i) service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or

(ii) financial institution with whom the licensee has a joint marketing agreement.

(6) If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties, except as authorized under sections 13 and 14 of this rule, the licensee may simply state that fact, in addition to the information it shall provide under subsections (a)(1), (a)(8), (a)(9), and (b).

(7) A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

(A) Describes in general terms who is authorized to have access to the information.

(B) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

(d) A licensee may satisfy the initial notice requirements of sections 3(a)(2) and 6(c) of this rule for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt out notice as required in section 6 of this rule.

(1) A short-form notice shall:
(A) be clear and conspicuous;
(B) state that the licensee's privacy notice is available upon request; and
(C) explain a reasonable means by which the consumer may obtain that notice.
(2) The licensee shall deliver its short-form initial notice according to section 8 of this rule. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to section 8 of this rule.
(3) The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee does either of the following:
(A) Provides a toll free telephone number that the consumer may call to request the notice.
(B) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

(e) The licensee's notice may include the following:
(1) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose.
(2) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the license does not currently disclose, nonpublic financial information.

(f) Sample clauses illustrating some of the notice content required by this section are included in section 17 of this rule. *(Department of Insurance; 760 IAC 1-67-5; filed Aug 31, 2001, 9:40 a.m.: 25 IR 90)*

760 IAC 1-67-6 Form of opt out notice to consumers and opt out methods

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-2-20-3; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 6. (a) If a licensee is required to provide an opt out notice under section 10(a) of this rule, it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section.
(1) The notice shall state all of the following:
(A) The licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party.
(B) The consumer has the right to opt out of that disclosure.
(C) A reasonable means by which the consumer may exercise the opt out right.
(2) The following are examples:
(A) A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee does all of the following:
(i) Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in section 5(a)(2) and 5(a)(3) of this rule.
(ii) States that the consumer can opt out of the disclosure of that information.
(iii) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt out direction would apply.
(B) A licensee provides a reasonable means to exercise an opt out right if it does any of the following:
(i) Designates check-off boxes in a prominent position on the relevant forms with the opt out notice.
(ii) Includes a reply form together with the opt out notice.
(iii) Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's Web site, if the consumer agrees to the electronic delivery of information.
(iv) Provides a toll free telephone number that consumers may call to opt out.
(C) A licensee does not provide a reasonable means of opting out if the only means of opting out:
(i) is for the consumer to write his or her own letter to exercise that opt out right; or
(ii) as described in any notice subsequent to the initial notice, is to use a check-off box that the licensee provided with the initial notice, but did not include with the subsequent notice.
(D) A licensee may require each consumer to opt out through a specific means as long as that means is reasonable for that consumer.

(b) A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with section 3 of this rule.

(c) If a licensee provides the opt out notice later than required for the initial notice in accordance with section 3 of this rule, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(d) The following apply to joint relationships:
(1) If two (2) or more consumers jointly obtain an insur-

ance product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer.

(2) Any of the joint consumers may exercise the right to opt out. The licensee may either:

(A) treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(B) permit each joint consumer to opt out separately.

(3) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one (1) of the joint consumers to opt out on behalf of all of the joint consumers.

(4) A licensee may not require all joint consumers to opt out before it implements any opt out direction.

(5) The following example is illustrative. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but it shall explain in its opt out notice which opt out policy the licensee will follow:

(A) Send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary.

(B) Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.

(C) Permit John and Mary to make different opt out directions. If the licensee does so:

(i) it shall permit John and Mary to opt out for each other;

(ii) if both opt out, the licensee shall permit both of them to notify it in a single response; and

(iii) if John opts out and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary, but not about John and not about John and Mary jointly.

(e) A licensee shall comply with the consumer's opt out direction as soon as reasonably practicable after it is received by the licensee.

(f) A consumer may exercise the right to opt out at any time.

(g) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically. When a consumer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

(h) When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to section 8 of this rule. *(Department of Insurance; 760 IAC 1-67-6; filed Aug 31, 2001, 9:40 a.m.: 25 IR 92)*

760 IAC 1-67-7 Revised privacy notices

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-2-20-3; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13

Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 7. (a) Except as otherwise authorized in this rule, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under section 3 of this rule unless the:

(1) licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(2) licensee has provided to the consumer a new opt out notice;

(3) licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) consumer does not opt out.

(b) Except as otherwise permitted by sections 12 through 14 of this rule, a licensee shall provide a revised notice before it does any of the following:

(1) Discloses a new category of nonpublic personal financial information to any nonaffiliated third party.

(2) Discloses nonpublic personal financial information to a new category of nonaffiliated third party.

(3) Discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(c) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

(d) When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to section 8 of this rule. *(Department of Insurance; 760 IAC 1-67-7; filed Aug 31, 2001, 9:40 a.m.: 25 IR 93)*

760 IAC 1-67-8 Delivery

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-2-20-3; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13

Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 8. (a) A licensee shall provide any notices that this rule requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b) A licensee may reasonably expect that a consumer will receive actual notice if the licensee does any of the following:

(1) Hand delivers a printed copy of the notice to the consumer.

(2) Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing, or other written communication.

(3) For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service.

(4) For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(c) A licensee may not reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it does either of the following:

(1) Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices.

(2) Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(d) A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if the customer:

(1) uses the licensee's Web site to access insurance products and services electronically and agrees to receive notices at the Web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the Web site; or

(2) has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

(e) A licensee may not provide any notice required by this rule solely by orally explaining the notice, either in person or over the telephone.

(f) For customers only, a licensee shall provide the initial notice required by section 3(a)(1) of this rule, the annual notice required by section 4(a) of this rule, and the revised notice required by section 7 of this rule so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee does any of the following:

(1) Hand delivers a printed copy of the notice to the customer.

(2) Mails a printed copy of the notice to the last known address of the customer.

(3) Makes its current privacy notice available on a Web site (or a link to another Web site) for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the Web site.

(g) A licensee may provide a joint notice from the licensee and one (1) or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

(h) If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual, and revised notice requirements of sections 3(a), 4(a), and 7(a) of this rule, by providing one (1) notice to those consumers jointly. *(Department of Insurance; 760 IAC 1-67-8; filed Aug 31, 2001, 9:40 a.m.: 25 IR 93)*

760 IAC 1-67-9 Limits on disclosure of nonpublic personal financial information to nonaffiliated third parties

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-2-20-3; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13

Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 9. (a) Except as otherwise authorized in this rule, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless the:

(1) licensee has provided to the consumer an initial notice as required under section 3 of this rule;

(2) licensee has provided to the consumer an opt out notice as required in section 6 of this rule;

(3) licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) consumer does not opt out.

(b) Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by sections 12 through 14 of this rule.

(c) A licensee provides a consumer with a reasonable

opportunity to opt out if the licensee does any of the following:

(1) The licensee mails the notices required in subsection (a) to the consumer and allows the consumer to opt out by mailing a form, calling a toll free telephone number or any other reasonable means within thirty (30) days from the date the licensee mailed the notices.

(2) A customer opens an on-line account with a licensee and agrees to receive the notices required in subsection (a) electronically, and the licensee allows the customer to opt out by any reasonable means within thirty (30) days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(3) For an isolated transaction, such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in subsection (a) at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(d) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship. Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

(e) A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out. *(Department of Insurance; 760 IAC 1-67-9; filed Aug 31, 2001, 9:40 a.m.: 25 IR 94)*

760 IAC 1-67-10 Limits on redisclosure and reuse of nonpublic personal financial information

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-2-20-3; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13

Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 10. (a) If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in section 13 or 14 of this rule, the licensee's disclosure and use of that information is limited as follows:

(1) The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information.

(2) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information.

(3) The licensee may disclose and use the information pursuant to an exception in section 13 or 14 of this rule, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

For example, if a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

(b) If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in section 13 or 14 of this rule, the licensee may disclose the information only to:

(1) the affiliates of the financial institution from which the licensee received the information;

(2) its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

(3) any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

For example, if a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in section 13 or 14 of this rule, the licensee may use that list for its own purposes, and the licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the opt out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in section 13 or 14 of this rule, such as to the licensee's attorneys or accountants.

(c) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in section 13 or 14 of this rule, the third party may disclose and use that information only as follows:

(1) The third party may disclose the information to the licensee's affiliates.

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information.

(3) The third party may disclose and use the information pursuant to an exception in section 13 or 14 of this rule in

the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(d) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in section 13 or 14 of this rule, the third party may disclose the information only to:

(1) the licensee's affiliates;

(2) the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(3) any other person, if the disclosure would be lawful if the licensee made it directly to that person.

(Department of Insurance; 760 IAC 1-67-10; filed Aug 31, 2001, 9:40 a.m.: 25 IR 95)

760 IAC 1-67-11 Limits on sharing account number information for marketing purposes

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-2-20-3; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13

Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 11. (a) A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(b) Subsection (a) does not apply if a licensee discloses a policy number or similar form of access number or access code to any of the following:

(1) The licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account.

(2) A licensee who is a producer solely in order to perform marketing for the licensee's own products or services.

(3) A participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(c) A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(d) For purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges. *(Department of Insurance; 760 IAC 1-67-11; filed Aug 31, 2001, 9:40 a.m.: 25 IR 96)*

760 IAC 1-67-12 Exception to opt out requirements for disclosure of nonpublic personal financial information for service providers and joint marketing

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-2-20-3; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13

Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 12. (a) The opt out requirements in sections 6 and 9 of this rule do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

(1) provides the initial notice in accordance with section 3 of this rule; and

(2) enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in section 13 or 14 of this rule in the ordinary course of business to carry out those purposes.

For example, if a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of this subsection if it prohibits the institution from disclosing or using the nonpublic personal financial information, except as necessary to carry out the joint marketing or under an exception in section 13 or 14 of this rule in the ordinary course of business to carry out that joint marketing.

(b) The services a nonaffiliated third party performs for a licensee under subsection (a) may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one (1) or more financial institutions.

(c) As used in this section, "joint agreement" means a written contract pursuant to which a licensee and one (1) or more financial institutions jointly offer, endorse, or sponsor a financial product or service. *(Department of Insurance; 760 IAC 1-67-12; filed Aug 31, 2001, 9:40 a.m.: 25 IR 96)*

760 IAC 1-67-13 Exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-2-20-3; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13

Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 13. (a) The requirements for initial notice in section 3(a)(2) of this rule, the opt out in sections 6 and 9 of this rule, and service providers and joint marketing in section 12 of this rule do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with any of the following:

(1) Servicing or processing an insurance product or service that a consumer requests or authorizes.

(2) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity.

(3) A proposed or actual securitization, secondary market sale, including sales of servicing rights, or similar transaction related to a transaction of the consumer.

(4) Reinsurance or stop loss or excess loss insurance.

(5) To provide information to the policyholder or the producer who procured the insurance policy with respect to a claim under the insurance policy.

(b) As used in this section, "necessary to effect, administer, or enforce a transaction" means that the disclosure is required, or is either of the following:

(1) One (1) of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service.

(2) A usual, appropriate, or acceptable method to do the following:

(A) Carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the insurance product or service.

(B) Administer or service benefits or claims relating to the transaction or the product or service business of which it is a part.

(C) Provide a confirmation, statement, or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker.

(D) Accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party.

(E) Underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance:

(i) Account administration.

(ii) Reporting.

(iii) Investigating or preventing fraud or material misrepresentation.

(iv) Processing premium payments.

(v) Processing insurance claims.

(vi) Administering insurance benefits, including utilization review activities.

(vii) Participating in research projects.

(viii) As otherwise required or specifically permitted by federal or state law.

(ix) In connection with any of the following:

(AA) Authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, or account number, or by other payment means.

(BB) Transfer of receivables, accounts, or interests therein.

(CC) Audit of debit, credit, or other payment information.

(Department of Insurance; 760 IAC 1-67-13; filed Aug 31, 2001, 9:40 a.m.: 25 IR 97)

760 IAC 1-67-14 Other exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-2-20-3; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13

Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 14. (a) The requirements for initial notice to consumers in section 3(a)(2) of this rule, the opt out in sections 6 and 9 of this rule, and service providers and joint marketing in section 12 of this rule do not apply when a licensee discloses nonpublic personal financial information as follows:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction.

(2) In any of the following situations:

(A) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product, or transaction.

(B) To protect against or prevent actual or potential

fraud or unauthorized transactions.

(C) For required institutional risk control or for resolving consumer disputes or inquiries.

(D) To persons holding a legal or beneficial interest relating to the consumer.

(E) To persons acting in a fiduciary or representative capacity on behalf of the consumer.

(3) To provide information to the following:

(A) Insurance rate advisory organizations.

(B) Guaranty funds or agencies.

(C) Agencies that are rating a licensee.

(D) Persons who are assessing the licensee's compliance with industry standards.

(E) The licensee's attorneys, accountants, and auditors.

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Privacy Act of 1978 (12 U.S.C. 3401 et seq.), to law enforcement agencies, including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a state insurance authority, and the Federal Trade Commission, self-regulatory organization or for an investigation on a matter related to public safety.

(5) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) or from a consumer report reported by a consumer reporting agency.

(6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit.

(7) To comply with or respond to any of the following:

(A) Federal, state, or local laws, rules, and other applicable legal requirements.

(B) Properly authorized civil, criminal, or regulatory investigation, or subpoena, or summons by federal, state, or local authorities.

(C) Judicial process or governmental regulatory authorities having jurisdiction over a licensee for examination, compliance, or other purposes as authorized by law.

(8) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan, or a workers' compensation plan.

(b) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under section 6(f) of this rule. *(Department of Insurance; 760 IAC 1-67-14; filed Aug 31, 2001, 9:40 a.m.: 25 IR 97)*

760 IAC 1-67-15 Protection of Fair Credit Reporting Act

Authority: IC 27-1-3-7;; IC 27-2-20-3
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 15. Nothing in this rule shall be construed to modify, limit, or supersede the operation of the federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq., and no inference shall be drawn on the basis of the provisions of this rule regarding whether information is transaction or experience information under Section 603 of the Fair Credit Reporting Act. *(Department of Insurance; 760 IAC 1-67-15; filed Aug 31, 2001, 9:40 a.m.: 25 IR 98)*

760 IAC 1-67-16 Nondiscrimination

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-2-20-3; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 16. A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure of his or her nonpublic personal financial information. *(Department of Insurance; 760 IAC 1-67-16; filed Aug 31, 2001, 9:40 a.m.: 25 IR 98)*

760 IAC 1-67-17 Sample clauses

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-2-20-3; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 17. (a) A licensee may use the following statement, as applicable, to meet the requirements of section 5(a)(1) of this rule, to describe the categories of nonpublic personal information the licensee collects, "We collect nonpublic personal information about you from the following sources:

(1) Information we receive from you on applications or other forms.

(2) Information about your transactions with us, our affiliates, or others.

(3) Information we receive from a consumer reporting agency.".

(b) A licensee may use one (1) of the statements in this subsection, as applicable, to meet the requirement of section 5(a)(2) of this rule, to describe the categories of nonpublic personal information the licensee discloses. The licensee may use either of the following statements if it discloses

nonpublic personal information other than as permitted by the exceptions in sections 12 through 14 of this rule:

(1) "We may disclose the following kinds of nonpublic personal information about you:

(A) Information we receive from you on applications or other forms, such as (provide illustrative examples, such as 'your name, address, Social Security number, assets, income, and beneficiaries').

(B) Information about your transactions with us, our affiliates, or others, such as (provide illustrative example, such as 'your policy coverage, premiums, and payment history').

(C) Information we receive from a consumer reporting agency, such as (provide illustrative examples, such as 'your creditworthiness and credit history').".

(2) "We may disclose all of the information that we collect, as described (describe location in the notice, such as 'above' or 'below').".

(c) A licensee may use the statement is this subsection, as applicable, to meet the requirements of section 5(a)(2), 5(a)(3), and 5(a)(4) of this rule, to describe the categories of nonpublic personal information about customers and former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses. A licensee may use the following statement if the licensee does not disclose nonpublic personal information to any party, other than as permitted by the exceptions in sections 13 and 14 of this rule, "We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.".

(d) A licensee may use the statement in this subsection, as applicable, to meet the requirement of section 5(a)(3) of this rule, to describe the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information. The following statement may be used if the licensee discloses nonpublic personal information other than as permitted by the exceptions in sections 12 through 14 of this rule, as well as when permitted by the exceptions in sections 13 and 14 of this rule, "We may disclose nonpublic personal information about you to the following types of third parties:

(1) Financial service providers, such as (provide illustrative examples, such as 'life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance agents').

(2) Nonfinancial companies, such as (provide illustrative examples, such as 'retailers, direct marketers, airlines, and publishers').

(3) Others, such as (provide illustrative examples, such as 'nonprofit organizations').

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.".

(e) A licensee may use one (1) of the statements in this subsection, as applicable, to meet the requirements of section 5(a)(5) of this rule, related to the exception for service providers and joint marketers in section 12 of this rule. The licensee may use either of the following statements, if a licensee discloses nonpublic personal information under the exception in section 12 of this rule, the licensee shall describe the categories of nonpublic personal information the licensee discloses and the categories of third parties with which the licensee has contracted:

(1) "We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements:

(A) Information we receive from you on applications or other forms, such as (provide illustrative examples, such as 'your name, address, Social Security number, assets, income, and beneficiaries').

(B) Information about your transactions with us, our affiliates or others, such as (provide illustrative examples, such as 'your policy coverage, premium, and payment history').

(C) Information we receive from a consumer reporting agency, such as (provide illustrative examples, such as 'your creditworthiness and credit history').".

(2) "We may disclose all of the information we collect, as described (describe location in the notice, such as 'above' or 'below') to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.".

(f) A licensee may use the statement in this subsection, as applicable, to meet the requirement of section 5(a)(6) of this rule, to provide an explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method or methods by which the consumer may exercise that right. The licensee may use the followings statement if the licensee discloses nonpublic personal information other than as permitted by the exceptions in sections 12 through 14 of this rule, "If you prefer that we do not disclose nonpublic personal financial information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures required by law). If you wish to opt out of disclosures to third parties, you may (describe reasonable means of opting out, such as 'call the following toll free number: (insert number)').".

(g) A licensee may use the following statement, as applicable, to meet the requirement of section 5(a)(8) of this rule to describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information, "We restrict access to nonpublic personal information about you to (provide an appropriate descrip-

tion, such as 'those employees who need to know that information to provide products or services to you'). We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.". *(Department of Insurance; 760 IAC 1-67-17; filed Aug 31, 2001, 9:40 a.m.: 25 IR 98)*

760 IAC 1-67-18 Violation

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-2-20-3; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-4-1; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 18. A violation of this rule is deemed an unfair method of competition and an unfair and deceptive act and practice in the business of insurance subject to the provisions of IC 27-4-1. *(Department of Insurance; 760 IAC 1-67-18; filed Aug 31, 2001, 9:40 a.m.: 25 IR 100)*

760 IAC 1-67-19 Severability

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-2-20-3; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 19. If any section or portion of a section of this rule or its applicability to any person or circumstance is held invalid by a court, the remainder of the rule or the applicability of the provision to other persons or circumstances shall not be affected. *(Department of Insurance; 760 IAC 1-67-19; filed Aug 31, 2001, 9:40 a.m.: 25 IR 100)*

760 IAC 1-67-20 Effective date

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-2-20-3; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 20. (a) This rule is effective thirty (30) days after filing with the secretary of state's office. In order provide sufficient time for licensees to establish policies and systems to comply with the requirements of this rule, the commissioner has extended the time for compliance with this rule until July 1, 2001.

(b) By July 1, 2001, a licensee shall provide an initial notice, as required by section 3 of this rule, to consumers who are the licensee's customers on July 1, 2001.

(c) Until July 1, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provision of section 12(a) of this rule, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the licensee entered into the agreement on or before July 1, 2000. *(Department of Insurance; 760 IAC 1-67-20; filed Aug 31, 2001, 9:40 a.m.: 25 IR 100)*

LSA Document #01-94(F)
Notice of Intent Published: 24 IR 2115
Proposed Rule Published: June 1, 2001; 24 IR 2832
Hearing Held: June 22, 2001
Approved by Attorney General: August 16, 2001
Approved by Governor: August 27, 2001
Filed with Secretary of State: August 31, 2001, 9:40 a.m.
Incorporated Documents Filed with Secretary of State: Fair Credit Reporting Act (15 U.S.C. 1681a); Section 4(k) of the federal Bank Holding Act of 1956 (12 U.S.C. 1843).

TITLE 876 INDIANA REAL ESTATE COMMISSION

LSA Document #00-260(F)

DIGEST

Amends 876 IAC 1-1-3 to revise and update the definition of selling principal broker. Amends 876 IAC 1-1-23 to require a mutual release or court order to authorize a listing and selling principal broker to release earnest money. Amends 876 IAC 1-1-24 to extend requirements that apply to listing principal brokers in closings to selling principal brokers. Amends 876 IAC 1-1-26 to add Internet advertising to the advertising requirements. Amends 876 IAC 2-17-3 to divide the real estate broker and salesperson examination into two sections and to require that applicants pass both sections and to require applicants for licensure as a broker or salesperson by reciprocity to pass the Indiana licensure law section of the examination. Amends 876 IAC 4-1-3 to allow individuals once approved to instruct for continuing education sponsors to teach for other sponsors without further approval. Amends 876 IAC 4-2-1 to require licensees to present photo identification and broker or salesperson pocket card for admission to a continuing education course. Amends 876 IAC 4-2-4 to change the course subjects allowed satisfying the ten hour continuing education requirements under IC 25-34.1-9-11(2). Amends 876 IAC 4-2-5 to eliminate mechanical skills as a course that does not qualify as instructional or contributing to professional competency. Amends 876 IAC 4-2-9 to require licensees to obtain 16 hours of continuing education to reactivate an inactive license during a two year licensure period. Partially effective 30 days after filing with the secretary of state and partially effective October 1, 2001.

876 IAC 1-1-3 **876 IAC 4-1-3**
876 IAC 1-1-23 **876 IAC 4-2-1**
876 IAC 1-1-24 **876 IAC 4-2-4**
876 IAC 1-1-26 **876 IAC 4-2-5**
876 IAC 2-17-3 **876 IAC 4-2-9**

SECTION 1. 876 IAC 1-1-3 IS AMENDED TO READ AS FOLLOWS:

876 IAC 1-1-3 Definitions
Authority: IC 25-34.1-2-5; IC 25-34.1-2-5.1
Affected: IC 25-34.1-3-2; IC 25-34.1-5

Sec. 3. (a) The definitions in this section apply throughout this title.

(b) "Person" means an individual, partnership, or corporation.

(c) "Commission" means the Indiana real estate commission.

(d) "Real estate" means any right, title, or interest in real property.

(e) "License" means a right to perform, for compensation, any of the acts provided in IC 25-34.1-3-2, as evidenced by a valid pocket card issued by the Indiana real estate commission.

(f) "Licensee" means one who holds a valid salesperson or broker license issued by the commission.

(g) "Course approval" means approval of a broker or a salesperson course granted under IC 25-34.1-5 and 876 IAC 2, which is not expired, suspended, or revoked.

(h) "Licensing agency" means the Indiana professional licensing agency.

(i) "Principal broker" means the individual broker, including the broker designated as representative of a corporation or partnership whom the commission shall hold responsible for the actions of licensees who are assigned to the principal broker.

(j) "Listing principal broker" means a principal broker who has a written contract with an owner, allowing him to sell, buy, trade, exchange, option, lease, rent, manage, list, or appraise real estate.

(k) "Selling principal broker" means
~~(1)~~ a principal broker who is acting ~~as a subagent of the listing principal broker,~~ on behalf of **the buyer and who provides an accepted offer to purchase to** the seller. ~~or~~
~~(2) a buyer agent or limited agent engaged by the buyer who provides an acceptable offer to purchase to the seller.~~

(l) "Managing broker" means a broker who manages a branch office.

(m) "Branch office" means a real estate broker's office other than his principal place of business.

(n) "Broker" means any person, partnership, or corporation, who holds a valid broker's license issued by the commission. A person who, for consideration:
(1) sells;
(2) buys;
(3) trades;
(4) exchanges;
(5) options;
(6) leases;
(7) rents;
(8) manages;
(9) lists;
(10) refers; or
(11) appraises;
real estate or negotiates or offers to perform any of those acts.

(o) "Salesperson" means any person holding a valid salesperson's license issued by the commission. An individual, other than a broker, who, for consideration and in association with and under the auspices of a principal broker:
(1) sells;
(2) buys;
(3) trades;
(4) exchanges;
(5) options;
(6) leases;
(7) rents;
(8) manages; or
(9) lists;
real estate or negotiates or offers to perform any of those acts.

(p) "Broker-salesperson" means an individual who meets all the legal requirements of a broker but elects to operate in association with and under the auspices of a principal broker to whom his license is assigned. The broker-salesperson is subject to all rules and regulations applying to salespersons in association with a principal broker.

(q) "He" shall also mean she.

(r) "Owner/seller" means that person or persons of record in titled to ~~or~~ having an interest in the property or their duly authorized representative.

(s) "Referral" means the act of recommending or referring a sales lead that develops a client or customer.

(t) "Referral service" means a company or part of a company or franchise system established for the purpose of recommending or referring client or customer leads to other brokers. *(Indiana Real Estate Commission; Rule 4; filed Sep 28, 1977, 4:30 p.m.: Rules and Regs. 1978, p. 794; filed Mar 13, 1980, 2:30 p.m.: 3 IR 646; filed Dec 11, 1986, 10:40 a.m.: 10 IR 874; filed Dec 9, 1988, 1:25 p.m.: 12 IR 925, eff Jan 8, 1989; errata*

filed Dec 21, 1988, 3:45 p.m.: 12 IR 1209; errata filed May 15, 1989, 2:20 p.m.: 12 IR 1907; filed Jun 14, 1995, 11:00 a.m.: 18 IR 2785; readopted filed Jun 29, 2001, 9:56 a.m.: 24 IR 3824; filed Aug 15, 2001, 9:50 a.m.: 25 IR 101)

SECTION 2. 876 IAC 1-1-23 IS AMENDED TO READ AS FOLLOWS:

876 IAC 1-1-23 Written offers to purchase; disposition of money received

Authority: IC 25-34.1-2-5; IC 25-34.1-2-5.1
Affected: IC 25-34.1-2-5

Sec. 23. Any and all written offers to purchase or authorization to purchase shall be communicated to the seller for his **or her** formal acceptance or rejection immediately upon receipt of such offer, and such offers or authorizations shall be made in quadruplicate, one **(1)** copy to the prospective purchasers at the time of signing, one **(1)** copy for the principal broker's files, one **(1)** copy to the sellers, and one **(1)** copy to be returned to the purchasers after acceptance or rejection. The listing principal broker shall, on or before the next two (2) banking days after acceptance of the offer to purchase by the seller, do one **(1)** of the following:

~~(a)~~ **(1)** Deposit all ~~monies~~ **money** received in connection with a transaction in his **or her** escrow/trust account.

~~(b)~~ **(2)** Delegate the responsibility to the selling principal broker to deposit ~~said monies~~ **the money** in the selling broker's escrow/trust account. ~~But~~

In any event, the ~~Indiana real estate~~ commission shall hold the listing principal broker responsible for ~~said monies.~~ **the money.** In the event the earnest money deposit is other than cash, this fact shall be communicated to the seller prior to his **or her** acceptance of the offer to purchase, and such fact shall be shown in the earnest money receipt. All ~~monies~~ **money** shall be retained in the escrow/trust account so designated until disbursement thereof is properly authorized. **The listing and selling principal brokers holding any earnest money are not required to make payment to the purchasers or sellers when a real estate transaction is not consummated unless the parties enter into a mutual release of the funds or a court issues an order for payment.** *(Indiana Real Estate Commission; Rule 24; filed Sep 28, 1977, 4:30 p.m.: Rules and Regs. 1978, p. 800; filed Dec 11, 1986, 10:40 a.m.: 10 IR 878; readopted filed Jun 29, 2001, 9:56 a.m.: 24 IR 3824; filed Aug 15, 2001, 9:50 a.m.: 25 IR 102)*

SECTION 3. 876 IAC 1-1-24 IS AMENDED TO READ AS FOLLOWS:

876 IAC 1-1-24 Closing statements

Authority: IC 25-34.1-2-5; IC 25-34.1-2-5.1
Affected: IC 25-34.1-2-5

Sec. 24. Every listing **and selling** principal broker shall deliver to ~~the seller~~ **their client** in every real estate transaction wherein he **or she** acts as real estate broker, at the time such transaction is consummated, a complete detailed closing statement showing all of the receipts and disbursements handled by such principal broker. The listing **and selling** principal broker shall retain true copies of such statements in his **or her** files for at least five (5) years. The listing **and selling** principal broker or his ~~license~~ **or her licensed** associate acting on his **or her** behalf, shall attend all closings. *(Indiana Real Estate Commission; Rule 25; filed Sep 28, 1977, 4:30 p.m.: Rules and Regs. 1978, p. 801; filed Jan 16, 1979, 11:55 a.m.: 2 IR 315; filed Dec 11, 1986, 10:40 a.m.: 10 IR 878; readopted filed Jun 29, 2001, 9:56 a.m.: 24 IR 3824; filed Aug 15, 2001, 9:50 a.m.: 25 IR 102)*

SECTION 4. 876 IAC 1-1-26 IS AMENDED TO READ AS FOLLOWS:

876 IAC 1-1-26 Advertising requirements; name of principal broker; prohibitions

Authority: IC 25-34.1-2-5; IC 25-34.1-2-5.1
Affected: IC 25-34.1-3-3.1; IC 25-34.1-3-4.1

Sec. 26. Any display, classified advertising, signs, **Internet advertising,** or business cards, which carries *[sic., carry]* a licensee's name must contain the name of the principal broker or firm with whom the licensee is associated, and, except for business cards, said principal broker or firm's name must be in letters larger than those used in advertising the licensee's name. All advertising shall be under the direct supervision and in the name of the principal broker or firm; a salesperson's name may not be a part of the firm name. Any advertising by a principal broker must reveal the surname of said broker as it appears on the broker's license issued by the ~~Indiana real estate~~ commission. Any television or radio advertising ~~which~~ **that** carries the name of any licensee associated with a principal broker must carry the name of the principal broker or firm, as licensed by the commission. A licensee shall not advertise in a manner indicating that the property is being offered by a private party not engaged in the real estate business and shall use no advertising where only a post office box number, telephone number, or street address appears. No licensee shall place a sign on any property, advertise or offer any property for sale, lease, or rent without the written consent of the seller or ~~his~~ **the seller's** authorized agent. *(Indiana Real Estate Commission; Rule 27; filed Sep 28, 1977, 4:30 p.m.: Rules and Regs. 1978, p. 801; filed Mar 13, 1980, 2:30 p.m.: 3 IR 648; filed Dec 11, 1986, 10:40 a.m.: 10 IR 879; readopted filed Jun 29, 2001, 9:56 a.m.: 24 IR 3824; filed Aug 15, 2001, 9:50 a.m.: 25 IR 102)*

SECTION 5. 876 IAC 2-17-3 IS AMENDED TO READ AS FOLLOWS:

876 IAC 2-17-3 Examinations; passing score

Authority: IC 25-34.1-2-5
Affected: IC 25-34.1-3-3.1; IC 25-34.1-3-4.1

Sec. 3. (a) The broker and salesperson examinations shall be

standardized examinations for the testing of real estate brokers and salespersons. **The examination required of all applicants for licensure as a broker or salesperson shall be divided into the following two (2) sections:**

(1) General real estate practices.

(2) Indiana licensure law.

(b) Applicants for licensure by reciprocity shall only be required to take and pass the Indiana licensure section of the broker or salesperson exam, whichever is applicable.

~~(b)~~ **(c)** The examination will be electronically administered by the commission's duly appointed agent. However, individuals who are unable to take the electronically administered examination because of a disability may apply to take it on paper.

~~(c)~~ **(d)** An applicant shall be deemed to have passed the examination upon attaining a score of at least seventy-five percent (75%) **on each section.**

(e) If the applicant passes one (1) section of the examination, the applicant is credited for the section the applicant has passed and is not required to retake the section of the examination unless the applicant is retaking the examination after having to again comply with the education requirement in section 1(c) of this rule. *(Indiana Real Estate Commission; 876 IAC 2-17-3; filed Dec 9, 1988, 1:25 p.m.: 12 IR 936, eff Jan 8, 1989; errata filed Dec 21, 1988, 3:45 p.m.: 12 IR 1209; filed Dec 6, 1994, 4:57 p.m.: 18 IR 1286; readopted filed Jun 29, 2001, 9:56 a.m.: 24 IR 3824; filed Aug 15, 2001, 9:50 a.m.: 25 IR 102, eff Oct 1, 2001)*

SECTION 6. 876 IAC 4-1-3 IS AMENDED TO READ AS FOLLOWS:

876 IAC 4-1-3 Significant changes

Authority: IC 25-34.1-9-21
Affected: IC 25-34.1

Sec. 3. (a) Any significant changes in the operation of the approved sponsor must be approved by the commission prior to the effective date of the change. Any change in the course outline must be approved by the commission prior to the course being offered or given. The commission shall review the changes to determine whether or not the sponsor shall continue to be approved.

(b) Significant changes shall include the following:
(1) Change in ownership of the sponsor, including changes in the officers and directors of the corporation.
(2) A new school director.
(3) A new instructor.
(4) Any change in course outline.

(c) Once a continuing education instructor has been approved through the continuing education sponsor, the instructor is approved to teach for all continuing education sponsors.

(d) Notwithstanding subsection (b)(3), an instructor who has already been approved under this section or section 2 of this rule for another approved sponsor shall not be considered a new instructor. *(Indiana Real Estate Commission; 876 IAC 4-1-3; filed Dec 1, 1993, 10:30 a.m.: 17 IR 766; filed Jun 14, 1995, 11:00 a.m.: 18 IR 2790; readopted filed Jun 29, 2001, 9:56 a.m.: 24 IR 3824; filed Aug 15, 2001, 9:50 a.m.: 25 IR 103)*

SECTION 7. 876 IAC 4-2-1 IS AMENDED TO READ AS FOLLOWS:

876 IAC 4-2-1 Continuing education requirements

Authority: IC 25-34.1-9-21
Affected: IC 25-34.1-3-10; IC 25-34.1-9-11; IC 25-34.1-9-19; IC 25-34.1-10

Sec. 1. (a) Every licensed real estate broker and salesperson who has not been granted an inactive license under IC 25-34.1-3-10 or a waiver under IC 25-34.1-9-19 must complete during each two (2) year licensure period at least sixteen (16) hours of the approved education ~~requirement~~ **requirements** under IC 25-34.1-9-11 and this article which are given by commission approved sponsors of courses in order to qualify for license renewal.

(b) Licensees attending continuing education courses shall present a government-issued photo identification and a real estate broker or salesperson pocket card for inspection by the course sponsor or a person designated by the course sponsor.

~~(b)~~ **(c)** Measurements and reporting shall be in full hours with a fifty (50) minute instruction period equaling one (1) hour.

~~(c)~~ **(d)** A course shall be a minimum of ~~a~~ two (2) ~~hour~~ **hours** instruction period.

~~(d)~~ **(e)** A minimum of two (2) hours and no more than eight (8) hours of instruction may be offered in a one (1) day course.

~~(e)~~ **(f)** A licensee shall not be entitled to any continuing education credit for a course unless the licensee attends the entire course.

~~(f)~~ **(g)** There shall be no minimum requirement of numbers of credit hours to be completed in each single year of the two (2) year licensure period.

~~(g)~~ **(h)** Any continuing education credit accumulated above the minimum requirement for a two (2) year licensure period shall not be carried forward ~~to~~ **o** *[sic.]* the next two (2) year licensure period.

~~(h)~~ **(i)** A licensee who attends the same approved continuing

education course more than once in the same two (2) year licensure period is only entitled to continuing education credit for ~~one~~ (1) course.

~~(i)~~ **(j)** An instructor shall be entitled to continuing education credit for courses the instructor teaches. However, an instructor may not be credited for more than six (6) hours of credit for instructing in any two (2) year licensure period. Instructors may not receive credit for repeated courses. *(Indiana Real Estate Commission; 876 IAC 4-2-1; filed Dec 1, 1993, 10:30 a.m.: 17 IR 767; readopted filed Jun 29, 2001, 9:56 a.m.: 24 IR 3824; filed Aug 15, 2001, 9:50 a.m.: 25 IR 103)*

SECTION 8. 876 IAC 4-2-4 IS AMENDED TO READ AS FOLLOWS:

876 IAC 4-2-4 Curricula under IC 25-34.1-9-11(2)
Authority: IC 25-34.1-9-21
Affected: IC 25-34.1-9-11

Sec. 4. In addition to the subjects listed in IC 25-34.1-9-11(2), the following course subjects shall be allowed toward meeting the required ten (10) hours of course work:

(1) Subjects listed in IC 25-34.1-9-11(1).
(2) Property management, including lease agreements, accounting procedures, and management contracts.
(3) Timeshares, condominiums, and cooperatives.
(4) Industrial brokerage and leasing.
(5) Investment real estate analysis.
(6) Any course approved by the commission relating to real estate practices.

(Indiana Real Estate Commission; 876 IAC 4-2-4; filed Dec 1, 1993, 10:30 a.m.: 17 IR 768; readopted filed Jun 29, 2001, 9:56 a.m.: 24 IR 3824; filed Aug 15, 2001, 9:05 a.m.: 25 IR 104)

SECTION 9. 876 IAC 4-2-5 IS AMENDED TO READ AS FOLLOWS:

876 IAC 4-2-5 Course qualifications
Authority: IC 25-34.1-9-21
Affected: IC 25-34.1-5

Sec. 5. (a) All courses must be instructional and contribute to professional competence in the practice of real estate.

(b) The following courses do not qualify:
(1) Real estate broker or salesperson prelicensing courses under IC 25-34.1-5.
(2) Examination preparation.
~~(3) Mechanical skills.~~
~~(4)~~ **(3)** Sales meetings.
~~(5)~~ **(4)** In-house training sessions.
~~(6)~~ **(5)** Correspondence.
~~(7)~~ **(6)** Motivational classes or seminars.

(Indiana Real Estate Commission; 876 IAC 4-2-5; filed Dec 1, 1993, 10:30 a.m.: 17 IR 768; readopted filed Jun 29, 2001, 9:56 a.m.: 24 IR 3824; filed Aug 15, 2001, 9:05 a.m.: 25 IR 104)

SECTION 10. 876 IAC 4-2-9 IS AMENDED TO READ AS FOLLOWS:

876 IAC 4-2-9 License activation
Authority: IC 25-34.1-9-21
Affected: IC 25-34.1-9-11

Sec. 9. (a) In order to reactivate an inactive license at the time of license renewal, the licensee must have obtained all sixteen (16) hours of continuing education which would have been required for renewal had the license been active.

(b) In order to reactivate an inactive license during a two (2) year licensure period, the licensee must obtain the ~~six (6)~~ **sixteen (16)** hours of continuing education required by IC 25-34.1-9-11(1) **and IC 25-34.1-9-11(2)** for that two (2) year licensure period and pay a ten dollar ($10) fee.

~~(c) A licensee who has reactivated the licensee's license during a two (2) year licensure period under subsection (b) must obtain the ten (10) hours of continuing education required by IC 25-34.1-9-11(2) in order to renew the license at the end of the two (2) year licensure period.~~ *(Indiana Real Estate Commission; 876 IAC 4-2-9; filed Dec 1, 1993, 10:30 a.m.: 17 IR 769; readopted filed Jun 29, 2001, 9:56 a.m.: 24 IR 3824; filed Aug 15, 2001, 9:05 a.m.: 25 IR 104)*

SECTION 11. **SECTION 5 of this document takes effect October 1, 2001.**

LSA Document #00-260(F)
Notice of Intent Published: 24 IR 701
Proposed Rule Published: June 1, 2001; 24 IR 2847
Hearing Held: June 28, 2001
Approved by Attorney General: July 30, 2001
Approved by Governor: August 14, 2001
Filed with Secretary of State: August 15, 2001, 9:50 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 898 INDIANA ATHLETIC TRAINERS BOARD

LSA Document #01-46(F)

DIGEST

Adds 898 IAC 1-1-1.5 concerning the definition of affiliated setting. Repeals 898 IAC 1-5-5. Effective 30 days after filing with the secretary of state.

898 IAC 1-1-1.5
898 IAC 1-5-5

SECTION 1. 898 IAC 1-1-1.5 IS ADDED TO READ AS FOLLOWS:

898 IAC 1-1-1.5 "Affiliated setting" defined
Authority: IC 25-5.1-2-6
Affected: IC 25-5.1

Sec. 1.5. "Affiliated setting" means a clinical setting that is an extension of the traditional athletic training program and thus is subject to established CAAHEP essentials and guidelines. Examples of affiliated clinical settings include, but are not limited to, athletic training rooms and athletic practices and games in secondary schools, colleges and universities, or professional sports organizations outside of the sponsoring institution. *(Indiana Athletic Trainers Board; 898 IAC 1-1-1.5; filed Aug 29, 2001, 9:55 a.m.: 25 IR 105)*

SECTION 2. 898 IAC 1-5-5 IS REPEALED.

LSA Document #01-46(F)
Notice of Intent Published: 24 IR 1689
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