

# Proposed Rules

## TITLE 50 STATE BOARD OF TAX COMMISSIONERS

### Proposed Rule

LSA Document #01-266

#### DIGEST

Amends 50 IAC 15 concerning the certification of assessor-appraisers, professional appraisers, and tax representatives. Makes changes recognizing the new department of local government finance and the Indiana board of tax review as entities that will succeed the state board of tax commissioners effective January 1, 2002 (pursuant to P.L.198-2001.) Makes other changes required under P.L.198-2001, including the deletion of testing requirements in connection with continuing education and adding provisions regarding procedures for the revocation of a certification. Effective 30 days after filing with the secretary of state.

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SECTION 1. 50 IAC 15-1-2.5 IS ADDED TO READ AS FOLLOWS:

### ARTICLE 15. ASSESSOR-APPRAISERS, PROFESSIONAL APPRAISERS, AND TAX REPRESENTATIVES

#### 50 IAC 15-1-2.5 "Commissioner" defined

Authority: IC 6-1.1-30-1.1; IC 6-1.1-31-1  
Affected: IC 6-1.1-35.5-6

Sec. 2.5. "Commissioner" means the commissioner of the department of local government finance established under IC 6-1.1-30-1.1. (State Board of Tax Commissioners; 50 IAC 15-1-2.5)

SECTION 2. 50 IAC 15-1-2.6 IS ADDED TO READ AS FOLLOWS:

#### 50 IAC 15-1-2.6 "Department" defined

Authority: IC 6-1.1-30-1.1  
Affected: IC 6-1.1-35.5-6

Sec. 2.6. "Department" means the department of local government finance established under IC 6-1.1-30-1.1. (State Board of Tax Commissioners; 50 IAC 15-1-2.6)

SECTION 3. 50 IAC 15-1-6 IS ADDED TO READ AS FOLLOWS:

#### 50 IAC 15-1-6 "State board" defined

Authority: IC 6-1.1-31-1; IC 6-1.1-31-11; IC 6-1.1-31-7-3; IC 6-1.1-35.5-8  
Affected: IC 6-1.1

Sec. 6. "State board" means the state board of tax commissioners. (State Board of Tax Commissioners; 50 IAC 15-1-6)

SECTION 4. 50 IAC 15-3-1 IS AMENDED TO READ AS FOLLOWS:

#### 50 IAC 15-3-1 Level One requirements

Authority: IC 6-1.1-31-1; IC 6-1.1-35.5-8  
Affected: IC 6-1.1

Sec. 1. In order to be certified as a Level One assessor-appraiser, an individual must:

- (1) after December 31, 1999, complete six (6) hours of Level One preexamination course work designated by the state board or the department;
- (2) pass the Level One examination designated by the state board or the department; and
- (3) complete the continuing education requirements specified in section 2 of this rule.

(State Board of Tax Commissioners; 50 IAC 15-3-1; filed Mar 31, 1999, 10:31 a.m.: 22 IR 2482)

SECTION 5. 50 IAC 15-3-2, AS AMENDED AT 24 IR 1302, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

#### 50 IAC 15-3-2 Level One continuing education

Authority: IC 6-1.1-31-1; IC 6-1.1-35.5-8  
Affected: IC 6-1.1

Sec. 2. (a) The continuing education requirements for Level One certification are as follows:

- (1) For certification cycles that begin after December 31, 1998, thirty (30) hours of course work approved by the state board six (6) hours of which must be evidenced by passage of the associated course examination. or the department.
- (2) For certification cycles that begin after December 31, 2002, thirty (30) hours of course work approved by the state board twelve (12) hours of which must be evidenced by passage of the associated course examination. or the department.
- (3) For certification cycles that begin after December 31, 2006, thirty (30) hours of course work approved by the state board fifteen (15) hours of which must be evidenced by passage of the associated course examination. or the department.

(b) After eight (8) years of continuous certification, accrued after December 31, 1998, as an assessor-appraiser under section 1 of this rule, the continuing education requirements of subsection (a) are reduced to fifteen (15) hours of course work approved by the state board or the department, three (3) hours

of which must be evidenced by passage of the associated course examination.

(c) The continuing education requirements specified in this section must be obtained in forty-eight (48) month cycles, beginning:

- (1) if first certified before January 1, 1999, January 1, 1999; or
- (2) if first certified after December 31, 1998, January 1 of the first year following certification.

*(State Board of Tax Commissioners; 50 IAC 15-3-2; filed Mar 31, 1999, 10:31 a.m.: 22 IR 2482; filed Dec 18, 2000, 11:01 a.m.: 24 IR 1302)*

SECTION 6. 50 IAC 15-3-3, AS AMENDED AT 24 IR 1302, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

**50 IAC 15-3-3 Level Two requirements**

**Authority:** IC 6-1.1-31-1; IC 6-1.1-35.5-8  
**Affected:** IC 6-1.1

Sec. 3. In order to be certified as a Level Two assessor-appraiser, an individual must:

- (1) after December 31, 1999, complete six (6) hours of Level Two preexamination course work designated by the **state board or the department**;
- (2) pass the Level Two examination designated by the **state board or the department**; and
- (3) complete the continuing education requirements specified in section 4 of this rule.

*(State Board of Tax Commissioners; 50 IAC 15-3-3; filed Mar 31, 1999, 10:31 a.m.: 22 IR 2483)*

SECTION 7. 50 IAC 15-3-4, AS AMENDED AT 24 IR 1302, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

**50 IAC 15-3-4 Level Two continuing education**

**Authority:** IC 6-1.1-31-1; IC 6-1.1-35.5-8  
**Affected:** IC 6-1.1

Sec. 4. (a) The continuing education requirements for Level Two certification are as follows:

- (1) For certification cycles that begin after December 31, 1998, forty-five (45) hours of course work approved by the **state board** ~~twelve (12) of which must be evidenced by passage of the associated course examination.~~ **or the department.**
- (2) For certification cycles that begin after December 31, 2002, forty-five (45) hours of course work approved by the **state board** ~~eighteen (18) hours of which must be evidenced by passage of the associated course examination.~~ **or the department.**
- (3) For certification cycles that begin after December 31, 2006, forty-five (45) hours of course work approved by the **state board** ~~twenty-two (22) hours of which must be evidenced by passage of the associated course examination.~~ **or the department.**

(b) After eight (8) years of continuous certification, accrued

after December 31, 1998, as an assessor-appraiser under section 3 of this rule, the continuing education requirements of subsection (a) are reduced to eighteen (18) hours of course work approved by the **state board or the department**, six (6) hours of which must be evidenced by passage of the associated course examination.

(c) The continuing education requirements specified in this section must be obtained every forty-eight (48) months, beginning:

- (1) if first certified before January 1, 1999, January 1, 1999; or
- (2) if first certified after December 31, 1998, January 1 of the first year following certification.

*(State Board of Tax Commissioners; 50 IAC 15-3-4; filed Mar 31, 1999, 10:31 a.m.: 22 IR 2483; filed Dec 18, 2000, 11:01 a.m.: 24 IR 1302)*

SECTION 8. 50 IAC 15-3-5 IS AMENDED TO READ AS FOLLOWS:

**50 IAC 15-3-5 Miscellaneous provisions**

**Authority:** IC 6-1.1-31-1; IC 6-1.1-35.5-8  
**Affected:** IC 6-1.1-4

Sec. 5. ~~(a) The board may, after proper notice and hearing, revoke an assessor-appraiser certification for noncompliance with:~~

- ~~(1) this article;~~
- ~~(2) the provisions of the contract entered under IC 6-1.1-4; or~~
- ~~(3) assessing laws and rules of the board.~~

~~(b) (a) The state board or the department shall maintain, publish, and distribute to each assessor-appraiser, a list of courses that have been accredited as approved assessor-appraiser continuing education courses. Courses that are not included on the list may be submitted for inclusion and will, at the discretion of the state board or the department, be accredited.~~

~~(c) (b) A certified assessor-appraiser that meets the continuing education requirements of section 4 of this rule is not required to meet the continuing education requirements of section 2 of this rule in order to maintain their Level One certification.~~

~~(d) (c) An assessor-appraiser holding a valid certification on January 1, 1999, shall be deemed certified under this rule. (State Board of Tax Commissioners; 50 IAC 15-3-5; filed Mar 31, 1999, 10:31 a.m.: 22 IR 2483)~~

SECTION 9. 50 IAC 15-3-6 IS ADDED TO READ AS FOLLOWS:

**50 IAC 15-3-6 Revocation of certification criteria and procedures**

**Authority:** IC 6-1.1-31-1  
**Affected:** IC 6-1.1-4; IC 6-1.1-35.5-6

**Sec. 6. (a) The state board, before January 1, 2002, or the**

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department, after December 31, 2001, may revoke the Level One or Level Two Assessor-appraiser certification of a professional appraiser or employee of a professional appraiser for:

- (1) conduct proscribed by IC 6-1.1-35.5-6(b);
- (2) noncompliance with:
  - (A) the educational provisions of this article;
  - (B) the provisions of the contract entered under IC 6-1.1-4; or
  - (C) assessing laws and rules of the state board.

(b) The revocation procedure shall be initiated by the state board's or the department's issuance of a notice to the respondent by certified mail, return receipt requested, containing a clear and concise statement detailing the alleged misconduct and stating the time and place for a hearing thereon; provided, however, that the hearing date cannot be less than ninety (90) days from the initial date of mailing of the notice to the respondent. The notice shall inform respondent of the information contained in subsections (d) and (g), and shall further inform respondent that the failure to attend the hearing without good reason cause may constitute grounds for default entered in favor of the state board or department, as well as the sanction imposed.

(c) The state board or the department shall appoint a hearing officer to serve as an administrative law judge for purposes of these proceedings. The hearing officer, once appointed, may, with notice to the parties, conduct any prehearing proceedings requested by either party, or which the hearing officer determines may aid in the ultimate resolution of the proceedings. Informal discovery may be allowed subject to any terms and conditions the hearing officer determines to be appropriate.

(d) The revocation hearing shall be conducted on the record. The respondent may be represented by counsel, and shall have the right to present evidence on the respondent's own behalf and to cross-examine the state board's or department's witnesses or evidence. The burden of proof shall be on the state board or the department to prove the violation or violations alleged by a preponderance of the evidence. No continuance shall be granted except upon a showing of good cause.

(e) The hearing officer may consider any of the following in determining whether to recommend to the commissioner whether respondent's Level One or Level Two assessor-appraiser certification should be revoked:

- (1) The seriousness of the violation that gave rise to these proceedings.
- (2) Whether the violation is likely to recur.
- (3) Respondent's character, including remorse, if any, expressed.
- (4) Whether respondent's continued status as a Level One

or Level Two assessor-appraiser would pose an undue risk to the public.

(5) Any other factor the hearing officer determines to be appropriate under the circumstances.

(f) The hearing officer shall submit a recommendation for final action to the state board or the commissioner. The recommendation shall contain the reasons for the hearing officer's determination of the sanction, if any, to be imposed. The state board or the commissioner is not bound by the hearing officer's recommendation.

(g) Upon receipt of the hearing officer's recommendation, if the state board or the commissioner determines that a violation of section 2(a) of this rule has occurred, the state board or the commissioner may take any of the following remedies with respect to the respondent:

- (1) Decline to issue any sanction.
- (2) Issue a written reprimand, either public or private, admonishing the respondent for the violation.
- (3) Issue a period of suspension of the respondent's Level One or Level Two assessor-appraiser certification for a period of up to one (1) year, at the conclusion of which the respondent shall be automatically reinstated, provided that respondent meets all educational requirements for a Level One or Level Two assessor-appraiser certification, as applicable to the proceedings.

The determination of the state board or the commissioner constitutes a final appealable order of the state board or the department, respectively.

(h) Any proceedings initiated by the state board in which a final appealable order has not been issued as of January 1, 2002, shall automatically transfer to the department on that date. A matter so transferred under this section shall not require repetition of the proceedings to-date. (*State Board of Tax Commissioners; 50 IAC 15-3-6*)

SECTION 10. 50 IAC 15-4-1 IS AMENDED TO READ AS FOLLOWS:

### 50 IAC 15-4-1 Certification requirements

Authority: IC 6-1.1-31-1; IC 6-1.1-31-7-3

Affected: IC 6-1.1-4-19; IC 6-1.1-31.7; IC 6-1.1-35.5

Sec. 1. (a) Professional appraisers who are individuals must:

- (1) be a certified Level Two assessor-appraiser under IC 6-1.1-35.5;

- (2) enter a contract that contains all applicable standard contract provisions developed by the board under IC 6-1.1-4-19;

- (3) specify in the contract entered under IC 6-1.1-4-19 that the contract is void if the individual's appraiser certification, issued under IC 6-1.1-31.7, is revoked; and

- (4) specify in the contract entered under IC 6-1.1-4-19 the precise contractual duties that:

- (A) the professional appraiser will personally fulfill;

- (B) the professional appraiser will personally review, direct, administer, supervise, or oversee;
- (C) will be conducted by an administrative assistant or any person other than the professional appraiser; and
- (D) will remain the responsibility of the township or county.

(b) Professional appraisers that are firms must:

- (1) employ a certified Level Two assessor-appraiser under IC 6-1.1-35.5;
- (2) enter a contract that contains all applicable standard contract provisions developed by the **state board or the department** under IC 6-1.1-4-19, including, specifically, provisions for sanctions;
- (3) specify in the contract entered under IC 6-1.1-4-19 that the contract is void if the firm's appraiser certification, issued under IC 6-1.1-31.7, is revoked; and
- (4) specify in the contract entered under IC 6-1.1-4 the precise contractual duties that:
  - (A) a certified Level Two assessor-appraiser will personally fulfill;
  - (B) a certified Level Two assessor-appraiser will personally review, direct, administer, supervise, or oversee;
  - (C) will be conducted by administrative personnel or any person other than a certified Level Two assessor-appraiser; and
  - (D) will remain the responsibility of the township or county.

(c) The board may revoke the Level Two assessor-appraiser certification of a professional appraiser or employee of a professional appraiser for noncompliance with:

- (1) this article;
- (2) the provisions of the contract entered under IC 6-1.1-4; or
- (3) assessing laws and rules of the board.

*(State Board of Tax Commissioners; 50 IAC 15-4-1; filed Mar 31, 1999, 10:31 a.m.: 22 IR 2483)*

SECTION 11. 50 IAC 15-5-1, AS ADDED AT 24 IR 947, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

**50 IAC 15-5-1 Definitions**

**Authority:** IC 6-1.1-31-1; IC 6-1.1-31-11  
**Affected:** IC 6-1.1-2-4; IC 6-1.1-15; IC 6-1.1-28-1; IC 6-1.1-30-11

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

- (1) "Division of appeals" means the division of appeals of the **state** board established under IC 6-1.1-30-11.
- (2) "Practice before the property tax assessment board of appeals, the division of appeals, or the **state** board" means participation in any matters connected with a presentation to the property tax assessment board of appeals, the division of appeals, the board, or any of their officers, or employees relating to a client's rights, privileges, or liabilities under Indiana's property tax laws or rules **before January 1, 2002**. "**Practice before the property tax assessment board of appeals, the department, or the Indiana board**" means

**participation in any matter connected with a presentation to the property tax assessment board of appeals, the department, or the Indiana board, or any of their officers, or employees relating to a client's rights, privileges, or liabilities under Indiana's property tax laws or rules after December 31, 2001.** Such presentations include, but are not limited to, the following:

- (A) Preparing and filing necessary documents, except personal property returns.
- (B) Corresponding and communicating with the property tax assessment board of appeals, the division of appeals, or the **state board before January 1, 2002, and the property tax assessment board of appeals, the department or the Indiana board after December 31, 2001.**
- (C) Representing a client at hearings, on-site inspections, and meetings.

Practice before the property tax assessment board of appeals, the division of appeals, or the **state board before January 1, 2002, and before the property tax assessment board of appeals, the department or the Indiana board after December 31, 2001**, does not include the activities of any local unit of government participating before the property tax assessment board of appeals, the division of appeals, or the **state board before January 1, 2002, or the property tax assessment board of appeals, the department or the Indiana board after December 31, 2001, respectively.**

- (3) "Property tax assessment board of appeals" means the county property tax assessment board of appeals established under IC 6-1.1-28-1.
- (4) "Tax representative" means a person who represents another person at a proceeding before the property tax assessment board of appeals, the division of appeals, or the board under IC 6-1.1-15, **before January 1, 2002; and before the department of local government finance, or the Indiana board, after December 31, 2001.** The term does not include:

- (A) the owner of the property (or person liable for the taxes under IC 6-1.1-2-4) that is the subject of the appeal;
- (B) a permanent full-time employee of the owner of the property (or person liable for the taxes under IC 6-1.1-2-4) who is the subject of the appeal;
- (C) representatives of local units of government appearing on behalf of the unit;
- (D) a certified public accountant, when the certified public accountant is representing a client in a matter that relates only to personal property taxation; or
- (E) an attorney who is a member in good standing of the Indiana bar or any person who is a member in good standing of any other state bar and who has been granted leave by the **state board or the Indiana board** to appear pro hac vice.

(5) "**Indiana board**" means the **Indiana board of tax review established under IC 6-1.5, et seq.**

*(State Board of Tax Commissioners; 50 IAC 15-5-1; filed Dec 5, 2000, 2:32 p.m.: 24 IR 947)*

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SECTION 12. 50 IAC 15-5-2, AS ADDED AT 24 IR 947, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

### 50 IAC 15-5-2 Practice requirements

Authority: IC 6-1.1-31-1; IC 6-1.1-31-11

Affected: IC 6-1.1-15-1; IC 6-1.1-15-12; IC 6-1.1-26-1

Sec. 2. (a) In order to practice before the property tax assessment board of appeals, the division of appeals, ~~or the state board, the department, or the Indiana board~~, a tax representative must:

- (1) beginning July 1, 2001, be ~~properly~~ certified **in writing** by the **state board or the department**; and
- (2) have a copy of a properly executed power of attorney from the taxpayer on the form prescribed by the **state board or the department** on file with the entity conducting the hearing before a hearing will be scheduled.

(b) Property tax representatives may not be certified to practice before the property tax assessment board of appeals, the division of appeals, ~~or the state board, the department, or the Indiana board~~ for:

- (1) matters relating to real and personal property exemptions claimed on a Form 132 or 136;
- (2) claims that assessments or taxes are “illegal as a matter of law”, whether brought on a Form 133 pursuant to IC 6-1.1-15-12(a)(6), on a Form 17-T pursuant to IC 6-1.1-26-1(4), a Form 130 pursuant to IC 6-1.1-15-1, or otherwise;
- (3) claims regarding the constitutionality of an assessment; or
- (4) any other representation that involves the practice of law.

(c) Individuals who apply for certification or recertification as a tax representative must furnish evidence to the **state board or the department** that they:

- (1) are at least eighteen (18) years of age;
- (2) hold a high school diploma or equivalent credential;
- (3) are a certified Level Two assessor-appraiser;
- (4) have completed the educational course requirements of all rules adopted by the **state board before January 1, 2002, or the department after December 31, 2001**, related to procedures for practice before the property tax assessment board of appeals, the division of appeals, ~~or the state board, the department, or the Indiana board~~;
- (5) have fully complied with all rules adopted by the **state board before January 1, 2002, and the Indiana board after December 31, 2001**, regarding professional conduct and ethical considerations; and
- (6) have fully complied with all rules adopted by the **state board before January 1, 2002, and the Indiana board after December 31, 2001**, regarding client solicitation.

**(d) A person who fulfills the requirements of subsection (c) shall be granted a written certification that shall be effective upon issuance by the state board or the department.** (*State Board of Tax Commissioners; 50 IAC 15-5-2; filed Dec 5, 2000, 2:32 p.m.: 24 IR 947*)

SECTION 13. 50 IAC 15-5-4, AS ADDED AT 24 IR 948, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

### 50 IAC 15-5-4 Course work

Authority: IC 6-1.1-31-11

Affected: IC 6-1.1

Sec. 4. Beginning January 1, 2002, a tax representative must, within each forty-eight (48) month continuing education certification cycle under 50 IAC 15-3-4, complete twelve (12) hours of course work that has been designated as tax representative practice course work approved by the **state board before January 1, 2002, or the department after December 31, 2001**. Of the twelve (12) hours of tax representative practice course work:

- (1) six (6) hours must be evidenced by passage of the associated course work examination; and
- (2) three (3) hours must relate to professional conduct, ethical considerations, or client communications.

The course work completed under this section will be credited toward the total continuing education course work required to maintain a Level Two assessor-appraiser certification under 50 IAC 15-3-4. (*State Board of Tax Commissioners; 50 IAC 15-5-4; filed Dec 5, 2000, 2:32 p.m.: 24 IR 948*)

SECTION 14. 50 IAC 15-5-5, AS ADDED AT 24 IR 948, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

### 50 IAC 15-5-5 Communication with client or prospective client

Authority: IC 6-1.1-31-1; IC 6-1.1-31-11

Affected: IC 6-1.1-2-4

Sec. 5. (a) No certified property tax representative shall, with respect to any matter relating to practice before the property tax assessment board of appeals, the division of appeals, or the **state board before January 1, 2002, and the property tax assessment board of appeals, the department, or the Indiana board after December 31, 2001**, in any way use or participate in the use of any form of public communication containing a:

- (1) false, fraudulent, unduly influencing, coercive, or unfair statement or claim; or
- (2) misleading or deceptive statement or claim.

(b) Beginning January 1, 2001, a property tax representative shall advise the client or prospective client in writing, using a typeface of not less than 12-point, either on the power of attorney or in some other form that may be reasonably interpreted by the taxpayer (the property owner, or person liable for the taxes under IC 6-1.1-2-4) to set forth the rights of the taxpayer with regard to his or her appeal, the following:

“I understand that by authorizing \_\_\_\_\_ to serve as my certified property tax representative, I am aware of and accept the possibility that the property value may increase as a result of filing an administrative appeal with the property tax

assessment board of appeals, the division of appeals of the state board of tax commissioners, or the state board of tax commissioners **before January 1, 2002, and with the property tax assessment board of appeals, the department of local government finance, or the Indiana board of tax review after December 31, 2001**, and that I may be compelled to appear at a hearing before any or all of these boards.

I further understand that the certified property tax representative is not an attorney and may not present arguments of a legal nature on my behalf. I understand that legal issues relating to my assessment that may now exist or may be discovered at some time in the future will not and cannot be addressed by the certified property tax representative, and that if not raised before the ~~property tax assessment board~~ **division of appeals of the state board of tax commissioners or the Indiana board of tax review** may not be raised at a later stage of my assessment appeal.”

The disclosure shall be signed by the taxpayer. The certified property tax representative shall provide the taxpayer with a copy of the disclosure and shall be required to provide a copy of the disclosure to the property tax assessment board of appeals, the division of appeals, ~~or the state board, the department, or the Indiana board~~ upon request. Failure to provide a signed copy of disclosure upon request may be grounds for dismissal of the appeal. (*State Board of Tax Commissioners; 50 IAC 15-5-5; filed Dec 5, 2000, 2:32 p.m.: 24 IR 948*)

SECTION 15. 50 IAC 15-5-6, AS ADDED AT 24 IR 948, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

**50 IAC 15-5-6 Prohibitions; obligations**

**Authority:** IC 6-1.1-31-1; IC 6-1.1-31-11  
**Affected:** IC 6-1.1-2-4

Sec. 6. A certified tax representative shall:

- (1) not knowingly misrepresent any information or act in a fraudulent manner;
- (2) not prepare documents or provide evidence in a property assessment appeal unless the representative is authorized by the property owner (or person liable for the taxes under IC 6-1.1-2-4) to do so and any required authorization form has been filed;
- (3) not knowingly submit false or erroneous information in a property assessment appeal;
- (4) use the appraisal standards and methods required by rules adopted by the board when the representative submits appraisal information in a property assessment appeal; and
- (5) notify the property owner (or person liable for the taxes under IC 6-1.1-2-4) of all matters relating to the review of the assessment of taxpayers’ property before the property tax assessment board of appeals, the division of appeals, ~~or the state board, the department, or the Indiana board~~, including, but not limited to, the following:

(A) The tax representative’s filing of all necessary docu-

ments, correspondence, and communications with the division of appeals **or the Indiana board.**

(B) The dates and substance of all hearings, on-site inspections, and meetings.

(*State Board of Tax Commissioners; 50 IAC 15-5-6; filed Dec 5, 2000, 2:32 p.m.: 24 IR 948*)

SECTION 16. 50 IAC 15-5-7, AS ADDED AT 24 IR 949, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

**50 IAC 15-5-7 Contingent fees**

**Authority:** IC 6-1.1-31-1; IC 6-1.1-31-11  
**Affected:** IC 6-1.1

Sec. 7. (a) In the event a tax representative charges a contingent fee for any matter relating to practice before the property tax assessment board of appeals, the division of appeals, ~~or the state board, the department, or the Indiana board~~, the tax representative may not testify at hearings or on-site inspections without first disclosing the existence of the contingent fee arrangement.

(b) Failure to disclose the existence of a contingent fee arrangement may result in the exclusion of the certified tax representative’s testimony or in dismissal of the appeal.

(c) As used in this section, “contingent fee” includes a fee that is based on:

- (1) a percentage of the refund obtained;
- (2) a percentage of the taxes saved; or
- (3) a percentage of the reduction in property value.

(*State Board of Tax Commissioners; 50 IAC 15-5-7; filed Dec 5, 2000, 2:32 p.m.: 24 IR 949*)

SECTION 17. 50 IAC 15-5-8, AS ADDED AT 24 IR 949, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

**50 IAC 15-5-8 Revocation of certification criteria and procedure**

**Authority:** IC 6-1.1-31-1; IC 6-1.1-31-11  
**Affected:** IC 6-1.1

Sec. 8. (a) ~~After a hearing, the board may deny, suspend, or revoke the certification of a property tax representative on the following grounds~~ **The state board, before January 1, 2002, or the department, after December 31, 2001, may revoke the tax representative certification of a professional appraiser or employee of a professional appraiser for the following:**

- (1) Violation of any rule applicable to certification **or practice.**
- (2) Gross incompetence in the performance of practicing before the property tax assessment board of appeals, the division of appeals, ~~or the state board, the department, or the Indiana board.~~
- (3) Dishonesty or fraud committed while practicing before the

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property tax assessment board of appeals, or the division of appeals, or the state board, the department, or the Indiana board.

(4) Violation of the standards of ethics or rules of solicitation adopted by the state board or the department.

(b) A hearing under subsection (a) will be conducted in a manner that affording the tax representative or applicant due process. Specifically, the tax representative or applicant will be given the opportunity to participate in the hearing process and may be represented by counsel, if desired. It shall be the burden of the board to show, by a preponderance of the evidence, that the denial, suspension, or revocation is justified under this rule.

(c) A certification may be suspended under this rule for a period of up to one (1) year. An applicant that has been denied certification, or a tax representative whose certification has been revoked, may reapply after one (1) year from the date the certification was denied or revoked.

(b) The revocation procedure shall be initiated by the state board's or the department's issuance of a notice to the respondent by certified mail, return receipt requested, containing a clear and concise statement detailing the alleged misconduct and stating the time and place for a hearing thereon; provided, however, that the hearing date cannot be less than ninety (90) days from the initial date of mailing of the notice to the respondent. The notice shall inform respondent of the information contained in subsections (d) and (g), and shall further inform respondent that the failure to attend the hearing without good reason cause may constitute grounds for default entered in favor of the state board or the department, as well as the sanction imposed.

(c) The state board or the department shall appoint a hearing officer to serve as an administrative law judge for purposes of these proceedings. The hearing officer, once appointed, may, with notice to the parties, conduct any prehearing proceedings requested by either party, or which the hearing officer determines may aid in the ultimate resolution of the proceedings. Informal discovery may be allowed subject to any terms and conditions the hearing officer determines to be appropriate.

(d) The revocation hearing shall be conducted on the record. The respondent may be represented by counsel, and shall have the right to present evidence on the respondent's own behalf and to cross-examine the state board's or the department's witnesses or evidence. The burden of proof shall be on the state board or the department to prove the violation or violations alleged by a preponderance of the evidence. No continuance shall be granted except upon a showing of good cause.

(e) The hearing officer may consider any of the following

in determining whether to recommend to the state board or the commissioner whether respondent's tax representative certification should be revoked:

(1) The seriousness of the violation that gave rise to these proceedings.

(2) Whether the violation is likely to recur.

(3) Respondent's character, including remorse, if any, expressed.

(4) Whether respondent's continued status as a tax representative would pose an undue risk to the public.

(5) Any other factor the hearing officer determines to be appropriate under the circumstances.

(f) The hearing officer shall submit a recommendation for final action to the state board or the commissioner. The recommendation shall contain the reasons for the hearing officer's determination of the sanction, if any, to be imposed. The state board or the commissioner is not bound by the hearing officer's recommendation.

(g) Upon receipt of the hearing officer's recommendation, if the state board or the commissioner determines that a violation of subsection (a) has occurred, the state board or the commissioner may take any of the following remedies with respect to the respondent:

(1) Decline to issue any sanction.

(2) Issue a:

(A) written reprimand, either public or private, admonishing the respondent for the violation; or

(B) period of suspension of the respondent's Level One assessor-appraiser certification for a period of up to one (1) year, at the conclusion of which the respondent shall be automatically reinstated, provided that respondent meets all educational requirements for a tax representative certification.

(3) Revoke the certification of a tax representative for a period of not less than one (1) year, and not more than three (3) years, at the conclusion of which respondent may petition the department for reinstatement provided that respondent meets all of the criteria for certification under this rule.

The determination of the state board or the commissioner constitutes a final appealable order of the state board or the department, respectively. (*State Board of Tax Commissioners; 50 IAC 15-5-8; filed Dec 5, 2000, 2:32 p.m.: 24 IR 949*)

SECTION 18. THE FOLLOWING ARE REPEALED: 50 IAC 15-1-3; 50 IAC 15-1-5.

### *Notice of Public Hearing*

*Under IC 4-22-2-24, notice is hereby given that on November 29, 2001 at 4:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Auditorium, Indianapolis, Indiana the State Board of Tax Commissioners*

will hold a public hearing on proposed amendments concerning the certification of assessor-appraisers, professional appraisers, and tax representatives under 50 IAC 15.

Parties interested in participating in the public hearing are encouraged to attend and submit written statements expressing their specific or general concerns, any suggested additions or revisions, and any documentation which may serve to support, clarify or supplement their concerns, suggestions, or proposed revisions. The State Board of Tax Commissioners also encourages any interested party who has concerns, suggestions, or proposed revisions to contact Mark Webb, Director, Communications and Public Affairs Division, State Board of Tax Commissioners, at (317) 233-9222.

Copies of these rules are now on file at the ISTA Building, 150 West Market Street, Suite 710 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Jon Laramore  
Chairman  
State Board of Tax Commissioners

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**TITLE 50 STATE BOARD OF TAX COMMISSIONERS**

**Proposed Rule**  
LSA Document #01-347

**DIGEST**

Adds 50 IAC 5.2 for the assessment of public utility owned property. Repeals 50 IAC 5.1. Partially effective 30 days after filing with the secretary of state and partially effective March 1, 2002.

**50 IAC 5.1**

**50 IAC 5.2**

SECTION 1. 50 IAC 5.2 IS ADDED TO READ AS FOLLOWS:

**ARTICLE 5.2. PUBLIC UTILITY ASSESSMENT**

**Rule 1. Definitions**

**50 IAC 5.2-1-1 Applicability**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

**Sec. 1.** Unless otherwise indicated, the definitions contained in 50 IAC 4.3-1-1 also apply to this article. However, if a definition in 50 IAC 4.3-1-1 conflicts with a definition contained in this article, the definition under this article controls with respect to the assessment and taxation of public utility property. The definitions in this rule apply throughout this article. (State Board of Tax Commissioners; 50 IAC 5.2-1-1)

**50 IAC 5.2-1-2 “Annual report” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2; IC 6-1.1-8-19

**Sec. 2.** “Annual report” means the statement required by IC 6-1.1-8-19. (State Board of Tax Commissioners; 50 IAC 5.2-1-2)

**50 IAC 5.2-1-3 “Base year value” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

**Sec. 3. (a)** The base year value of the leased property, plus freight and installation costs, must be used in determining the value of leased personal property subject to assessment.

**(b)** “Base year value” means the dollar amount that a willing buyer would pay the owner in an arm’s-length transaction to acquire the personal property encumbered by the lease at the beginning of the lease term.

**(c)** For purposes of applying this definition to a specific situation, “base year value” shall be computed in the following order of preference:

**(1)** The alternative acquisition cost, which is the amount stated in the lease the lessee would have had to pay to purchase the leased property instead of leasing it. This will be deemed to be the base year value, provided that the local assessor or state board does not determine that such amount is not reflective of the market value of the leased property.

**(2)** The factory delivered price for the personal property subject to the lease plus freight, installation costs, and a profit factor.

**(3)** The present value of the lease payments at the inception of the lease computed in accordance with 50 IAC 5.2-10.

**(4)** The insurable value in the year the lease was first consummated.

**(5)** The capitalized value of the annual lease payments over the term of the lease.

**(d)** If the state board issues an instructional bulletin or administrative adjudication prescribing the base year value of certain property pursuant to this article, such prescribed value shall be the base year value of the property. (State Board of Tax Commissioners; 50 IAC 5.2-1-3)

**50 IAC 5.2-1-4 “Bridge company” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

**Sec. 4.** “Bridge company” means a company that owns or operates a toll bridge or an approach or facility operated in connection with a toll bridge. (State Board of Tax Commissioners; 50 IAC 5.2-1-4)

**50 IAC 5.2-1-5 “Bus company” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2



## Proposed Rules

**Sec. 5. "Bus company"** means a company (other than a street railway company) that is principally engaged in the business of transporting persons, for hire, by bus on regularly scheduled routes in or through two (2) or more townships of this state. The term does not include a company that exclusively operates charter buses, which do not have scheduled routes. *(State Board of Tax Commissioners; 50 IAC 5.2-1-5)*

### 50 IAC 5.2-1-6 "Capital lease" defined

Authority: IC 6-1.1-31-1

Affected: IC 6-1.1-8-2

**Sec. 6. "Capital lease"** means a financing instrument and includes sales-type leases, direct financing leases, and leveraged leases. These leases must meet one (1) or more of the following conditions to be so classified:

- (1) Ownership of the property is transferred to the lessee at or before the end of the lease term.
  - (2) The lease permits the lessee to purchase the property or renew the lease at a price or rental that is substantially less than the estimated market value or fair rental of the leased property at the time the option to purchase or renew the lease is exercised.
  - (3) The lease term is equal to seventy-five percent (75%) or more of the estimated economic life of the leased property.
  - (4) The present value of the minimum lease payments equals or exceeds ninety percent (90%) of the fair market value of the leased property at the inception of the lease.
- In addition, the leases are or should be capitalized by the lessee for federal income tax purposes. *(State Board of Tax Commissioners; 50 IAC 5.2-1-6)*

### 50 IAC 5.2-1-7 "Construction in process" defined

Authority: IC 6-1.1-31-1

Affected: IC 6-1.1-8-2

**Sec. 7. "Construction in process"** means tangible personal property not placed in service. The term includes tangible personal property that has not been depreciated and is not yet eligible for federal income tax depreciation. It does not include inventory, leased property, or returnable containers. *(State Board of Tax Commissioners; 50 IAC 5.2-1-7)*

### 50 IAC 5.2-1-8 "Definite situs" defined

Authority: IC 6-1.1-31-1

Affected: IC 6-1.1-8-2

**Sec. 8. "Definite situs"** means the location where property is regularly used or permanently located within one (1) taxing district. *(State Board of Tax Commissioners; 50 IAC 5.2-1-8)*

### 50 IAC 5.2-1-9 "Distributable property" defined

Authority: IC 6-1.1-31-1

Affected: IC 6-1.1-8-2

**Sec. 9. "Distributable property"** means property owned or used by a public utility company that is not locally assessed real property or locally assessed personal property. Distributable property is that property used to furnish the public utility service. It consists of the public utility company's transportation system, production plant, transmission system, distribution system, and right-of-way. The state board shall distribute the assessed value of such property to the appropriate taxing district. *(State Board of Tax Commissioners; 50 IAC 5.2-1-9)*

### 50 IAC 5.2-1-10 "Express company" defined

Authority: IC 6-1.1-31-1

Affected: IC 6-1.1-8-2

**Sec. 10. "Express company"** means a company that:

- (1) is engaged in the business of transporting property by land, air, or water; and
- (2) does not itself operate the vehicles (except for terminal pickup and delivery vehicles) of transportation.

*(State Board of Tax Commissioners; 50 IAC 5.2-1-10)*

### 50 IAC 5.2-1-11 "Fixed property" defined

Authority: IC 6-1.1-31-1

Affected: IC 6-1.1-8-2

**Sec. 11. "Fixed property"** means property that is assessed by an assessing official in the taxing district where it is located. The term may include both locally assessed personal property and locally assessed real property. Fixed property is also known as locally assessed property. *(State Board of Tax Commissioners; 50 IAC 5.2-1-11)*

### 50 IAC 5.2-1-12 "Inventory" defined

Authority: IC 6-1.1-31-1

Affected: IC 6-1.1-3-11; IC 6-1.1-8-2

**Sec. 12. "Inventory"** means the following:

- (1) Property defined under IC 6-1.1-3-11, and includes the aggregate of those elements of cost incurred to acquire or produce items of tangible personal property as defined in 50 IAC 4.3-1-1(11), that are:

- (A) held for sale in the ordinary course of business;
- (B) currently in the process of production for subsequent sale;
- (C) ultimately to be consumed in the production of the goods or services to be available for sale;
- (D) used in marketing or distribution activities; or
- (E) critical spare parts.

- (2) The term includes the following:

- (A) Goods or commodities awaiting sale, which include, but are not limited to, the following:

- (i) The merchandise of a retail or wholesale concern.
- (ii) The finished goods of a manufacturer.
- (iii) Commodities from farms, mines, and quarries.
- (iv) Goods that are used or trade-in merchandise and byproducts of a manufacturer.

- (B) Goods or commodities that are in the course of

production at the Indiana location, that is, items needing further processing to be considered finished or ready for shipment.

(C) Goods that will be consumed or used in either the Indiana manufacturing process or in any other manner by the taxpayer, directly or indirectly. This category would include, but not be limited to, the following:

- (i) Raw materials.
- (ii) Supplies.
- (iii) Repair parts.
- (iv) Critical spare parts.
- (v) Expendable tools.
- (vi) Samples.

(D) To the extent that critical spare parts are depreciated for federal tax purposes, they shall be treated as such and subject to 50 IAC 5.2-6.

*(State Board of Tax Commissioners; 50 IAC 5.2-1-12)*

**50 IAC 5.2-1-13 “Leased property” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

Sec. 13. “Leased property” means those units of tangible personal property defined in 50 IAC 4.3-1-1(11), excluding inventory and returnable containers as defined in 50 IAC 4.3-1-1(7) and 50 IAC 4.3-6-3, which are leased, rented or otherwise made available to a person other than the owner under a bailment agreement, written or unwritten, on the assessment date. The term includes, but is not limited to:

- (1) business machines;
- (2) postage meters;
- (3) machinery;
- (4) equipment;
- (5) furniture;
- (6) fixtures;
- (7) coin-operated devices;
- (8) tools;
- (9) burglar alarms;
- (10) signs and other advertising devices; and
- (11) motor vehicles;

to the extent taxable as personal property that are loaned, leased, used, or otherwise held in the possession of a person other than the owner on the assessment date whether or not any fees are charged. *(State Board of Tax Commissioners; 50 IAC 5.2-1-13)*

**50 IAC 5.2-1-14 “Light, heat, or power company” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

Sec. 14. “Light, heat, or power company” means a company that is engaged in the business of furnishing light, heat, or power by electricity, gas, or steam. Light, heat, and power companies may be:

- (1) investor-owned electric and steam heat companies;

- (2) rural electric membership corporations or cooperatives; or
- (3) natural gas distribution companies.

*(State Board of Tax Commissioners; 50 IAC 5.2-1-14)*

**50 IAC 5.2-1-15 “Locally assessed personal property” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

Sec. 15. “Locally assessed personal property” means tangible personal property owned or used by the public utility company (except for a railroad company) that is not used as part of the company’s production plant, transmission system, or distribution system. For a railroad company, “locally assessed personal property” means tangible personal property owned or used by the railroad company that is not used in the operation of the railroad. *(State Board of Tax Commissioners; 50 IAC 5.2-1-15)*

**50 IAC 5.2-1-16 “Locally assessed property” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

Sec. 16. “Locally assessed property” means property that is assessed by an assessing official in the taxing district where it is located. The term includes both locally assessed personal property and locally assessed real property. Locally assessed property is also known as fixed property. *(State Board of Tax Commissioners; 50 IAC 5.2-1-16)*

**50 IAC 5.2-1-17 “Locally assessed real property” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

Sec. 17. “Locally assessed real property” means fixed real property owned or used by a public utility company that is assessed by an assessing official in the taxing district where it is located. Real property may include both land and improvements. It does not include the right-of-way of a public utility company. For a railroad company, it includes the right-of-way land and buildings leased to commercial tenants, the land adjoining the right-of-way devoted to industrial parks, any abandoned right-of-way, and railroad land and buildings not being used for railroad operations. *(State Board of Tax Commissioners; 50 IAC 5.2-1-17)*

**50 IAC 5.2-1-18 “Materials and supplies” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

Sec. 18. “Materials and supplies” shall have the meaning set forth in 50 IAC 4.3-1-1(7)(B)(iii). *(State Board of Tax Commissioners; 50 IAC 5.2-1-18)*

**50 IAC 5.2-1-19 “Operating lease” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

## Proposed Rules

**Sec. 19. “Operating lease” means a lease other than a capital lease.** *(State Board of Tax Commissioners; 50 IAC 5.2-1-19)*

**50 IAC 5.2-1-20 “Original return” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

**Sec. 20. “Original return” means a return filed with the state board by the statutory due date, or if an extension is granted, the extended filing date.** *(State Board of Tax Commissioners; 50 IAC 5.2-1-20)*

**50 IAC 5.2-1-21 “Pipeline company” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

**Sec. 21. “Pipeline company” means a company that is engaged in the business of transporting or transmitting any gas or fluid (except water) through pipes.** *(State Board of Tax Commissioners; 50 IAC 5.2-1-21)*

**50 IAC 5.2-1-22 “Public utility company” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8

**Sec. 22. “Public utility company” means a company that is subject to taxation under IC 6-1.1-8 regardless of whether the company is operated by an individual, a partnership, an association, a corporation, a fiduciary, or any other entity.** *(State Board of Tax Commissioners; 50 IAC 5.2-1-22)*

**50 IAC 5.2-1-23 “Public utility property” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

**Sec. 23. “Public utility property” means property owned or used by a public utility company.** *(State Board of Tax Commissioners; 50 IAC 5.2-1-23)*

**50 IAC 5.2-1-24 “Railroad car company” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

**Sec. 24. “Railroad car company” means a company (other than a railroad company) which owns or operates cars for the transportation of property on railroads.** *(State Board of Tax Commissioners; 50 IAC 5.2-1-24)*

**50 IAC 5.2-1-25 “Railroad company” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

**Sec. 25. “Railroad company” means a company that owns or operates:**

- (1) a steam or electric railroad;
- (2) a suburban or interurban railroad;
- (3) a switching or terminal railroad;
- (4) a railroad station, track, or bridge; or
- (5) a facility that is part of a railroad system.

*(State Board of Tax Commissioners; 50 IAC 5.2-1-25)*

**50 IAC 5.2-1-26 “Returnable containers” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

**Sec. 26. “Returnable containers” means those reusable items of tangible personal property which are used to package inventory or other property while in transit. Returnable containers include, but are not limited to, coopeage, skids, bottles, cases, and other reusable packaging devices.** *(State Board of Tax Commissioners; 50 IAC 5.2-1-26)*

**50 IAC 5.2-1-27 “Sewage company” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

**Sec. 27. “Sewage company” means a company that is engaged in the business of operating a sewage system or a sewage treatment plant.** *(State Board of Tax Commissioners; 50 IAC 5.2-1-27)*

**50 IAC 5.2-1-28 “Sleeping car company” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

**Sec. 28. “Sleeping car company” means a company (other than a railroad company) that owns or operates cars for the transportation of passengers on railroads.** *(State Board of Tax Commissioners; 50 IAC 5.2-1-28)*

**50 IAC 5.2-1-29 “State board” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

**Sec. 29. “State board” means the state board of tax commissioners.** *(State Board of Tax Commissioners; 50 IAC 5.2-1-29)*

**50 IAC 5.2-1-30 “Street railway company” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

**Sec. 30. “Street railway company” means a company which owns or operates a passenger transportation business principally within one (1) or more municipalities regardless of whether the transportation vehicles operate on tracks, by means of electric power transmitted through wires, or by means of automotive equipment.** *(State Board of Tax Commissioners; 50 IAC 5.2-1-30)*

**50 IAC 5.2-1-31 “System” defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

**Sec. 31. “System” means all property owned or used by a public utility company or companies and operated as one (1) unit in furnishing a public utility service. The term does not include generating facilities collectively owned by multiple Rural Electric Membership Corporations (REMC) and the**

controlling REMC's individually owned transmission facilities. *(State Board of Tax Commissioners; 50 IAC 5.2-1-31)*

**50 IAC 5.2-1-32 "Telephone, telegraph, or cable company" defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

Sec. 32. "Telephone, telegraph, or cable company" means a company that is principally engaged in the business of communicating by electrical transmission, including the following:

- (1) Cellular telephone companies.
- (2) Local exchange telephone companies.
- (3) Interexchange companies.
- (4) Long distance companies.
- (5) Radio-telephone companies.
- (6) Paging services.

The term does not include a cable television company, tower leasing company, or a company owning fiber optic cable that is not being used by the owner to communicate by electrical transmission. *(State Board of Tax Commissioners; 50 IAC 5.2-1-32)*

**50 IAC 5.2-1-33 "Tunnel company" defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

Sec. 33. "Tunnel company" means a company which owns or operates a toll tunnel. *(State Board of Tax Commissioners; 50 IAC 5.2-1-33)*

**50 IAC 5.2-1-34 "Unit value" defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

Sec. 34. "Unit value" means the total value of all of the property of a public utility company determined under this article (including all leased property used by the company). *(State Board of Tax Commissioners; 50 IAC 5.2-1-34)*

**50 IAC 5.2-1-35 "Water distribution company" defined**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

Sec. 35. "Water distribution company" means a company that is engaged in the business of selling or distributing water by pipe, main, canal, or ditch. *(State Board of Tax Commissioners; 50 IAC 5.2-1-35)*

**Rule 2. Introduction; Companies Subject to Assessment**

**50 IAC 5.2-2-1 Purpose**

Authority: IC 6-1.1-8-42  
Affected: IC 6-1.1-3-1; IC 6-1.1-8

Sec. 1. (a) The purpose of this rule is to provide rules for the assessment of public utility property. This rule applies to all public utility companies.

(b) Under IC 6-1.1-8, the state board makes an annual assessment of each public utility company.

(c) The valuation made by the state board includes all real, personal, and distributable property of the public utility company, wherever located. The value of locally assessed real and personal property is deducted from the unit valuation to calculate the value of distributable property. The state board subtracts the value of locally assessed property, as reported by the county assessor from the unit valuation. The state board allocates the remainder, the distributable property, to the various taxing districts. *(State Board of Tax Commissioners; 50 IAC 5.2-2-1)*

**50 IAC 5.2-2-2 Property subject to assessment**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

Sec. 2. The property owned or used by a public utility company is subject to assessment according to this rule. Property that is used by the public utility company under an agreement whereby the public utility company exercises the beneficial rights of ownership for a major part of a year is assessed to the public utility company. Leased property may be subject to assessment to the public utility company, see 50 IAC 5.2-10. *(State Board of Tax Commissioners; 50 IAC 5.2-2-2)*

**50 IAC 5.2-2-3 Companies subject to assessment**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

Sec. 3. Except as provided in section 4 of this rule, the following companies are subject to assessment as public utility companies under this article:

- (1) A company engaged in the business of transporting persons or property, including:
  - (A) bus companies;
  - (B) express companies;
  - (C) pipeline companies;
  - (D) railroad companies;
  - (E) railroad car companies;
  - (F) sleeping car companies;
  - (G) street railway companies; and
  - (H) tunnel companies.
- (2) A company engaged in the business of selling or distributing electricity, gas, steam, or water.
- (3) A company engaged in the business of transmitting messages for the general public by wire, airwaves, fiber optic, or similar media.
- (4) A company engaged in the business of operating a sewage system or a sewage treatment plant.

*(State Board of Tax Commissioners; 50 IAC 5.2-2-3)*

**50 IAC 5.2-2-4 Companies excluded**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2

## Proposed Rules

Sec. 4. The following companies are not subject to assessment as public utility companies under this article:

- (1) Aviation companies.
- (2) Broadcasting companies, including radio and television broadcasting companies and cable television companies.
- (3) Water transportation companies.
- (4) Companies that are operated by a municipality or a municipal corporation, except those utility companies owned or held in trust by a first class city.

*(State Board of Tax Commissioners; 50 IAC 5.2-2-4)*

### Rule 3. Reporting Requirements

#### 50 IAC 5.2-3-1 Who must file

Authority: IC 6-1.1-8; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-19

Sec. 1. (a) Each year a public utility company shall file an annual report with the state board concerning the value and description of the property that is either owned or used by the public utility company.

(b) In completing a report or statement, a public utility company shall make a complete disclosure of all information, required by the state board, that is related to the value, nature, and location of property that the public utility company:

- (1) owned; or
- (2) held, possessed, controlled, or occupied.

(c) The public utility company shall certify the truth of all information appearing in the report or statement and all data accompanying the report or statement. *(State Board of Tax Commissioners; 50 IAC 5.2-3-1)*

#### 50 IAC 5.2-3-2 What to file; annual report to state board

Authority: IC 6-1.1-8; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-19; IC 6-1.1-8-21

Sec. 2. (a) The state board has designated Form UD-45, Annual Report of Public Utility Company, as the annual report to be filed with the state board by all public utility companies, other than railroad companies and railroad car companies.

(b) Railroad companies shall annually file Form UD-32, Annual Report of Railroad Company, with the state board.

(c) Railroad car companies shall annually file Form RC-1, Railcar Tax Report, with the state board.

(d) Along with the required filings listed in subsections (a) and (b), a public utility, including railroad companies shall submit to the state board information requested by the state board, including:

- (1) the most recent financial statements;
- (2) information concerning depreciation records; and

(3) the most recent annual report to shareholders or members;  
to the extent that such reports, records, or statements exist.

(e) Railroad companies shall also submit to the state board the Interstate Commerce Commission Form R-1, if the railroad company is required to file Form R-1 with the Interstate Commerce Commission.

(f) A public utility company may submit a substitute computer or machine generated annual report form or schedule that is a part of the annual report, in lieu of using the actual annual report form or schedule, provided that the report or schedule:

- (1) contains all of the required information as set forth in the actual report or schedule;
- (2) properly and clearly identifies the report or schedule being substituted; and
- (3) is approved by the state board under 50 IAC 4.3-1-6 prior to its use.

*(State Board of Tax Commissioners; 50 IAC 5.2-3-2)*

#### 50 IAC 5.2-3-3 What to file; local reporting requirement

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-23

Sec. 3. (a) In addition to Form UD-45, public utility companies shall also file Form 1, Annual Return of Local Personal Property, with the assessor of each township in which the public utility company's locally assessed personal property is subject to assessment. If a public utility company has locally assessed personal property in two (2) or more taxing districts within the same township, the public utility company shall file a separate Form 1 reporting the locally assessed personal property in each taxing district.

(b) A substitute computer or machine generated Form 1 may be used in lieu of the actual Form 1, if such form is approved by the state board under 50 IAC 4.3-1-6 prior to its use. *(State Board of Tax Commissioners; 50 IAC 5.2-3-3)*

#### 50 IAC 5.2-3-4 Time to file

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-19

Sec. 4. (a) A public utility company, except a railroad car company, shall file its annual report with the state board on or before March 1 of each year unless a filing extension has been granted by the state board under section 6 of this rule.

(b) A railroad car company shall file its annual report with the state board on or before May 1 of each year unless a filing extension has been granted by the state board under section 6 of this rule.

(c) A public utility company shall also file Form 1, Annual Return of Local Personal Property, with the assessor of

each township in which the public utility company's locally assessed personal property is subject to assessment on or before March 1 of each year unless a filing extension has been granted by the state board under section 6 of this rule. (*State Board of Tax Commissioners; 50 IAC 5.2-3-4*)

**50 IAC 5.2-3-5 Duty to file**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-19

Sec. 5. (a) It is the responsibility of the public utility company to obtain the necessary report forms and timely file the required reports with the state board.

(b) The state board will furnish each public utility company with the appropriate forms to complete their respective annual reports. However, the obligation to file the required report is not diminished or affected by the failure of the state board to deliver or mail forms to the public utility company.

(c) It is also the responsibility of the public utility company to file the required report (Form 1) with each of the assessors of the townships in which the public utility company has locally assessed personal property subject to assessment. (*State Board of Tax Commissioners; 50 IAC 5.2-3-5*)

**50 IAC 5.2-3-6 Extension of time**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-19

Sec. 6. (a) The state board may extend the due date up to thirty (30) days for the forms identified under section 4 of this rule.

(b) An extension of the due date shall be considered by the state board if:

- (1) the public utility company submits a written request for an extension at least fifteen (15) days prior to the due date; and
- (2) the public utility company cannot file on or before the due date because of extraordinary and unusual circumstances.

(c) An extension granted by the state board under subsection (b) shall be in writing. A copy of the extension shall accompany the taxpayer's annual report. (*State Board of Tax Commissioners; 50 IAC 5.2-3-6*)

**50 IAC 5.2-3-7 Disclosure of information**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-2-4; IC 6-1.1-3-9; IC 6-1.1-8-21

Sec. 7. (a) In completing the annual report, a public utility company shall make a complete disclosure of all information required by the state board.

(b) A public utility company that holds, possesses, controls, or occupies property that it does not own must

make a full disclosure of the not-owned property. The required information shall include the name and address of the owner, model, description, location, quantities on hand, date of installation, value (if known) as required by this article, and any other information requested. (See special instructions in 50 IAC 5.2-10-3 for reporting leased personal property.)

(c) Failure to properly disclose property that a public utility company holds, possesses, or controls shall result in the assessment of the property to the public utility company.

(d) Information is required to be submitted by the holder, possessor, or controller even if the owner is liable for the taxes under a contract to ensure that the assessing official has the necessary information to correctly assess the property in question. (*State Board of Tax Commissioners; 50 IAC 5.2-3-7*)

**50 IAC 5.2-3-8 Penalty**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-2-4; IC 6-1.1-8-20

Sec. 8. (a) If a public utility company does not file the annual report as required by this rule, the company will incur a penalty of one hundred dollars (\$100) per day for each day that the annual report is late.

(b) An annual report is not considered to be complete unless the report contains the information required by the state board and is signed under the penalty for perjury by an authorized person. (*State Board of Tax Commissioners; 50 IAC 5.2-3-8*)

**50 IAC 5.2-3-9 Amended returns**

Authority: IC 6-1.1-31-1  
Affected: IC 6-1.1-2-4; IC 6-1.1-3-9; IC 6-1.1-8-21

Sec. 9. (a) A taxpayer may file an amended return not more than six (6) months after the later of the following:

- (1) If no extension was granted under section 6 of this rule, an amended return must be filed before September 1 of the year in which the original return was filed.
- (2) If an extension was granted under section 6 of this rule, an amended return must be filed within six (6) months of the extended filing date.

(b) A taxpayer who files a return may file no more than one (1) amended return.

(c) In no case will a taxpayer be allowed to file an amended return if the original return was not filed timely or, in the case of an extension, by the extended filing date.

(d) A taxpayer must file the amended return on the same form prescribed by the state board for the filing of an original return, indicating that it is "amended" in a conspicuous place on the front of the return. The amended return must be completed and filed with the state board in the same manner as is required for the original return.

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(e) Notwithstanding the provisions of this article, an amended return remains subject to the review and adjustment by the state board in the same manner as original returns. (*State Board of Tax Commissioners; 50 IAC 5.2-3-9*)

### 50 IAC 5.2-3-10 Authorized forms

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1

Affected: IC 6-1.1-2-4; IC 6-1.1-3-9; IC 6-1.1-8-21; IC 6-1.1-35-9

Sec. 10. (a) The state board is required by statute to adopt tax return forms and schedules for public utility assessment purposes.

(b) The following are the authorized return forms and schedules for public utility assessment purposes pursuant to this article:

#### Form # Form Description

RC-1	Report of Railcar Tax
UD 32	Annual Report—Railroad Property
UD 45	Annual Report
A-3	Schedule for Air Pollution Control Equipment
A-4	Schedule for Water Pollution Control Equipment
A-5	REMC schedule (optional)
A-6	Schedule for Pipe Valuation
A-7	Schedule for Utility Distributable Property of Pipeline Companies
A-8	Schedule for Value of Buses and Tires
1	Tax Return—Fixed Personal Property of Public Utilities (locally assessed)
1-N	Information Return of Not Owned Locally Assessed Personal Property

(c) In lieu of using the actual return form prescribed in subsection (b), a taxpayer may use a computer or machine prepared substitute tax return form or schedule provided that the substitute:

- (1) contains all of the information as set forth in the prescribed form;
- (2) properly identifies the form or schedule being substituted; and
- (3) is approved by the state board.

(d) The following are authorized administrative forms provided for public utility property assessment purposes pursuant to this article:

Form Number	Form Description
11A	Notice of Tentative Assessment
34C	Certification by County Assessor (of railroad and public utility assessments)
34T	Certification by Township Assessor (of railroad and public utility assessments)

(e) Prescribed Forms RC-1, UD32, UD45, Form 1, and all attachments, together with any schedules or other information attached thereto, are confidential in that no local assessing official or employee or official of the state board shall disclose it to any person unless specifically authorized by law. For further information on confidentiality see IC 6-1.1-35-9.

(f) Public utility property is a self-assessment method of taxation requiring the taxpayer to complete the assessment return in accordance with the rules prescribed by the state board. The taxpayer is responsible for the accuracy of the information on the return and for assuring that it is a complete return that has been prepared in accordance with the law and rules of the state board. (*State Board of Tax Commissioners; 50 IAC 5.2-3-10*)

### Rule 4. Assessment, Appeal, and Review

#### 50 IAC 5.2-4-1 Tentative assessment

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1

Affected: IC 6-1.1-8-12

Sec. 1. (a) Each year the state board shall determine the true tax value of the property of each public utility company. Except for railroad car companies, the state board shall determine the true tax value by first determining the value of each public utility company's Indiana property. The value of the distributable property of a public utility company, other than a railroad car company, equals the remainder of:

- (1) the value of the company's Indiana property; minus
- (2) the value of the company's Indiana fixed property.

(b) The value of the distributable property of a railroad car company equals the unit value of all of the company's distributable property multiplied by the allocation factor provided in IC 6-1.1-8-12(b).

(c) In order to determine the value of a public utility company, the state board may consider the following:

- (1) Book value.
- (2) The cost of replacement or reproduction, less depreciation.
- (3) The cost of establishing and developing the business.
- (4) The amount and market value or sales price of outstanding securities.
- (5) Valuations determined by another governmental agency or indicated by a judicial decision, including, but not limited to, determinations made for rate making purposes.
- (6) Statistics and reports prepared or filed by the company.
- (7) Statistics and reports prepared by another governmental agency or by a private organization if the organization is considered reliable by investors and investment dealers.
- (8) Earnings capitalized at a reasonable rate.

(9) Any other information which the state board considers relevant.

(d) Except for railroad car companies, the state board shall notify each public utility company of its tentative assessment on or before June 1. The state board shall notify each railroad car company of its tentative assessment on or before September 1. (*State Board of Tax Commissioners; 50 IAC 5.2-4-1*)

**50 IAC 5.2-4-2 Failure to file or disclose information**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-22

Sec. 2. (a) The state board shall assess the property of a public utility company based upon the information available to the state board if the public utility company does not:

- (1) file a statement which is required under 50 IAC 5.2-3-2;
- (2) permit the state board to examine the public utility company's property, books, or records; or
- (3) comply with a summons issued by the state board.

(b) An assessment that is made by the state board under this section is final unless the public utility company establishes that the state board committed actual fraud in making the assessment. (*State Board of Tax Commissioners; 50 IAC 5.2-4-2*)

**50 IAC 5.2-4-3 Notice; objection; hearings**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-22; IC 6-1.1-8-28

Sec. 3. (a) Each year the state board shall notify each public utility company of the state board's tentative assessment of the company's distributable property.

(b) The state board shall give the notice on or before September 1, in the case of railroad car companies, and shall give the notice on or before June 1, in the case of all other public utility companies.

(c) Within ten (10) days after a public utility company receives notice of the state board's tentative assessment, the company may:

- (1) file with the state board its objections to the tentative assessment; and
- (2) demand that the state board hold a hearing on the tentative assessment.

(d) If the public utility company does not file with the state board its objections to the tentative assessment within the time allowed, the tentative assessment is final and may not be appealed. (*State Board of Tax Commissioners; 50 IAC 5.2-4-3*)

**50 IAC 5.2-4-4 Hearing; final assessment; notice**

Authority: IC 6-1.1-8; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-29

Sec. 4. If a public utility company files its objections to, and demands a hearing on, a tentative assessment within the time allowed, the state board shall hold a hearing on the tentative assessment at a time and place fixed by the state board. After the hearing, if any, the state board shall make a final assessment of the company's distributable property and shall notify the company of the final assessment. However, the state board must give notice of the final assessment before September 30, in the case of railroad car companies, and before June 30 in the case of all other public utility companies. (*State Board of Tax Commissioners; 50 IAC 5.2-4-4*)

**50 IAC 5.2-4-5 Appeal of final assessment; Indiana board of tax review**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-30

Sec. 5. If a public utility company files its objections to the state board's tentative assessment in the manner prescribed in section 4 of this rule, the company may appeal the state board's final assessment of that property to the Indiana board of tax review. However, the company must initiate the appeal within twenty (20) days after the date of the notice of the state board's final assessment. (*State Board of Tax Commissioners; 50 IAC 5.2-4-5*)

**50 IAC 5.2-4-6 Appeal of final assessment; tax court**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-30

Sec. 6. The company may appeal the Indiana board's final determination to the tax court. However, the company must:

- (1) petition for judicial review; and
- (2) mail to the county auditor of each county in which the public utility company's distributable property is located:
  - (A) a notice that the complaint was filed; and
  - (B) instructions for obtaining a copy of the complaint.

(*State Board of Tax Commissioners; 50 IAC 5.2-4-6*)

**50 IAC 5.2-4-7 Appeal of township assessor's assessment of fixed property**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-33; IC 6-1.1-15

Sec. 7. A public utility company may appeal a township assessor's assessment of locally assessed property in the manner provided in IC 6-1.1-15. (*State Board of Tax Commissioners; 50 IAC 5.2-4-7*)

**50 IAC 5.2-4-8 Omitted property**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-39

Sec. 8. The annual assessments of a public utility company's property are presumed to include all the company's



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property that is subject to taxation. However, this presumption does not preclude the subsequent assessment of a specific item of tangible property that is clearly shown to have been omitted from the assessments for a particular year. The appropriate township assessor shall make assessments of omitted fixed property. The state board shall make assessments of omitted distributable property. However, the state board may not assess omitted distributable property after the expiration of ten (10) years from the last day of the year in which the assessment should have been made. (*State Board of Tax Commissioners; 50 IAC 5.2-4-8*)

### 50 IAC 5.2-4-9 Return not on file

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-39

Sec. 9. If a public utility company owning, holding, possessing or controlling any property that is subject to taxation fails to file a return with the state board or township assessor, the appropriate township assessor shall make assessments of fixed property and the state board shall make assessments of distributable property. However, the state board and township assessor may not assess such distributable or fixed property after the expiration of ten (10) years from the last day of the year in which the assessment should have been made. (*State Board of Tax Commissioners; 50 IAC 5.2-4-9*)

### 50 IAC 5.2-4-10 Omitted property and return not on file; rate of assessment; interest

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-40

Sec. 10. When the state board assesses distributable property that was omitted from, or the taxpayer failed to file a return for, the assessment for a particular year, the state board shall assess such distributable property in the same manner that the state board assesses other distributable property. The taxes due on the distributable property shall be calculated by using the same tax rates that were applicable for the tax year that the distributable property was to be assessed. The public utility company shall pay interest on the taxes due on such distributable property at the rate of two percent (2%) per month or fraction of a month. The interest due shall be calculated on the period of time beginning with January 1 of the year following the year in which the property was to be assessed and ending with the day the taxes are paid. However, the state board may waive any portion of the interest due under this section at the time the state board makes its final assessment of such distributable property. (*State Board of Tax Commissioners; 50 IAC 5.2-4-10*)

### 50 IAC 5.2-4-11 Return not on file; penalty

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-40

Sec. 11. (a) If a public utility company does not file a statement with the state board on or before the date prescribed by this article, the company shall pay a penalty of one hundred dollars (\$100) per day for each day that the statement is late.

(b) The state board shall notify the attorney general if a public utility company fails to file a statement on or before the due date. The attorney general shall then bring an action in the name of this state to collect the penalty due under this section. (*State Board of Tax Commissioners; 50 IAC 5.2-4-11*)

### Rule 5. Use of Other Factors

#### 50 IAC 5.2-5-1 Value as a going concern; adjustments; use of other factors

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-26

Sec. 1. (a) The state board or Indiana board, on its own motion or on petition of a public utility company, may, in determining the just value of a public utility company, authorize or require the use of factors other than those normally used in determining a unit value of a company as a going concern.

(b) The use of other factors is permitted only in situations where the use of other factors is necessary to:

- (1) ensure equal and nondiscriminatory treatment of all public utility companies within the same classification; or
- (2) provide for a unit value that is not clearly unreasonable or unfair to the state or the public utility company.

(*State Board of Tax Commissioners; 50 IAC 5.2-5-1*)

#### 50 IAC 5.2-5-2 Readily ascertainable values

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-26

Sec. 2. In the case of certain types of property that the state board determines have readily ascertainable values, for example, certain types of petroleum products, the state board may determine the true tax value of such property. The state board will issue instructional bulletins listing the unit values of such property. These bulletins will be published in the Indiana Register as nonrule policy statements. (*State Board of Tax Commissioners; 50 IAC 5.2-5-2*)

#### 50 IAC 5.2-5-3 Uniform useful life

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-26

Sec. 3. (a) The state board may prescribe the useful life of certain items of personal property if the state board determines that a uniform useful life should be required for all affected public utility companies in order to obtain uniformity of assessment.

(b) If the state board prescribes a uniform useful life for a certain item of personal property, the state board shall notify all affected taxpayers. (*State Board of Tax Commissioners; 50 IAC 5.2-5-3*)

**Rule 6. Valuation of Depreciable Personal Property**

**50 IAC 5.2-6-1 Definitions**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
 Affected: IC 6-1.1-8-26; IC 6-6-6.5

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

- (1) "Adjusted cost of depreciable personal property" has the meaning set forth in 50 IAC 4.3-4-5.
- (2) "Cost of depreciable personal property" has the meaning set forth in 50 IAC 4.3-4-2.
- (3) "Depreciable personal property" has the meaning set forth in 50 IAC 4.3-1-1(5) and 50 IAC 4.3-4-1.
- (4) "Permanently retired depreciable personal property" has the meaning set forth in 50 IAC 4.3-4-3(c).

(*State Board of Tax Commissioners; 50 IAC 5.2-6-1*)

**50 IAC 5.2-6-2 Book cost determinative**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
 Affected: IC 6-1.1-8-26; IC 6-1.1-31

Sec. 2. (a) The cost of depreciable property, both real and personal, as recorded on the public utility company's books and records, must be utilized in determining the value of the depreciable personal property subject to assessment.

(b) The cost of all depreciable personal property of a public utility company shall be the total amount reflected on the books and records of the company as of the assessment date except as provided in section 3 of this rule.

(c) Property may be depreciable personal property regardless of the account in which the property is carried on the books and records of the public utility company. For example, property classified on the public utility company's books and records as real property may nevertheless be depreciable personal property within the meaning of this article. This treatment is necessary to ensure the proper assessment of property, regardless of the accounting system used by the public utility company.

(d) Except as otherwise provided in this article, property is deemed to be depreciable personal property when a depreciation deduction is allowable for federal income tax purposes.

(e) The cost of additions and betterments is added to the original cost of the depreciable personal property. If an additional part is added or some other change is made in the fixed asset that increases its estimated useful life, production, or efficiency, or converts the property to a

different use, it is a betterment. The expenditure is capitalized by adding it to the original cost of the asset. If a part is replaced with a similar part, the new part is shown as a new acquisition while the part replaced is deducted from the original cost of the asset.

(f) In the event a taxpayer cannot determine from its books and records the cost of the depreciable property on the assessment date, it must use:

- (1) the cost per books as of the close of its annual financial period immediately prior to the assessment date and so indicate on its return;
- (2) the book cost as of the close of its last financial period will then be adjusted to reflect all acquisitions and disposals of depreciable property which have occurred between the acquisition or disposal date and the assessment date; and
- (3) installation costs and foundations applicable to machinery and equipment shall be reported and assessed on the same basis as the asset to which they apply.

(*State Board of Tax Commissioners; 50 IAC 5.2-6-2*)

**50 IAC 5.2-6-3 Mandatory adjustment**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
 Affected: IC 6-1.1-8-26; IC 6-1.1-31

Sec. 3. (a) The cost of depreciable personal property as computed in section 2 of this rule must be reported at the tax basis of such property as defined in Section 1012 of the Internal Revenue Code of 1994. The cost of depreciable personal property shall not be reduced by Sections 167 (depreciation) or 179 (expense election deduction) of the Internal Revenue Code or any credits (such as investment tax credit) which would otherwise diminish the cost basis of the property.

(b) If the tax basis of the depreciable personal property is different from the cost reflected on the books and records of the taxpayer, an adjustment must be made to the cost per books of the assessable depreciable personal property. The cost reflected on the books and records must be adjusted to the tax basis of the property.

(c) The adjustment of the cost of depreciable personal property to its tax basis is required to be made regardless of whether it is an increase or decrease to the cost recorded on the books and records. (*State Board of Tax Commissioners; 50 IAC 5.2-6-3*)

**50 IAC 5.2-6-4 Fully depreciated property**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
 Affected: IC 6-1.1-8-26

Sec. 4. Depreciable personal property that has not been retired from use is reported for assessment purposes whether or not the cost of the property has been removed from the taxpayer's books and records. (*State Board of Tax Commissioners; 50 IAC 5.2-6-4*)

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### 50 IAC 5.2-6-5 Nominally valued depreciable personal property

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-26

Sec. 5. Depreciable personal property recorded on the books and records at a nominal value or at no value must be valued at its actual acquisition cost determined by reference to the insurable value in the year of acquisition. This category of property includes, but is not limited to:

- (1) bulk purchases; or
  - (2) the acquisition of a going business concern.
- (State Board of Tax Commissioners; 50 IAC 5.2-6-5)

### 50 IAC 5.2-6-6 Computer equipment

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-26

Sec. 6. (a) Computer equipment is made up of the following elements:

- (1) "Hardware" means physical equipment used for input, processing, and output activities in an information system. It is composed of mechanical, magnetic, and electronic devices and other components that constitute the physical computer assembly.
- (2) "System software" means a set of generalized programs that manage the computer's resources, such as the central processor, communication links, and peripheral devices. It is not normally accessible or modifiable by the user. Also system software may be referred to as the operating system.
- (3) "Application software" means programs written for a specific application to perform functions specified by end users.

(b) Computer hardware and system software must be reported at the actual acquisition cost regardless of how it may be valued on the taxpayers books and records.

(c) If the value for computer equipment recorded on the books and records reflects charges for customer support services such as educational services, maintenance, or application software that relate to future periods and not to the value of the tangible personal property, such charges may be deducted as intangible personal property to the extent that a separate charge or value can be identified. (State Board of Tax Commissioners; 50 IAC 5.2-6-6)

### 50 IAC 5.2-6-7 Valuation

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-26

Sec. 7. (a) Except as provided in section 8 of this rule, the value of depreciable personal property is computed by subtracting federal depreciation from the adjusted cost of the depreciable personal property.

(b) Depreciation shall be computed using the method or

methods of depreciation that the public utility company has used for federal income tax purposes for that property. If depreciable personal property is acquired prior to the establishment of the first reporting year for federal income tax purposes, depreciation shall be computed in the same manner as the public utility contemplates using for federal income tax purposes.

(c) The amount of depreciation computed in subsection (b) shall be increased by any expense election deduction or investment tax credit claimed on the property by the public utility company for federal income tax purposes. (State Board of Tax Commissioners; 50 IAC 5.2-6-7)

### 50 IAC 5.2-6-8 Minimum value

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-26

Sec. 8. (a) The total value of the distributable depreciable personal property cannot be less than nine percent (9%) of the adjusted cost of the distributable personal property.

(b) The total value of the locally assessed depreciable personal property in a single taxing district cannot be less than nine percent (9%) of the adjusted cost of the locally assessed personal property in that taxing district.

(c) The nine percent (9%) minimum value test shall be applied prior to any adjustment for abnormal obsolescence or permanently retired depreciable personal property. (State Board of Tax Commissioners; 50 IAC 5.2-6-8)

### 50 IAC 5.2-6-9 Valuation of permanently retired depreciable personal property

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-26

Sec. 9. (a) Permanently retired depreciable personal property that is on hand on the assessment date is subject to an adjustment at the election of the taxpayer.

(b) The value of permanently retired depreciable personal property is the net scrap or net sale value of such property.

(c) In order to qualify for this adjustment, a taxpayer will need to substantiate that the depreciable personal property was permanently retired and not in use.

(d) The adjustment for permanently retired depreciable personal property is computed as the difference between the true tax value of such property (computed under sections 6 through 8 of this rule) and its net scrap or net sale value.

(e) The adjustment for permanently retired depreciable personal property may not exceed the true tax value of such property. (State Board of Tax Commissioners; 50 IAC 5.2-6-9)

**50 IAC 5.2-6-10 Abnormal obsolescence**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-26

**Sec. 10. (a)** An adjustment for abnormal obsolescence, as defined in 50 IAC 5.2-11, may be permitted in accordance with 50 IAC 5.2-11.

**(b)** No adjustment will be allowed for normal obsolescence as defined in 50 IAC 5.2-11.

**(c)** The dollar amount of the adjustment for the depreciable personal property under this section may not exceed the tentative true tax value as computed in sections 7 and 8 of this rule for the specific unit or units of such property on which the taxpayer claims the adjustment. *(State Board of Tax Commissioners; 50 IAC 5.2-6-10)*

**Rule 7. Valuation of Nondepreciable Property**

**50 IAC 5.2-7-1 Definitions**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-26

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

**(1)** "Contributions in aid of construction" or "CIAC" means donated or contributed property, other than locally assessed real property, of a public utility company that is used by such company in providing the utility service.

**(2)** "Nondepreciable personal property" means any property, other than locally assessed real property, of a public utility company that is not subject to depreciation for federal income tax purposes. It does not include inventory, but may include both locally assessed personal property (excluding inventory) and distributable property.

*(State Board of Tax Commissioners; 50 IAC 5.2-7-1)*

**50 IAC 5.2-7-2 Book cost determinative**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-26

**Sec. 2. (a)** The cost of nondepreciable property, both real and personal, as recorded on the public utility company's books and records, must be utilized in determining the value of the nondepreciable property subject to assessment.

**(b)** A public utility company is subject to assessment for property owned or used by it. Contributions in aid of construction are used by the public utility company to deliver its service. Therefore, contributions in aid of construction are subject to assessment. The public utility company may not reduce the cost of property shown on its books and records by the amount of contributions in aid of construction or customer advances. *(State Board of Tax Commissioners; 50 IAC 5.2-7-2)*

**50 IAC 5.2-7-3 Mandatory adjustment**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-26

**Sec. 3.** The cost of nondepreciable property as computed under section 2 of this rule must be reported at the tax basis of such property as defined in Section 1012 of the Internal Revenue Code of 1994. *(State Board of Tax Commissioners; 50 IAC 5.2-7-3)*

**50 IAC 5.2-7-4 Valuation**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-26

**Sec. 4. (a)** Except as provided in subsection (b), the value of nondepreciable property shall be the tax basis of such property as defined in Section 1012 of the Internal Revenue Code of 1994.

**(b)** Contributions in aid of construction that would be subject to depreciation for federal income tax purposes if owned by the public utility company are eligible for depreciation. Depreciation for contributions in aid of construction shall be computed using the method of depreciation that the owner would have used for federal income tax purposes. Depreciation is computed over the useful life of the contributions in aid of construction. For purposes of this subsection, useful life is the life that would have been used for federal income tax purposes by the owner. *(State Board of Tax Commissioners; 50 IAC 5.2-7-4)*

**Rule 8. Valuation of Inventories**

**50 IAC 5.2-8-1 Valuation**

Authority: IC 6-1.1-8; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-26

**Sec. 1.** Inventory, materials, and supplies shall be valued in accordance with 50 IAC 4.3-5. *(State Board of Tax Commissioners; 50 IAC 5.2-8-1)*

**Rule 9. Valuation of Other Tangible Personal Property**

**50 IAC 5.2-9-1 Construction in process**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-26

**Sec. 1. (a)** The starting point for the valuation of construction in process is the cost recorded on the public utility company's books and records which is attributable to such property, excluding locally assessed real property, including all expenses incurred in acquiring or producing the assets not yet placed in service.

**(b)** In the event the cost as recorded on the regular books and records of the public utility company does not reflect acquisitions and transfers since the end of the financial

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period immediately preceding the assessment date, such acquisitions and transfers are required to be included.

(c) If the cost as recorded on the regular books and records of the public utility company reflects advance payments or deposits, and if such amounts were attributable to property other than locally assessed real property, such amounts shall be allowed as a deduction from book cost.

(d) The true tax value of construction in process is eighty-seven percent (87%) of the cost of such property. (*State Board of Tax Commissioners; 50 IAC 5.2-9-1*)

### 50 IAC 5.2-9-2 Leasehold improvements

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1

Affected: IC 6-1.1-8-26

Sec. 2. (a) Whenever a public utility company makes any expenditure for an improvement to locally assessed real property, locally assessed personal property, or distributable property not owned by the public utility company, such expenditure shall be assessable as locally assessed personal property or distributable property to the extent it is not locally assessed real property.

(b) The following are examples of leasehold improvements which are personal property:

- (1) Foundations and pilings related to the installation and use of personal property.
- (2) Personal property attached to the real property, if such items are related to activities or processes conducted in or on the real property, if the personal property is an integral part of such activity. For example, improvements to real property that would be assessable as either locally assessed personal property or as distributable property may include:
  - (A) shelving, bins, counters, and related items;
  - (B) nonpermanent partitions;
  - (C) supplemental heating and air conditioning;
  - (D) extraordinary lighting;
  - (E) extraordinary electrical and plumbing facilities; and
  - (F) carpeting and draperies.

(c) Leasehold improvements are reported and valued in the same manner as other locally assessed personal property or distributable property which the public utility company may own. (*State Board of Tax Commissioners; 50 IAC 5.2-9-2*)

### 50 IAC 5.2-9-3 Returnable containers

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1

Affected: IC 6-1.1-8-26

Sec. 3. (a) Returnable containers must be reported for property assessment purposes at the tax situs where located on the assessment date by the person owning the returnable containers.

(b) The owner of any personal property subject to assessment and taxation on the assessment date has the responsibility for reporting such property for assessment and taxation. Returnable containers must be reported on the appropriate form on the public utility company's annual report to the state board. If the returnable containers are locally assessed personal property, the returnable containers must also be reported to the township assessor.

(c) The possessor of not-owned returnable containers has the responsibility for disclosing such property to the local assessing officials and the state board.

(d) The cost of returnable containers is computed by extending the quantity of such property on hand by:

- (1) the amount of deposit required for such item;
- (2) the refund entitled thereto when such returnable containers are returned to the owner;
- (3) the sales price of the returnable property; or
- (4) the cost of such returnable containers in the hands of the owner since the owner is liable for assessment.

(e) The value of returnable containers is computed in the same manner as other locally assessed personal property or distributable property which the public utility company may own. (*State Board of Tax Commissioners; 50 IAC 5.2-9-3*)

## Rule 10. Valuation of Leased Property

### 50 IAC 5.2-10-1 Valuation

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1

Affected: IC 6-1.1-8-26

Sec. 1. (a) Leased property reported for assessment by a public utility company shall be valued in the same manner as property owned by the public utility company. The value is computed by subtracting depreciation from the base year value.

(b) Depreciation for leased property shall be computed using the method of depreciation that the owner would have used for federal income tax purposes. Depreciation is computed over the useful life of the leased property. For purposes of this subsection, useful life is that which would have been used for federal income tax purposes by the owner. (*State Board of Tax Commissioners; 50 IAC 5.2-10-1*)

### 50 IAC 5.2-10-2 General reporting requirements

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1

Affected: IC 6-1.1-8-26

Sec. 2. (a) In completing the annual report, a public utility company shall make a complete disclosure of all information relating to leased property that it owns, holds, possesses, or controls.

(b) If a public utility company holds, possesses, controls, or occupies leased property, the public utility company shall make a full disclosure, on the forms provided by the state board, of such property and information relating to that property. The required information shall include the name and address of the owner, model, description, location, quantities on hand, date of installation, value (if known) as required by this article, and any other information requested on the appropriate form. If the leased property is:

(1) distributable property, the public utility company shall disclose such property on the appropriate form in its annual report to the state board; or

(2) locally assessed personal property, the public utility company shall disclose such property on the appropriate form in its annual report to the state board and shall also disclose such property on Form 1, Annual Report of Local Personal Property.

(c) Failure by a public utility company to properly disclose property that it holds, possesses, or controls will result in the assessment of the property to the public utility company.

(d) Information is required to be submitted by the holder, possessor, or controller even if the owner is liable for the taxes under a contract to assure that the assessing official has the necessary information to correctly assess the property in question.

(e) Both the lessor (the owner) and the lessee (the holder, possessor, or controller) have specific reporting requirements. The purpose of these dual reporting requirements is to assure that property is disclosed to the local assessing officials who will ensure that the property is assessed. (*State Board of Tax Commissioners; 50 IAC 5.2-10-2*)

**50 IAC 5.2-10-3 Leased distributable property; specific reporting requirements**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-26

Sec. 3. (a) The public utility company is primarily responsible for the reporting of the leased distributable property for assessment and taxation, whether such lease is a capital lease or an operating lease.

(b) The holder, possessor, or controller of leased distributable property (lessee) shall disclose the leased property on the designated form included with its annual report to the state board. In completing the designated form, the holder, possessor, or controller shall include all of the information required by the form.

(c) The owner (lessor) of leased distributable property is required to disclose the existence of the leased property to the state board. In completing the form designated for such

disclosure, the owner shall include all of the information required by the form. (*State Board of Tax Commissioners; 50 IAC 5.2-10-3*)

**50 IAC 5.2-10-4 Locally assessed property subject to operating leases; specific reporting requirements**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-26

Sec. 4. (a) The owner (lessor) of locally assessed leased property subject to an operating lease is primarily responsible for the reporting of the locally assessed leased property for assessment and taxation.

(b) If the owner of the locally assessed leased property is a public utility company and the locally assessed leased property is subject to an operating lease, the locally assessed leased property shall be assessed in the following manner:

(1) The owner shall disclose and report the locally assessed leased property on the designated form included with its annual report to the state board. In completing the designated form, the owner shall include all of the information required by the form. The owner shall also complete Form 1, Annual Report of Local Personal Property, disclosing and reporting the locally assessed leased property for assessment and taxation.

(2) The holder, possessor, or controller (lessee) of locally assessed leased property subject to an operating lease is required to disclose the existence of the leased property to the state board and local assessing officials. The holder, possessor, or controller shall disclose the locally assessed leased property on the designated form included with its annual report to the state board. In completing the designated form, the holder, possessor, or controller shall include all of the information required by the form. The holder, possessor, or controller shall also disclose the locally assessed leased property on Form 1, Annual Report of Local Personal Property.

(*State Board of Tax Commissioners; 50 IAC 5.2-10-4*)

**50 IAC 5.2-10-5 Locally assessed property subject to capital leases; specific reporting requirements**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-26

Sec. 5. (a) The holder, possessor, or controller (lessee) of locally assessed leased property subject to a capital lease is primarily responsible for the reporting of the locally assessed leased property for assessment and taxation.

(b) If the holder, possessor, or controller of the locally assessed leased property is a public utility company and the locally assessed leased property is subject to a capital lease,

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the locally assessed leased property shall be assessed in the following manner:

(1) The holder, possessor, or controller shall disclose and report the locally assessed leased property on the designated form included with its annual report to the state board. In completing the designated form, the holder, possessor, or controller shall include all of the information required by the form. The holder, possessor, or controller shall also complete Form 1, Annual Report of Local Personal Property, disclosing and reporting the locally assessed leased property for assessment and taxation.

(2) The owner (lessor) of locally assessed leased property subject to a capital lease is required to disclose the existence of the leased property to the state board and local assessing officials. The owner shall disclose the locally assessed leased property on the designated form. In completing the designated form, the owner shall include all of the information required by the form.

(State Board of Tax Commissioners; 50 IAC 5.2-10-5)

### Rule 11. Obsolescence

#### 50 IAC 5.2-11-1 "Obsolescence" defined

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1

Affected: IC 6-1.1-8-26

Sec. 1. (a) "Obsolescence" means a loss in value caused by inutility within the property or by changes in demand for the goods produced by the property. Obsolescence may be caused by:

(1) defects in:

(A) design;

(B) style; or

(C) capacity;

(2) a deficiency;

(3) a superadequacy; or

(4) changes in the tastes of buyers in the market place.

(b) Functional obsolescence is a loss in value due to impairment of functional capacity as a result of inadequacy, over capacity, or changes in the state of the art.

(c) External obsolescence is a loss in value arising from forces outside the property itself. (State Board of Tax Commissioners; 50 IAC 5.2-11-1)

#### 50 IAC 5.2-11-2 "Normal obsolescence" defined

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1

Affected: IC 6-1.1-8-26

Sec. 2. "Normal obsolescence" means the anticipated or expected reduction in the value of property that can be foreseen by a reasonable, prudent businessperson when property is acquired and placed into service. In general, it includes the expected gradual decline in value because of expected technological innovations and the general assumption

that such property will have a minimum value at the end of its useful life. The depreciation allowed pursuant to 50 IAC 5.2-6 accounts for normal obsolescence as well as physical deterioration. (State Board of Tax Commissioners; 50 IAC 5.2-11-2)

#### 50 IAC 5.2-11-3 "Abnormal obsolescence" defined

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1

Affected: IC 6-1.1-8-26

Sec. 3. (a) "Abnormal obsolescence" means obsolescence that occurs as a result of factors over which the taxpayer has no control and is unanticipated, unexpected, and cannot reasonably be foreseen by a prudent businessperson before the occurrence. It is of a nonrecurring nature and includes unforeseen changes in market values and exceptional technological innovations that have a direct effect upon the value of the property. Any abnormal obsolescence that affects the property must be considered separately since it has not been accounted for in normal obsolescence or physical deterioration. Abnormal obsolescence is calculated using different methodologies depending upon the type of inutility it represents. There are numerous methodologies and, as a general rule, common appraisal concepts and methods may be used to determine abnormal obsolescence. However, any method used must qualify and quantify any abnormal obsolescence claimed. The invention of newer, more productive personal property that produces a better quality item, utilizes state-of-the-art technology, or produces more efficiently at a lower cost of production, does not cause an older, currently used asset to be considered abnormally obsolete. If the asset is still capable of performing the function for which it was acquired, and is producing both on and before the assessment date, no abnormal obsolescence shall be allowed.

(b) An example of unforeseen change in market value (external obsolescence) is a government restriction on the amount of pollutants released into the atmosphere. In this case, the equipment producing the pollutants may be eligible for abnormal obsolescence.

(c) An example of exceptional technological innovation (functional obsolescence) is the development of digital switches that replace mechanical switches. Functional obsolescence should be recognized to the extent that it causes the subject property to be incapable of use for current production or adaptation to a different use. (State Board of Tax Commissioners; 50 IAC 5.2-11-3)

#### 50 IAC 5.2-11-4 Abnormal obsolescence claim

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1

Affected: IC 6-1.1-8

Sec. 4. (a) Abnormal obsolescence should be recognized to the extent that the taxpayer can demonstrate that the property qualifies for abnormal obsolescence and can

quantify the amount. This must be done through a presentation of the facts, circumstances, and methodology used in calculating the amount of the abnormal obsolescence.

(b) The adjustment for abnormal obsolescence must be computed in accordance with this article for each respective item of property. (*State Board of Tax Commissioners; 50 IAC 5.2-11-4*)

**50 IAC 5.2-11-5 Limitation**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8

Sec. 5. (a) The availability of abnormal obsolescence is limited to that which is not already reflected on the books and records of the taxpayer.

(b) The adjustment for abnormal obsolescence may not exceed the true tax value of the property without consideration of the abnormal obsolescence adjustment.

(c) A taxpayer may not claim an adjustment for abnormal obsolescence as defined in section 3 of this rule for inventory. Adjustments provided in 50 IAC 4.3 with respect to the valuation of inventory allow the taxpayer to account for all forms of obsolescence. (*State Board of Tax Commissioners; 50 IAC 5.2-11-5*)

**50 IAC 5.2-11-6 Reporting of abnormal obsolescence**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8

Sec. 6. The taxpayer may claim an adjustment for abnormal obsolescence on the form prescribed in this article when filing the tax return for the year in question. The adjustment or adjustments, if requested, must specifically:

- (1) identify all property for which an adjustment is requested;
- (2) indicate the original cost of the property;
- (3) indicate the true tax value of the property as if no adjustment would be allowed;
- (4) indicate the true tax value of the property as a result of the requested adjustment; and
- (5) provide sufficient detail in order to effectively qualify and quantify the claim.

(*State Board of Tax Commissioners; 50 IAC 5.2-11-6*)

**50 IAC 5.2-11-7 Full disclosure**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-26

Sec. 7. A public utility company shall disclose any claim for an adjustment for abnormal obsolescence in the annual report filed with the state board under 50 IAC 5.2-3-2. (*State Board of Tax Commissioners; 50 IAC 5.2-11-7*)

**50 IAC 5.2-11-8 Administrative adjudication on adjustment for abnormal obsolescence**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-26

Sec. 8. A public utility company may, prior to the filing of the property tax return for the year in question, petition the state board under 50 IAC 4.3-1-6, for an administrative adjudication determination regarding an abnormal obsolescence adjustment. (*State Board of Tax Commissioners; 50 IAC 5.2-11-8*)

**Rule 12. Exemptions, Deductions, and Credits**

**50 IAC 5.2-12-1 Introduction**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2; IC 6-1.1-8-28; IC 6-1.1-10; IC 6-1.1-11; IC 6-1.1-12; IC 6-1.1-12.1; IC 6-1.1-20.7; IC 6-1.1-20.8; IC 6-1.1-40; IC 6-1.1-42

Sec. 1. A public utility company may qualify for certain exemptions, deductions, or credits. For specific information on exemptions, deductions, and credits, see IC 6-1.1-10, IC 6-1.1-11, IC 6-1.1-12, IC 6-1.1-12.1, IC 6-1.1-20.7, IC 6-1.1-20.8, IC 6-1.1-40, and IC 6-1.1-42. Unless otherwise indicated, the specific statutory requirements for obtaining the exemption, deduction, or credit must be followed under section 6 of this rule. (*State Board of Tax Commissioners; 50 IAC 5.2-12-1*)

**50 IAC 5.2-12-2 Air pollution control exemption**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8-2; IC 6-1.1-8-28; IC 6-1.1-10-12; IC 6-1.1-10-13; IC 6-1.1-11

Sec. 2. (a) Generally, personal property, such as paint spray booths or dust collectors, do not qualify for exemption under this section, since they are primarily used to remove particulates, dust, or fumes from the work area and/or in the production of property for sale. Dust collecting baghouses or stack scrubbers which are primarily designed and used to prevent or eliminate pollutant contamination of the air outside of, or away from, the production plant generally would qualify for exemption since such systems primarily benefit the general public. The specific facts and circumstances of each taxpayer's equipment and operations must be considered in determining whether each item of property qualifies under this section.

(b) The amount of the exemption claimed is specifically limited to the value of the personal property that is attributable to the stationary or unlicensed mobile industrial air purification system. (*State Board of Tax Commissioners; 50 IAC 5.2-12-2*)

**50 IAC 5.2-12-3 Air pollution control exemption; claim**

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1  
Affected: IC 6-1.1-8; IC 6-1.1-10-12; IC 6-1.1-10-13; IC 6-1.1-11



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**Sec. 3.** A public utility company that wishes to obtain an exemption for an air pollution control system must annually claim the exemption on the appropriate form included in its annual report. The public utility company must disclose such information about the property claimed to be exempt as an air pollution control system as required on the form. (*State Board of Tax Commissioners; 50 IAC 5.2-12-3*)

### 50 IAC 5.2-12-4 Water pollution control exemption

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1

Affected: IC 6-1.1-8-2; IC 6-1.1-8-28; IC 6-1.1-10-9; IC 6-1.1-10-10; IC 6-1.1-11

**Sec. 4. (a)** An industrial waste control facility may qualify for exemption from property taxation if it is not used in the production of property for sale.

**(b)** The amount of the exemption claimed is specifically limited to the value of the personal property that is attributable to the industrial waste control facility. (*State Board of Tax Commissioners; 50 IAC 5.2-12-4*)

### 50 IAC 5.2-12-5 Water pollution control exemption; claim

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1

Affected: IC 6-1.1-8-2; IC 6-1.1-8-28; IC 6-1.1-10-9; IC 6-1.1-10-10; IC 6-1.1-11

**Sec. 5. (a)** A public utility company that wishes to obtain an exemption for an industrial waste control facility must annually claim the exemption on the appropriate form included in its annual report. The public utility company must disclose such information about the property claimed to be exempt as an industrial waste control facility as required on the form.

**(b)** In addition to the requirements of subsection (a), the public utility company must, by registered or certified mail, forward a copy of the exemption claim to the department of environmental management. The department of environmental management shall acknowledge its receipt of the claim.

**(c)** The department of environmental management may investigate any claim. The department of environmental management may also determine if the property for which the exemption is claimed is being utilized as an industrial waste control facility. Within one hundred twenty (120) days after the copy of the claim is mailed to the department of environmental management, the department of environmental management may certify its written determination to the state board.

**(d)** The determination of the department of environmental management remains in effect as long as the owner owns the property and uses the property as an industrial waste control facility, or five (5) years, whichever is less.

**(e)** During the five (5) years after the department of environmental management's determination, the owner of the industrial waste control facility must notify the state board and the department of environmental management in writing if any of the industrial waste control facility on which the department of environmental management's determination was based is disposed of or removed from service as an industrial waste control facility.

**(f)** The department of environmental management may revoke a determination if the department finds that the property is not predominantly used as an industrial waste control facility.

**(g)** The state board shall allow or deny the claim for exemption as determined by the department of environmental management. If the department of environmental management fails to act within one hundred twenty (120) days, the state board shall allow the claim if the owner provides proof that a copy of the claim has been mailed to the department of environmental management.

**(h)** If the department of environmental management denies the claim for exemption, and the state board has previously issued its tentative assessment, the state board shall issue a revised tentative assessment.

**(i)** The attorney general, in O.A.G. No. 39, 1969, has taken the position that a sewage treatment plant built by and within the premises of a privately owned manufacturing or industrial facility qualifies as an industrial waste control facility, providing the taxpayer follows the procedure for claiming an exemption. (*State Board of Tax Commissioners; 50 IAC 5.2-12-5*)

### 50 IAC 5.2-12-6 Waiver of exemption

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1

Affected: IC 6-1.1-8-2; IC 6-1.1-8-28; IC 6-1.1-11-1

**Sec. 6.** An exemption is a privilege that may be waived by a person who owns tangible property that would qualify for the exemption. If the owner does not comply with statutory procedures for obtaining an exemption, the exemption is waived. If the exemption is waived, the property is subject to taxation. (The complete text of the statute is contained in IC 6-1.1-11-1.) (*State Board of Tax Commissioners; 50 IAC 5.2-12-6*)

### Rule 13. Severability

#### 50 IAC 5.2-13-1 Severability

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1

Affected: IC 6-1.1-8-42

**Sec. 1.** If any part of this article, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other parts of this article or

**the application thereof which can be given effect without the invalid part, and to this end the provisions of this article are severable.** (*State Board of Tax Commissioners; 50 IAC 5.2-13-1*)

SECTION 2. 50 IAC 5.1 IS REPEALED.

SECTION 3. **SECTION 2 of this document takes effect March 1, 2002.**

**Notice of Public Hearing**

*Under IC 4-22-2-24, notice is hereby given that on November 29, 2001 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Auditorium, Indianapolis, Indiana the State Board of Tax Commissioners will hold a public hearing on proposed new rules governing the assessment of all public utility owned personal property for 2002 and thereafter. Parties interested in participating in the public hearing are encouraged to attend and submit written statements expressing their specific or general concerns, any suggested additions or revisions, and any documentation which may serve to support, clarify or supplement their concerns, suggestions, or proposed revisions. The State Board of Tax Commissioners also encourages any interested party who has concerns, suggestions, or proposed revisions to contact Kurt Barrow, Director, Assessment Division, State Board of Tax Commissioners, at (317) 232-3762. Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room 1058 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Jon Laramore  
Chairman  
State Board of Tax Commissioners

**TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA**

**Proposed Rule**  
LSA Document #01-294

**DIGEST**

Amends 355 IAC 5 to standardize some of the terms used throughout the article. Adds a definition of a mobile container and an appurtenance. Repeals outdated effective dates for compliance by existing storage facilities, duplicative and contradictory provisions for drainage from secondary containment, inspection and record keeping requirements with a maintenance standard, and a duplicative requirement for a discharge response plan. Repeals 355 IAC 5-1-2, 355 IAC 5-1-20, 355 IAC 5-2-13, 355 IAC 5-3-2, 355 IAC 5-4-5, 355 IAC 5-4-6, 355 IAC 5-4-9, 355 IAC 5-5-2, 355 IAC 5-6, 355 IAC 5-7, and 355 IAC 5-8-2. Effective 30 days after filing with the secretary of state.

- |                 |                |
|-----------------|----------------|
| 355 IAC 5-1-1   | 355 IAC 5-2-10 |
| 355 IAC 5-1-1.5 | 355 IAC 5-2-11 |
| 355 IAC 5-1-2   | 355 IAC 5-2-12 |
| 355 IAC 5-1-3   | 355 IAC 5-2-13 |
| 355 IAC 5-1-4   | 355 IAC 5-3-1  |
| 355 IAC 5-1-5   | 355 IAC 5-3-2  |
| 355 IAC 5-1-6   | 355 IAC 5-4-1  |
| 355 IAC 5-1-7.5 | 355 IAC 5-4-2  |
| 355 IAC 5-1-10  | 355 IAC 5-4-3  |
| 355 IAC 5-1-11  | 355 IAC 5-4-4  |
| 355 IAC 5-1-13  | 355 IAC 5-4-5  |
| 355 IAC 5-1-14  | 355 IAC 5-4-6  |
| 355 IAC 5-1-15  | 355 IAC 5-4-7  |
| 355 IAC 5-2-2   | 355 IAC 5-4-8  |
| 355 IAC 5-2-3   | 355 IAC 5-4-9  |
| 355 IAC 5-2-4   | 355 IAC 5-5-1  |
| 355 IAC 5-2-5   | 355 IAC 5-5-2  |
| 355 IAC 5-2-6   | 355 IAC 5-6    |
| 355 IAC 5-2-7   | 355 IAC 5-7    |
| 355 IAC 5-2-8   | 355 IAC 5-8-1  |
| 355 IAC 5-2-9   | 355 IAC 5-8-2  |

SECTION 1. 355 IAC 5-1-1 IS AMENDED TO READ AS FOLLOWS:

**ARTICLE 5. STORAGE AND SECONDARY CONTAINMENT OF PESTICIDES**

**355 IAC 5-1-1 “Approved” defined**  
Authority: IC 15-3-3.5-11  
Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 1. As used in this article, “approved” means approval by the ~~Indiana~~ state chemist ~~or his agent~~ except where otherwise stated. (*State Chemist of the State of Indiana; 355 IAC 5-1-1; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1400, eff sixty (60) days after filing with secretary of state*)

SECTION 2. 355 IAC 5-1-1.5 IS ADDED TO READ AS FOLLOWS:

**355 IAC 5-1-1.5 “Appurtenance” defined**  
Authority: IC 15-3-3.5-11  
Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 1.5. As used in this article, “appurtenance” means **any value, pump, fitting, pipe, hose, metering device, or mechanical device that is connected to a storage container, or is used to transfer a material into or out of such container.** (*State Chemist of the State of Indiana; 355 IAC 5-1-1.5*)

SECTION 3. 355 IAC 5-1-3 IS AMENDED TO READ AS FOLLOWS:

**355 IAC 5-1-3 “Discharge” defined**  
Authority: IC 15-3-3.5-11  
Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

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Sec. 3. As used in this article, “discharge” means ~~any spill, leak, deposit, dumping, or emitting, either accidental or otherwise, that results in a release of a pesticide into either a secondary containment or operational containment area at a storage facility. “Discharge” does not include lawful repackaging, transfer, loading, unloading, distribution use, disposal, or application of a pesticide.~~ (State Chemist of the State of Indiana; 355 IAC 5-1-3; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1401, eff sixty (60) days after filing with secretary of state)

SECTION 4. 355 IAC 5-1-4 IS AMENDED TO READ AS FOLLOWS:

### 355 IAC 5-1-4 “Dry pesticide” defined

Authority: IC 15-3-3.5-11

Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 4. As used in this article, “dry pesticide” means pesticide ~~which in an undivided quantity exceeding one hundred (100) pounds that~~ is in solid form prior to any application or mixing for application and includes formulations, such as dusts, wettable powders, dry flowable powders, and granules. (State Chemist of the State of Indiana; 355 IAC 5-1-4; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1401, eff sixty (60) days after filing with secretary of state)

SECTION 5. 355 IAC 5-1-5 IS AMENDED TO READ AS FOLLOWS:

### 355 IAC 5-1-5 “Elephant ring” defined

Authority: IC 15-3-3.5-11

Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 5. As used in this article, “elephant ring” means a storage container with open top serving as a secondary containment vessel into which a smaller ~~primary~~ storage container is placed. (State Chemist of the State of Indiana; 355 IAC 5-1-5; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1401, eff sixty (60) days after filing with secretary of state)

SECTION 6. 355 IAC 5-1-6 IS AMENDED TO READ AS FOLLOWS:

### 355 IAC 5-1-6 “Liquid pesticide” defined

Authority: IC 15-3-3.5-11

Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 6. As used in this article, “liquid pesticide” means pesticide in liquid form, including solutions, emulsions, suspensions, and slurries contained in an undivided quantity exceeding fifty-five (55) U.S. gallons. ~~It includes minibulk pesticide except as otherwise specified.~~ (State Chemist of the State of Indiana; 355 IAC 5-1-6; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1401, eff sixty (60) days after filing with secretary of state)

SECTION 7. 355 IAC 5-1-7.5 IS ADDED TO READ AS FOLLOWS:

### 355 IAC 5-1-7.5 “Mobile container” defined

Authority: IC 15-3-3.5-11

Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 7.5. As used in this article, “mobile container” means a storage container that is designed and used as:

- (1) a delivery vehicle;
- (2) application equipment; or
- (3) a minibulk pesticide container.

(State Chemist of the State of Indiana; 355 IAC 5-1-7.5)

SECTION 8. 355 IAC 5-1-11 IS AMENDED TO READ AS FOLLOWS:

### 355 IAC 5-1-11 “Secondary containment” defined

Authority: IC 15-3-3.5-11

Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 11. As used in this article, “secondary containment” means any structure, ~~such as a dike,~~ used to contain ~~product spills~~ pesticide discharges from storage containers and prevent run-off or leaching. (State Chemist of the State of Indiana; 355 IAC 5-1-11; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1402, eff sixty (60) days after filing with secretary of state)

SECTION 9. 355 IAC 5-1-13 IS AMENDED TO READ AS FOLLOWS:

### 355 IAC 5-1-13 “Storage container” defined

Authority: IC 15-3-3.5-11

Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 13. (a) As used in this article, “storage container” means the following:

- (1) a container used for the storage of liquid or dry pesticide at a storage facility.
- (2) ~~A rail car, nurse tank, or other mobile container used for the storage of liquid pesticide.~~

(b) “Storage container” ~~The term~~ does not include the following:

- (1) a mobile container storing liquid pesticide at a storage facility for less than ~~fifteen (15)~~ thirty (30) days. if this storage is incidental to the loading or unloading of a storage container at the storage facility. ~~In the case of minibulk pesticide containers, written and verifiable documentation as to the period of storage at the storage facility shall be required and made available to the state chemist upon request.~~
- (2) ~~A mobile container located other than on property owned, operated, or controlled by an owner or operator of a storage facility.~~
- (3) ~~A container used solely for emergency storage of leaking pesticide containers that are fifty-five (55) gallons or smaller.~~ (State Chemist of the State of Indiana; 355 IAC 5-1-13; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1402, eff sixty (60) days after filing with secretary of state)

SECTION 10. 355 IAC 5-1-14 IS AMENDED TO READ AS FOLLOWS:

**355 IAC 5-1-14 "Storage facility" defined**

Authority: IC 15-3-3.5-11

Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 14. As used in this article, "storage facility" means a location at which liquid ~~pesticide and/or bulk or dry~~ pesticide is held in storage. (State Chemist of the State of Indiana; 355 IAC 5-1-14; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1402, eff sixty (60) days after filing with secretary of state)

SECTION 11. 355 IAC 5-1-15 IS AMENDED TO READ AS FOLLOWS:

**355 IAC 5-1-15 "Storage facility registry" defined**

Authority: IC 15-3-3.5-11

Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 15. As used in this article, "storage facility ~~location~~ registry" means the annual listing of all liquid ~~pesticide and bulk pesticide~~ storage facilities in Indiana by the state chemist as derived from written notification ~~of such from the~~ storage facility. ~~location by the facility's owner, operator, or person in charge.~~ (State Chemist of the State of Indiana; 355 IAC 5-1-15; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1402, eff sixty (60) days after filing with secretary of state)

SECTION 12. 355 IAC 5-2-2 IS AMENDED TO READ AS FOLLOWS:

**Rule 2. Storage of Liquid Pesticide**

**355 IAC 5-2-2 Prohibition against underground storage**

Authority: IC 15-3-3.5-11

Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 2. ~~No person may store~~ Liquid pesticide **shall not be stored** in an underground storage container. ~~This prohibition does not apply to a watertight catch basin used for the temporary collection of run-off or rinsate from transfer and loading areas.~~ (State Chemist of the State of Indiana; 355 IAC 5-2-2; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1403, eff sixty (60) days after filing with secretary of state)

SECTION 13. 355 IAC 5-2-3 IS AMENDED TO READ AS FOLLOWS:

**355 IAC 5-2-3 Abandoned containers**

Authority: IC 15-3-3.5-11

Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 3. (a) Storage containers and other containers used at a storage facility to hold pesticide or pesticide rinsate are considered abandoned if they have been out of service for more than six (6) months because of a weakness or leak or have been out of service for any reason for more than two (2) years.

(b) Abandoned underground containers, including abandoned underground catch basins, shall be thoroughly cleaned and removed from the ground or thoroughly cleaned and filled with an inert solid. All connections and vents shall be disconnected and sealed. A record of the catch basin size, location, and method of closing shall be maintained at the storage facility or as otherwise provided for in this article.

(c) Abandoned aboveground containers shall be thoroughly cleaned. All hatches on the containers shall be left open, and all valves or connections shall be severed and left open.

(d) ~~★~~ Secondary containment ~~facility~~ is not considered abandoned merely because there have been no discharges into the secondary containment. ~~facility.~~ (State Chemist of the State of Indiana; 355 IAC 5-2-3; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1403, eff sixty (60) days after filing with secretary of state)

SECTION 14. 355 IAC 5-2-4 IS AMENDED TO READ AS FOLLOWS:

**355 IAC 5-2-4 Prohibited materials**

Authority: IC 15-3-3.5-11

Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 4. (a) Storage containers and appurtenances **may shall** not be made of polyvinyl chloride.

(b) A storage container **may shall** not be made of ferrous metals, unless the container is made of stainless steel **or other approved materials**, or the container has a protective lining ~~which that~~ inhibits corrosion and ~~which~~ does not react chemically with the stored pesticide. ~~or the manufacturer of the stored pesticide has confirmed in writing to the state chemist that corrosion tests have been conducted and storage in such unlined containers has been found to be satisfactory.~~ (State Chemist of the State of Indiana; 355 IAC 5-2-4; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1403, eff sixty (60) days after filing with secretary of state)

SECTION 15. 355 IAC 5-2-5 IS AMENDED TO READ AS FOLLOWS:

**355 IAC 5-2-5 Anchoring storage containers**

Authority: IC 15-3-3.5-11

Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 5. (a) Storage containers shall be anchored, as necessary, to prevent flotation or instability which might occur as a result of liquid accumulations within a secondary containment. ~~facility constructed in accordance with this article.~~

(b) ~~In lieu of anchoring,~~ the Storage container **may contain-ers shall be considered anchored if, in addition to other approved means, the containers:**

**(1)** are placed on a raised area or platform of such height as to prevent flotation or instability in the event of liquid accumulations; **or**

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### **(2) store product with sufficient volume to rise to at least the height of the secondary containment walls.**

*(State Chemist of the State of Indiana; 355 IAC 5-2-5; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1403, eff sixty (60) days after filing with secretary of state)*

SECTION 16. 355 IAC 5-2-6 IS AMENDED TO READ AS FOLLOWS:

#### **355 IAC 5-2-6 Vents**

**Authority:** IC 15-3-3.5-11

**Affected:** IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 6. (a) Each storage container shall be equipped with a vent with hood or inverted opening.

(b) Conservation vents shall be used on containers storing products where loss of vapor affects product quality or where the vapor is harmful or objectionable to plants, animals, or humans.

(c) ~~When~~ Conservation vents are used, they shall open and close within the designed pressure limits of the storage container. *(State Chemist of the State of Indiana; 355 IAC 5-2-6; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1403, eff sixty (60) days after filing with secretary of state)*

SECTION 17. 355 IAC 5-2-7 IS AMENDED TO READ AS FOLLOWS:

#### **355 IAC 5-2-7 Security**

**Authority:** IC 15-3-3.5-11

**Affected:** IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 7. (a) Storage containers and appurtenances shall be secured to provide reasonable protection from wildlife, vandalism, and unauthorized access. ~~which may result in damage and a subsequent discharge.~~ Such security shall be provided by fencing, lighting, or other approved means.

(b) Valves on storage containers shall be locked or otherwise secured, except when persons responsible for facility security are present at the facility.

(c) Valves on mobile ~~pesticide~~ containers ~~containing liquid pesticide and~~ parked overnight at a storage facility shall be locked or secured except when persons responsible for facility security are present at the facility.

(d) Valves on empty containers need not be secured. *(State Chemist of the State of Indiana; 355 IAC 5-2-7; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1403, eff sixty (60) days after filing with secretary of state)*

SECTION 18. 355 IAC 5-2-8 IS AMENDED TO READ AS FOLLOWS:

#### **355 IAC 5-2-8 Filling**

**Authority:** IC 15-3-3.5-11

**Affected:** IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 8. Storage containers shall not be filled to more than ninety-five percent (95%) of capacity unless the storage container construction or location provides constant temperature control, ~~or the storage container is a minibulk pesticide container,~~ or is otherwise designed to be filled to a capacity of greater than ninety-five percent (95%). ~~of its total volume according to the manufacturer's recommendations.~~ *(State Chemist of the State of Indiana; 355 IAC 5-2-8; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1404, eff sixty (60) days after filing with secretary of state)*

SECTION 19. 355 IAC 5-2-9 IS AMENDED TO READ AS FOLLOWS:

#### **355 IAC 5-2-9 Shutoff valves**

**Authority:** IC 15-3-3.5-11

**Affected:** IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 9. (a) ~~Every~~ Storage container ~~connection,~~ **connections,** except ~~a~~ **for** safety relief ~~connection,~~ **connections,** shall be equipped with a shutoff valve located on the storage container or at a distance from the storage container dictated by standard engineering practice.

(b) Except for a storage container of minibulk pesticide, all wetted parts inside shutoff valves and connections from the storage container to the shutoff valve shall be made of stainless steel or other approved material.

(c) ~~Valves shall be secured to protect against vandalism or accidental valve openings which may result in a discharge.~~ *(State Chemist of the State of Indiana; 355 IAC 5-2-9; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1404, eff sixty (60) days after filing with secretary of state)*

SECTION 20. 355 IAC 5-2-10 IS AMENDED TO READ AS FOLLOWS:

#### **355 IAC 5-2-10 Appurtenances**

**Authority:** IC 15-3-3.5-11

**Affected:** IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 10. ~~Pipes and fittings~~ **Appurtenances** shall be adequately supported to prevent sagging and possible breakage because of gravity and other forces which may be encountered in the ordinary course of operations. *(State Chemist of the State of Indiana; 355 IAC 5-2-10; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1404, eff sixty (60) days after filing with secretary of state)*

SECTION 21. 355 IAC 5-2-11 IS AMENDED TO READ AS FOLLOWS:

#### **355 IAC 5-2-11 Liquid level gauging device**

**Authority:** IC 15-3-3.5-11

**Affected:** IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 11. (a) ~~Every~~ Storage ~~container~~ **containers** shall be equipped with a liquid level gauging device ~~or other means~~ by

which the level of liquid in the storage container can be readily and safely determined. A liquid level gauging device is not required if the level of liquid in a storage container can be readily and reliably measured by other approved means:

(b) Liquid level gauging devices shall be secured, in a safe manner, to protect against breakage or vandalism which may result in a discharge.

(c) (b) External sight gauges are prohibited. (*State Chemist of the State of Indiana; 355 IAC 5-2-11; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1404, eff sixty (60) days after filing with secretary of state*)

SECTION 22. 355 IAC 5-2-12 IS AMENDED TO READ AS FOLLOWS:

**355 IAC 5-2-12 Maintenance**

Authority: IC 15-3-3.5-11

Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 12. (a) The operator of a storage facility shall routinely inspect and maintain storage facilities; Storage containers and appurtenances shall be maintained to minimize the risk of a discharge.

(b) The operator shall inspect valves and other appurtenances for leakage at least weekly and shall inspect vents for proper operation at least monthly.

(c) A written record of all inspections and maintenance shall be made on the day of the inspection or maintenance.

(d) Inspection and maintenance records shall be kept at the storage site or at the nearest local office from which the storage site is administered. (*State Chemist of the State of Indiana; 355 IAC 5-2-12; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1404, eff sixty (60) days after filing with secretary of state*)

SECTION 23. 355 IAC 5-3-1 IS AMENDED TO READ AS FOLLOWS:

**355 IAC 5-3-1 Operational area containment**

Authority: IC 15-3-3.5-11

Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 1. (a) Areas used for the loading of liquid pesticide into storage containers or for unloading liquid pesticide from storage containers into mobile containers shall be **Operational areas at a storage facility shall have containment that is** curbed and paved with reinforced concrete or other suitable approved material which that provides an impervious surface. and is approved by the state chemist. Operational area activities at the liquid pesticide storage facility shall be carried out within this area. Such activities include the loadout and unloading of liquid pesticide to and from storage containers; application equipment; mobile containers; equipment and container washing; and other similar activities: **containment.**

(b) The operational area containment shall be constructed and reinforced to **handle at least support** the foreseeable maximum gross load including of all product, equipment that utilize the operational area; mobile container; and motor vehicle **vehicles utilizing the area.** The curbed and paved area **containment** shall have a minimum width of ten (10) feet, and a minimum length of twenty (20) feet, **Any fill or unloading point and a minimum capacity of seven hundred fifty (750) gallons. Points of the mobile container loading and unloading shall be positioned over the paved area during loading or unloading to assure retention of any discharge: containment.**

(c) Wherever sufficient capacity required in 355 IAC 5-4-1(c) and provisions of this rule are complied with, the ~~diked~~ secondary containment area described in 355 IAC 5-4 may be designed for and jointly used in lieu of a separate operational area containment.

(d) The operational area containment shall form or drain into a watertight catch basin. If the operational area containment drains to a sump, the catch basin may include the sump and an aboveground container, provided a pump is installed which automatically transfers the contents of the sump into an aboveground container. Such containers used for the temporary storage of liquids collected from the operational area containment shall be located within secondary containment.

(e) The curbed surface and catch basin shall be of adequate design and size to contain a combined total of at least seven hundred fifty (750) gallons of discharged liquid.

(f) Discharges incidental to loading or unloading and rainwater **(e) All liquids shall be promptly recovered removed** from the operational area containment area and catch basin **such that for use in the blending process or for proper disposal in accordance with all applicable rules.** The capacity required in subsection (e) is **(b) shall be** available at all times.

(g) (f) Storage containers and appurtenances, including pipes, shall be protected against reasonably foreseeable risks of damage by trucks and other moving vehicles engaged in the loading or unloading of liquid pesticide: **operating in the area.**

(h) (g) This section does not apply to **the unloading of** mobile containers used to **nurse field operations when at a field unloading the pesticide application site.**

(i) The operator of a storage facility shall routinely inspect and maintain the **(h) Operational area containment system.** Such inspections shall be conducted at least weekly during operational periods: **shall be maintained as necessary to assure compliance with this rule.**

(j) (i) Alternative means, including portable operational area containment systems, shall be permitted to serve as operational

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area containment systems if recommended by the manufacturer and approved for this use by the state chemist.

(k) ~~A written record of all inspections and maintenance shall be made on the day of the inspection or maintenance. Inspection and maintenance records shall be kept at the storage site or at the nearest local office from which the storage site and operational area is administered. (State Chemist of the State of Indiana; 355 IAC 5-3-1; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1405, eff sixty (60) days after filing with secretary of state)~~

SECTION 24. 355 IAC 5-4-1 IS AMENDED TO READ AS FOLLOWS:

### Rule 4. Secondary Containment of Liquid Pesticide

#### 355 IAC 5-4-1 General requirements

Authority: IC 15-3-3.5-11

Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 1. (a) ~~Primary storage of~~ Liquid pesticide **storage containers** shall be located within a ~~diked area~~ **secondary containment** constructed with a base, perimeter wall, and sloped floor. ~~drain, except as noted in sections 4 through 6 of this rule.~~ Exception for a sloped floor ~~drain~~ may be granted prior existing ~~diked areas~~ providing other requirements of this rule are met: ~~by the state chemist.~~

(b) The ~~diked containment~~ area shall be separate from a secondary containment area for other materials and used only for containment of ~~primary storage of~~ liquid pesticide **storage containers** or other **pesticide related** equipment. ~~used in the operational area provided the minimum containment requirement noted in subsection (c) is maintained at all times.~~ Adjoining secondary containment areas may share common walls.

(c) ~~The diked area for~~ Secondary containment of ~~storage facilities~~ not protected from rainfall shall ~~contain at all times~~ have a minimum **capacity** of one hundred percent (100%) of the volume of the largest storage container within the ~~diked contained~~ area plus the volume ~~occupied~~ **displaced** by all the other tanks, equipment, and appurtenances in the area up to the safe design level of the ~~dike~~ **containment structure** plus a freeboard of six (6) inches.

(d) ~~Diked~~ Secondary containment ~~areas~~ protected from rainfall ~~are~~ **is** not required to ~~provide~~ **have** the freeboard noted in subsection (c), but shall comply with all other requirements therein.

(e) ~~Diked~~ Secondary containment ~~areas~~ constructed prior to enactment of this rule and ~~which have that has~~ a capacity of a minimum of one hundred ten percent (110%) of the volume of the largest storage container within the ~~diked contained~~ area plus the volume ~~occupied~~ **displaced** by all the other tanks in the area up to the safe design level of the ~~dike~~ **containment**

**structure** shall be deemed to be in compliance with this rule. Any such storage facility upon alteration of the secondary containment area or increases in storage container volume shall be brought into full compliance within ninety (90) days of alteration or increase.

(f) ~~Tile drainage shall not be permitted within or underlying the area to be diked shall be eliminated. under secondary containment. (State Chemist of the State of Indiana; 355 IAC 5-4-1; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1405, eff sixty (60) days after filing with secretary of state)~~

SECTION 25. 355 IAC 5-4-2 IS AMENDED TO READ AS FOLLOWS:

#### 355 IAC 5-4-2 Walls

Authority: IC 15-3-3.5-11

Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 2. (a) The walls of a secondary containment facility shall be constructed of steel, poured reinforced concrete, precast concrete modules, or solid masonry and be designed to withstand a full hydrostatic head of any discharged liquid and weight load of material used in construction.

(b) Cracks and seams shall be sealed to prevent leakage.

(c) Walls ~~may~~ **shall** not exceed six (6) feet in height above interior grade unless provisions are made for normal access and necessary emergency access to ~~tanks, storage containers,~~ valves, and other equipment and for safe exit from the secondary containment. ~~facility.~~

(d) Walls constructed of concrete or solid masonry shall rest upon a floating base of concrete prepared as in section 3(b) of this rule or upon suitable concrete footings which extend below the average frost depth. ~~to provide structural integrity. Joints between walls and the base shall be watertight. (State Chemist of the State of Indiana; 355 IAC 5-4-2; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1406; errata filed May 10, 1991, 2:30 p.m.: 14 IR 1730, eff sixty (60) days after filing with secretary of state)~~

SECTION 26. 355 IAC 5-4-3 IS AMENDED TO READ AS FOLLOWS:

#### 355 IAC 5-4-3 Base liners

Authority: IC 15-3-3.5-11

Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 3. (a) The base of a secondary containment facility shall be lined with concrete, steel, or other approved liners. ~~liners shall meet the requirements of this section.~~

(b) Concrete liners shall be designed according to good engineering practices to withstand any foreseeable loading conditions, including a full hydrostatic head of discharged fluid

and static loads of storage containers, including appurtenances, equipment, and contents. Cracks and seams shall be sealed to prevent leakage.

(c) ~~Steel plates may be used for wall and for base liners. Installation plans shall be approved by the state chemist who shall require that the plates are protected against corrosion and are joined in a manner as to provide water-tight joints: and installation plans shall be approved before use.~~

(d) ~~Synthetic liners and installation plans shall be approved by the state chemist. A synthetic liner may not be approved by the state chemist until the manufacturer of the liner provides the state chemist with a written confirmation of compatibility and a written estimate of the life of the liner: before use.~~

(e) ~~Synthetic liners shall have a minimum thickness of thirty (30) mils (eight-tenths (0.8) millimeters) millimeter) and be chemically compatible with the materials being stored within the containment. and operational areas.~~

(f) ~~Synthetic liners shall be installed under the supervision of a qualified representative of the manufacturer, and all field constructed seams shall be tested and repaired, if necessary, in accordance with the manufacturer's recommendations. (State Chemist of the State of Indiana; 355 IAC 5-4-3; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1406, eff sixty (60) days after filing with secretary of state)~~

SECTION 27. 355 IAC 5-4-4 IS AMENDED TO READ AS FOLLOWS:

**355 IAC 5-4-4 Drainage from secondary containment**

Authority: IC 15-3-3.5-11

Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 4. ~~A prefabricated diked area~~ **Secondary containment** shall not have a relief outlet ~~and or~~ valve. The base shall slope to a collecting spot where ~~storm water can~~ **liquid shall be discharged removed** by a manually operated **activated** pump over the ~~berm wall~~ for use in the blending process or for proper disposal in accordance with ~~local requirements for disposal of storm water: all applicable regulations.~~ (State Chemist of the State of Indiana; 355 IAC 5-4-4; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1407, eff sixty (60) days after filing with secretary of state)

SECTION 28. 355 IAC 5-4-7 IS AMENDED TO READ AS FOLLOWS:

**355 IAC 5-4-7 Alternative to secondary containment for storage containers of 3,000 gallons or less**

Authority: IC 15-3-3.5-11

Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 7. (a) Individual storage containers not exceeding three thousand (3,000) gallons may be contained within a ~~secondary storage container~~ **an elephant ring** in lieu of a ~~diked secondary~~

~~containment. area. The "elephant ring" serves as a second containing wall in the event that the primary storage container develops a leak.~~

(b) Both the ~~primary~~ storage container and the elephant ring shall be fabricated of ~~material materials~~ compatible with each other and with the pesticide being stored. ~~Dissimilar metals between~~ The primary storage container and the elephant ring contribute to electrolytic corrosion and such use is prohibited: **shall be constructed of similar metals.** Elephant rings **shall not be** constructed of plastic. ~~are prohibited from use.~~

(c) The height of the elephant ring wall shall not exceed four (4) feet. The ~~volume contained within the secondary storage walls up to the working height~~ **minimum capacity** of the elephant ring shall be sufficient to ~~contain a volume equal to~~ **one hundred percent (100%)** of the volume of the ~~primary~~ storage container plus the volume displaced by ~~any all~~ equipment, i.e., ~~pumps, meters, etc., placed within and appurtenances in~~ the secondary containment vessel up to the safe storage level of the elephant ring, plus a freeboard of six (6) inches. ~~which freeboard is exempted if the containment system is protected from rainfall. An elephant ring protected from rainfall is not required to have the freeboard of six (6) inches.~~

(d) The elephant ring shall be free of leaks and structural defects. The base shall be protected from corrosion, both from inside and outside, and shall be underlain by a concrete pad or ~~with by~~ eight (8) inches of compacted gravel beneath four (4) inches of compacted sand or as recommended by the manufacturer of the elephant ring and approved by the state chemist.

(e) ~~All piping connections to the primary storage container shall be made over~~ **The elephant ring shall not have a relief outlet or valve. No appurtenances shall extend through the wall of the elephant ring. and shall be adequately supported and braced.** Pumps ~~and other fixtures, if located within the elephant ring containment structure,~~ shall be placed on an elevated platform.

(f) ~~Accumulations of storm water and other material~~ **Liquid** shall be ~~drained removed~~ from the elephant ring ~~over the wall of the container by means of a sump manually activated pump within the secondary container or by means of an exterior portable pump, and disposed of in accordance with section 5(g) of this rule: for use in the blending process or disposal in accordance with all applicable regulations.~~

(g) Inspection and maintenance of the primary storage container and of the Elephant rings shall be conducted and records of inspections and maintenance maintained as in section 8 of ~~necessary to assure compliance with~~ this rule. (State Chemist of the State of Indiana; 355 IAC 5-4-7; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1407, eff sixty (60) days after filing with secretary of state)



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## Proposed Rules

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SECTION 29. 355 IAC 5-4-8 IS AMENDED TO READ AS FOLLOWS:

### 355 IAC 5-4-8 Maintenance

Authority: IC 15-3-3.5-11

Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 8. (a) Every Secondary containment shall be inspected by the operator of the storage facility at intervals of not greater than six (6) months and be maintained as necessary to assure compliance with this rule.

(b) A written record of all inspections and maintenance shall be made on the day of the inspection or maintenance and kept at the storage facility or at the nearest local office from which the storage facility is administered.

(c) All (b) Secondary containment areas shall be maintained free of debris and foreign matter. *(State Chemist of the State of Indiana; 355 IAC 5-4-8; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1408, eff sixty (60) days after filing with secretary of state)*

SECTION 30. 355 IAC 5-5-1 IS AMENDED TO READ AS FOLLOWS:

### 355 IAC 5-5-1 Storage requirements

Authority: IC 15-3-3.5-11

Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 1. (a) Dry bulk pesticide stored in outdoor facilities shall be kept in storage containers effectively designed and constructed to hold dry bulk pesticide. ~~and which shall be compatible with the pesticide stored therein.~~ Storage containers shall be constructed of materials ~~which that~~ are **compatible with the pesticide being stored** resistant to corrosion, puncture, or cracking, and shall be maintained in a good state of repair. Storage containers shall be placed on pallets or on a raised concrete platform which is drained to prevent the accumulation of water in or under the pesticide.

(b) Except during loading or unloading, stored dry bulk pesticide shall be covered by a roof or tarpaulin ~~which that~~ will keep precipitation off the pesticide.

(c) Storage facilities shall be secured ~~against unauthorized persons or to provide reasonable protection from~~ **wildlife, vandalism, and unauthorized access.** *(State Chemist of the State of Indiana; 355 IAC 5-5-1; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1408, eff sixty (60) days after filing with secretary of state)*

SECTION 31. 355 IAC 5-8-1 IS AMENDED TO READ AS FOLLOWS:

### Rule 8. Storage Facility Registry

#### 355 IAC 5-8-1 Facility registry

Authority: IC 15-3-3.5-11

Affected: IC 15-3-3.5-33; IC 15-3-3.5-34

Sec. 1. The owner, operator, or person in charge of a liquid pesticide or a bulk pesticide Storage facility facilities shall notify the state chemist each year prior to the receipt of the

initial shipment of such pesticide; the location of each respective storage facility operated in this state. The notice shall be submitted in writing upon either a form furnished by the state chemist upon request of the facility owner, operator, or person in charge; or upon the facility letterhead: **of the facilities' location and status.** The notice shall disclose the physical location of the facility and its mailing address, if different. The state chemist shall compile the location notices into a location registry and may use the registry as deemed necessary to promote the general public benefit: **include the facilities':**

(1) mailing address;

(2) owner or manager name;

(3) rated or calculated capacity off all storage containers; and

(4) physical location of storage containers.

*(State Chemist of the State of Indiana; 355 IAC 5-8-1; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1410, eff sixty (60) days after filing with secretary of state)*

SECTION 32. THE FOLLOWING ARE REPEALED: 355 IAC 5-1-2; 355 IAC 5-1-10; 355 IAC 5-2-13; 355 IAC 5-3-2; 355 IAC 5-4-5; 355 IAC 5-4-6; 355 IAC 5-4-9; 355 IAC 5-5-2; 355 IAC 5-6; 355 IAC 5-7; 355 IAC 5-8-2.

### Notice of Public Hearing

*Under IC 4-22-2-24, notice is hereby given that on November 30, 2001 at 9:00 a.m., at the Office of the Indiana State Chemist, Purdue University, 1154 Biochemistry, Room A151, West Lafayette, Indiana the State Chemist of the State of Indiana will hold a public hearing on proposed amendments to standardize some of the terms used throughout the article; add a definition of a mobile container and an appurtenance; and repeal outdated effective dates for compliance by existing storage facilities, duplicative and contradictory provisions for drainage from secondary containment, inspection and record keeping requirements with a maintenance standard, and a duplicative requirement for a discharge response plan. Copies of these rules are now on file at the State Chemist of the State of Indiana, Purdue University, 1154 Biochemistry Building, West Lafayette and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

David Scott

Pesticide Administrator

State Chemist of the State of Indiana

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## TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

### Proposed Rule

LSA Document #01-335

### DIGEST

Adds 355 IAC 6 to provide detailed labeling requirements consistent with nutritional parameters necessary for livestock

and pet foods. Effective 30 days after filing with the secretary of state.

355 IAC 6

SECTION 1. 355 IAC 6 IS ADDED TO READ AS FOLLOWS:

ARTICLE 6. ANIMAL FOODS

Rule 1. General Provisions

355 IAC 6-1-1 Definitions and terms

Authority: IC 15-5-13-14

Affected: IC 15-5-13-1; IC 15-5-13-9

Sec. 1. (a) The names and definitions for commercial feeds shall be the official definitions of feed ingredients adopted by the Association of American Feed Control Officials (AAFCO), except as the director designates otherwise in specific cases.

(b) The terms used in reference to commercial feeds shall be the official feed terms adopted by the AAFCO, except as the director designates otherwise in specific cases.

(c) The following commodities, when unground and when not mixed or intermixed with other materials, are hereby declared exempt from the definition of commercial feeds under IC 15-5-13-1:

- (1) Raw meat.
- (2) Hay.
- (3) Straw.
- (4) Stover.
- (5) Silages.
- (6) Cobs.
- (7) Husks.
- (8) Hulls.

Provided that these commodities are not adulterated within the meaning of IC 15-5-13-9.

(d) The individual chemical compounds and substances of loose salt (sodium chloride) are hereby declared exempt from the definition of commercial feed under IC 15-5-13-1.

(e) Unmanipulated high moisture (greater than ninety percent (90%) moisture) human food processing byproducts are hereby declared exempt from the definition of commercial feed under IC 15-5-13-1 provided they are not adulterated within the meaning of IC 15-5-13-9.

(f) "Custom-mixed feed" includes feed to which the manufacturer retains title and which is fed to animals to which the manufacturer retains title. (State Chemist of the State of Indiana; 355 IAC 6-1-1)

355 IAC 6-1-2 Label format

Authority: IC 15-5-13-14

Affected: IC 15-5-13

Sec. 2. (a) Commercial feed, other than custom-mixed feed, shall be labeled with the information prescribed in this rule on the principal display panel of the product and in the following format:

- (1) Product name and brand name, if any, as stipulated in section 3(a)(1) of this rule.
- (2) If a drug is used, label as stipulated in section 3(a)(2) of this rule.
- (3) Purpose statement as stipulated in section 3(a)(3) of this rule.
- (4) Guaranteed analysis as stipulated in section 3(a)(4) of this rule.
- (5) Feed ingredients as stipulated in section 3(a)(5) of this rule.
- (6) Directions for use and precautionary statements as stipulated in section 3(a)(6) of this rule.
- (7) Name and principal mailing address of the manufacturer or person responsible for distributing the feed as stipulated in section 3(a)(7) of this rule.
- (8) Quantity statement.

(b) The following requirements apply to labeling:

- (1) The information required in subsection (a)(1) through (a)(5), (a)(7), and (a)(8) must appear in its entirety on one (1) side of the label or on one (1) side of the container.
- (2) The information required by subsection (a)(6) shall be displayed in a prominent place on the label or container but not necessarily on the same side as the information in subdivision (1). When the information required by subsection (a)(6) is placed on a different side of the label or container, it shall be referenced on the front side with a statement, such as "See back of label for directions for use.". None of the information required by this section shall be subordinated or obscured by other statements or designs.

(c) Custom mixed feed shall be accompanied with the information prescribed in this rule using labels, invoice, delivery ticket, or another distribution document bearing the following information:

- (1) The name and address of the manufacturer.
- (2) The name and address of the purchaser.
- (3) The date of sale or delivery.
- (4) The custom mixed feed name and brand name if any.
- (5) The product name and net quantity of each commercial feed and each other ingredient used in the mixture.
- (6) The direction for use and precautionary statements as required by sections 7 and 8 of this rule.
- (7) If a drug containing product is used, the:
  - (A) purpose of the medication (claim statement); and
  - (B) established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with section 4(d) of this rule.

(State Chemist of the State of Indiana; 355 IAC 6-1-2)

**355 IAC 6-1-3 Label information**

Authority: IC 15-5-13-14

Affected: IC 15-5-13-6; IC 15-5-13-8

Sec. 3. (a) Commercial feed, other than custom-mixed feed, shall be labeled with the information prescribed as follows:

(1) Product name and brand name, if any, as follows:

(A) The brand or product name must be appropriate for the intended use of the feed and must not be misleading. If the name indicates the feed is made for a specific use, the character of the feed must conform therewith. A commercial feed for a particular animal class must be suitable for that purpose.

(B) Commercial, registered brand or trade names are not permitted in guarantees or ingredient listings and only in the product name of feeds produced by or for the firm holding the rights to such a name.

(C) The name of a commercial feed shall not be derived from one (1) or more ingredients of a mixture to the exclusion of other ingredients and shall not be one representing any components of a mixture unless all components are included in the name: provided, that if any ingredient or combination of ingredients is intended to impart a distinctive characteristic to the product which is of significance to the purchaser, the name of that ingredient or combination of ingredients may be used as a part of the brand name or product name if the ingredient or combination of ingredients is quantitatively guaranteed in the guaranteed analysis, and the brand or product name is not otherwise false or misleading.

(D) The word "protein" shall not be permitted in the product name of a feed that contains added nonprotein nitrogen.

(E) When the name carries a percentage value, it shall be understood to signify protein and/or equivalent protein from nonprotein nitrogen content only, even though it may not explicitly modify the percentage with the word "protein", provided that other percentage values may be permitted if they are followed by the proper description and conform to good labeling practices. Digital numbers shall not be used in a product name in such a manner as to be misleading or confusing to the customer.

(F) Single ingredient feeds shall have a product name in accordance with the designated definition of feed ingredients as recognized by the Association of American Feed Control Officials unless the director designates otherwise.

(G) The word "vitamin", or a contraction thereof, or any word suggesting vitamin can be used only in the name of a feed which is represented to be a vitamin supplement, and which is labeled with the minimum content of each vitamin declared, as specified in section 4(c) of this rule.

(H) The term "mineralized" shall not be used in the name of a feed except for "TRACE MINERALIZED SALT". When so used, the product must contain significant amounts of trace minerals which are recognized as essential for animal nutrition.

(I) The term "meat" and "meat byproducts" shall be qualified to designate the animal from which the meat and meat byproducts is derived unless the meat and meat byproducts are made from cattle, swine, sheep, and goats.

(2) If a drug is used, the following requirements apply:

(A) The word "medicated" shall appear directly following and below the product name in type size, no smaller than half the type size of the product name.

(B) Purpose statement as required in subdivision (3).

(C) The purpose of medication (claim statement).

(D) An active ingredient statement listing the active drug ingredients by their established name and the amounts in accordance with section 4(d) of this rule.

(3) Requirements for purpose statement are as follows:

(A) The statement of purpose shall contain the specific species and animal class or classes for which the feed is intended as defined in subdivision (4).

(B) The manufacturer shall have flexibility in describing in more specific and common language the defined animal class, species, and purpose while being consistent with the category of animal class defined in subdivision (4), which may include, but is not limited to, weight range, sex, or age of the animal for which the feed is manufactured.

(C) The purpose statement may be excluded from the label if the product name includes a description of the species and animal class or classes for which the product is intended.

(D) The purpose statement of a premix for the manufacture of feed may exclude the animal class and species and state "For Further Manufacture of Feed" if the nutrients contained in the premix are guaranteed and sufficient for formulation into various animal species feeds and premix specifications are provided by the end user of the premix. This section is applicable to commercial feeds regulated under subdivision (4)(J)(ii)(JJ).

(E) The purpose statement of a single purpose ingredient blend, such as a blend of animal protein products, milk products, fat products, roughage products, or molasses products may exclude the animal class and species and state "For Further Manufacture of Feed" if the label guarantees of the nutrients contained in the single purpose nutrient blend are sufficient to provide for formulation into various animal species feeds. This section is applicable to commercial feeds regulated under subdivision (4)(J)(ii)(JJ).

(F) The purpose statement of a product shall include a statement of enzyme functionality if enzymatic activity is represented in any manner.

(4) Guarantees for crude protein, equivalent crude protein from nonprotein nitrogen, amino acids, crude fat, crude fiber, acid detergent fiber, calcium, phosphorus, salt, and sodium shall be the sequence of nutritional guarantees when such guarantee is stated. Other required and voluntary guarantees should follow in a general format such that the units of measure used to express guarantees (percentage, parts per million, International Units, etc.) are listed in a sequence that provides a consistent grouping of the units of measure as follows:

(A) Required guarantees for swine formula feeds are as follows:

(i) Animal classes as follows:

- (AA) Prestarter, two (2) to eleven (11) pounds.
- (BB) Starter, eleven (11) to forty-four (44) pounds.
- (CC) Grower, forty-four (44) to one hundred ten (110) pounds.
- (DD) Finisher, one hundred ten (110) to two hundred forty-two (242) pounds (market).
- (EE) Gilts, sows, and adult boars.
- (FF) Lactating gilts and sows.

(ii) Guaranteed analysis for swine complete feeds and supplements (all animal classes) as follows:

- (AA) Minimum percentage of crude protein.
- (BB) Minimum percentage of lysine.
- (CC) Minimum percentage of crude fat.
- (DD) Maximum percentage of crude fiber.
- (EE) Minimum and maximum percentage of calcium.
- (FF) Minimum percentage of phosphorus.
- (GG) Minimum and maximum percentage of salt (if added).
- (HH) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.
- (II) Minimum selenium in parts per million.
- (JJ) Minimum zinc in parts per million.

(B) Required guarantees for formula poultry feeds (broilers, layers, and turkeys) as follows:

(i) Animal classes as follows:

- (AA) Layer, chickens that are grown to produce eggs for food, for example, table eggs:
  - (aa) starting/growing, from day of hatch to approximately ten (10) weeks of age;
  - (bb) finisher, from approximately ten (10) weeks of age to the time first egg is produced (approximately twenty (20) weeks of age);
  - (cc) laying, from the time the first egg is laid throughout the time of egg production; and
  - (dd) breeders, chickens that produce fertile eggs for hatch replacement layers to produce eggs for food, table eggs, from the time the first egg is laid throughout their productive cycle.
- (BB) Broilers, chickens that are grown for human food:

- (aa) starting/growing, from the day of hatch to approximately five (5) weeks of age;

- (bb) finisher, from approximately five (5) weeks of age to market, (forty-two (42) to fifty-two (52) days); and

- (cc) breeders, hybrid strains of chickens whose offspring are grown for human food (broilers) any age and either sex.

(CC) Broilers, breeders, chickens whose offspring are grown for human food (broilers):

- (aa) starting/growing, from the day of hatch until approximately ten (10) weeks of age;

- (bb) finishing, from approximately ten (10) weeks of age to the time the first egg is produced, approximately twenty (20) weeks of age; and

- (cc) laying, fertile egg producing chickens (broilers/roasters) from the day of the first egg throughout the time fertile eggs are produced.

(DD) Turkeys:

- (aa) starting/growing, turkeys that are grown for human food from the day of the hatch to approximately thirteen (13) weeks of age (females) and sixteen (16) weeks of age (males);

- (bb) finisher, turkeys that are grown for human food, females from approximately thirteen (13) weeks of age to approximately seventeen (17) weeks of age; males from sixteen (16) weeks of age to twenty (20) weeks of age (or desired market weight);

- (cc) laying, female turkeys that are producing eggs; from the time the first egg is produced, throughout the time they are producing eggs; and
- (dd) breeder, turkeys that are grown to produce fertile eggs, from the day of hatch to the time the first eggs is produced (approximately thirty (30) weeks of age), both sexes.

(ii) Guaranteed analysis for poultry complete feeds and supplements (all animal classes):

- (AA) minimum percentage of crude protein;
- (BB) minimum percentage of lysine;
- (CC) minimum percentage of methionine;
- (DD) minimum percentage of crude fat;
- (EE) maximum percentage of crude fiber;
- (FF) minimum and maximum percentage of calcium;
- (GG) minimum percentage of phosphorus;
- (HH) minimum and maximum percentage of salt (if added); and
- (II) minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

(C) Required guaranteed for beef cattle formula feeds as follows:

(i) Animal classes as follows:

- (AA) Calves (birth to weaning).

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- (BB) Cattle on pasture may be specific as to production stage, for example:
- (aa) stocker;
  - (bb) feeder;
  - (cc) replacement heifers;
  - (dd) brood cows; or
  - (ee) bulls.
- (CC) Feedlot cattle.
- (ii) Guaranteed analysis for beef complete feeds and supplements (all animal classes) as follows:
- (AA) Minimum percentage of crude protein.
  - (BB) Maximum percentage of equivalent crude protein from nonprotein nitrogen when added.
  - (CC) Minimum percentage of crude fat.
  - (DD) Maximum percentage of crude fiber.
  - (EE) Minimum and maximum percentage of calcium.
  - (FF) Minimum percentage of phosphorus.
  - (GG) Minimum and maximum percentage of salt (if added).
  - (HH) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.
  - (II) Minimum percentage of potassium.
  - (JJ) Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).
- (iii) Guaranteed analysis for beef mineral feeds (if added) as follows:
- (AA) Minimum and maximum percentage calcium.
  - (BB) Minimum percentage of phosphorus.
  - (CC) Minimum and maximum percentage of salt.
  - (DD) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.
  - (EE) Minimum percentage of magnesium.
  - (FF) Minimum percentage of potassium.
  - (GG) Minimum copper in parts per million.
  - (HH) Minimum selenium in parts per million.
  - (II) Minimum zinc in parts per million.
  - (JJ) Minimum vitamin A, other than precursors of vitamin A, in International Units per pound.
- (D) Required guarantees for dairy formula feeds as follows:
- (i) Animal classes as follows:
    - (AA) Veal milk replacer, milk replacer to be fed for veal production.
    - (BB) Herd milk replacer, milk replacer to be fed for herd replacement calves.
    - (CC) Starter, approximately three (3) days to three (3) months.
    - (DD) Growing heifers, bulls, and dairy beef as follows:
      - (aa) Grower 1, three (3) months to twelve (12) months of age.
      - (bb) Grower 2, more than twelve (12) months of age.
      - (EE) Lactating dairy cattle.
      - (FF) Nonlactating dairy cattle.
  - (ii) Guaranteed analysis for veal and herd replacement milk replacer as follows:
    - (AA) Minimum percentage crude protein.
    - (BB) Minimum percentage crude fat.
    - (CC) Maximum percentage of crude fiber.
    - (DD) Minimum and maximum percentage calcium.
    - (EE) Minimum percentage of phosphorus.
    - (FF) Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).
  - (iii) Guaranteed analysis for dairy cattle complete feeds and supplements as follows:
    - (AA) Minimum percentage of crude protein.
    - (BB) Maximum percentage of equivalent crude protein from nonprotein nitrogen when added.
    - (CC) Minimum percentage of crude fat.
    - (DD) Maximum percentage of crude fiber.
    - (EE) Maximum percentage of acid detergent fiber.
    - (FF) Minimum and maximum percentage of calcium.
    - (GG) Minimum percentage of phosphorus.
    - (HH) Minimum selenium in parts per million.
    - (II) Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).
  - (iv) Required guaranteed analysis for dairy mixing and pasture mineral as follows:
    - (AA) Minimum and maximum percentage of calcium.
    - (BB) Minimum percentage of phosphorus.
    - (CC) Minimum and maximum percentage of salt.
    - (DD) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.
    - (EE) Minimum percentage of magnesium.
    - (FF) Minimum percentage of potassium.
    - (GG) Minimum selenium in parts per million.
    - (HH) Minimum vitamin A, other than the precursors of vitamin A, in International Units per pound.
- (E) Required guarantees for equine formula feeds as follows:
- (i) Animal classes as follows:
    - (AA) Foal.
    - (BB) Mare.
    - (CC) Breeding.
    - (DD) Maintenance.
  - (ii) Guaranteed analysis for equine complete feeds and supplements (all animal classes) as follows:

- (AA) Minimum percentage of crude protein.
- (BB) Minimum percentage of crude fat.
- (CC) Maximum percentage of crude fiber.
- (DD) Minimum and maximum percentage of calcium.
- (EE) Minimum percentage of phosphorus.
- (FF) Minimum copper in parts per million.
- (GG) Minimum selenium in parts per million.
- (HH) Minimum zinc in parts per million.
- (II) Minimum vitamin A, other than the precursors of vitamin A, in International Units per pound (if added).
- (iii) Guaranteed analysis for equine mineral feeds (all animal classes) as follows:
  - (AA) Minimum and maximum percentage of calcium.
  - (BB) Minimum percentage of phosphorus.
  - (CC) Minimum and maximum percentage of salt (if added).
  - (DD) Minimum and maximum percentage of sodium shall be guaranteed only when the total sodium exceeds that furnished by the maximum salt guarantee.
  - (EE) Minimum copper in parts per million.
  - (FF) Minimum selenium in parts per million.
  - (GG) Minimum zinc in parts per million.
  - (HH) Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).
- (F) Required guaranteed for goat and sheep formula feeds as follows:
  - (i) Animal classes as follows:
    - (AA) Starter.
    - (BB) Grower.
    - (CC) Finisher.
    - (DD) Breeder.
    - (EE) Lactating.
  - (ii) Guaranteed analysis for goat and sheep complete feeds and supplements (all animal classes) as follows:
    - (AA) Minimum percentage of crude protein.
    - (BB) Maximum percentage of equivalent crude protein from nonprotein nitrogen when added.
    - (CC) Minimum percentage of crude fat.
    - (DD) Maximum percentage of crude fiber.
    - (EE) Minimum and maximum percentage of calcium.
    - (FF) Minimum percentage of phosphorus.
    - (GG) Minimum and maximum percentage of salt (if added).
    - (HH) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.
    - (II) Minimum and maximum copper in parts per million (if added, or if total copper exceeds twenty (20) parts per million).
- (JJ) Minimum selenium in parts per million.
- (KK) Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).
- (G) Required guarantees for duck and geese formula feeds as follows:
  - (i) Animal classes as follows:
    - (AA) Ducks as follows:
      - (aa) Starter, zero (0) to three (3) weeks of age.
      - (bb) Grower, three (3) to six (6) weeks of age.
      - (cc) Finisher, six (6) weeks to market.
      - (dd) Breeder developer, eight (8) to nineteen (19) weeks of age.
      - (ee) Breeder, twenty-two (22) weeks to end of lay.
    - (BB) Geese as follows:
      - (aa) Starter, zero (0) to four (4) weeks of age.
      - (bb) Grower, four (4) to eight (8) weeks of age.
      - (cc) Finisher, eight (8) weeks to market.
      - (dd) Breeder developer, ten (10) to twenty-two (22) weeks of age.
      - (ee) Breeder, twenty-two (22) weeks to end of lay.
  - (ii) Guaranteed analysis for duck and geese complete feeds and supplements (for all animal classes) as follows:
    - (AA) Minimum percentage of crude protein.
    - (BB) Minimum percentage of crude fat.
    - (CC) Maximum percentage of crude fiber.
    - (DD) Minimum and maximum percentage of calcium.
    - (EE) Minimum percentage of phosphorus.
    - (FF) Minimum and maximum percentage of salt (if added).
    - (GG) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.
- (H) Required guarantees for fish complete feeds and supplements as follows:
  - (i) Animal species shall be declared in lieu of animal class as follows:
    - (AA) Trout.
    - (BB) Catfish.
    - (CC) Species other than trout or catfish.
  - (ii) Guaranteed analysis for all fish complete feeds and supplements as follows:
    - (AA) Minimum percentage of crude protein.
    - (BB) Minimum percentage of crude fat.
    - (CC) Maximum percentage of crude fiber.
    - (DD) Minimum percentage of phosphorus.
- (I) Required guarantees for rabbit complete feeds and supplements as follows:
  - (i) Animal classes as follows:
    - (AA) Grower, four (4) to twelve (12) weeks of age.
    - (BB) Breeder, twelve (12) weeks of age and over.
  - (ii) Guaranteed analysis for rabbit complete feeds and supplements (all animal classes) as follows:

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- (AA) Minimum percentage of crude protein.
  - (BB) Minimum percentage of crude fat.
  - (CC) Minimum and maximum percentage of crude fiber (the maximum crude fiber shall not exceed the minimum by more than five (5.0) units).
  - (DD) Minimum and maximum percentage of calcium.
  - (EE) Minimum percentage of phosphorus.
  - (FF) Minimum and maximum percentage of salt (if added).
  - (GG) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.
  - (HH) Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).
- (J) The required guarantees of grain mixtures with or without molasses and feeds other than those described in clauses (A) through (I) shall include the following items, unless exempted in clause (K), in the order listed as follows:
- (i) Animal classes and species for which the product is intended.
  - (ii) Guaranteed analysis as follows:
    - (AA) Minimum percentage crude protein.
    - (BB) Maximum or minimum percentage of equivalent crude protein from nonprotein nitrogen as required in section 4(e) of this rule.
    - (CC) Minimum percentage of crude fat.
    - (DD) Maximum percentage of crude fiber.
    - (EE) Minerals in formula feeds, to include in the following order:
      - (aa) Minimum and maximum percentages of calcium.
      - (bb) Minimum percentage of phosphorus.
      - (cc) Minimum and maximum percentage of salt (if added).
      - (dd) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.
      - (ee) Other minerals.
    - (FF) Minerals in feeds ingredients as specified by the official definitions of the Association of American Feed Control Officials.
    - (GG) Vitamins in such terms as specified in section 4(c) of this rule.
    - (HH) Total sugars as invert on dried molasses products or products being sold primarily for their sugar content.
  - (II) Viable lactic acid producing micro-organisms for use in silages in terms specified in section 4(g) of this rule.
  - (JJ) A commercial feed, for example, vita-
- min/mineral premix or base mix, intended to provide a specialized nutritional source for use in the manufacture of other feeds, must state its intended purpose and guarantee those nutrients relevant to such stated purpose.
- (K) Exemptions as follows:
- (i) A mineral guarantee for feed, excluding those feeds manufactured as complete feeds and for feed supplements intended to be mixed with grain to produce a complete feed for swine, poultry, fish, and veal and herd milk replacers is not required when the feed or feed ingredient:
    - (AA) is not intended or represented or does not serve as a principal source of that mineral to the animal; or
    - (BB) is intended for nonfood producing animals and contains less than six and five-tenths percent (6.5%) total mineral.
  - (ii) Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement.
  - (iii) Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses.
  - (iv) Guarantees for micro-organisms are not required when the commercial feed is intended for a purpose other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, and no specific label claims are made.
  - (v) The indication for animal classes and species is not required on single ingredient products if the ingredient is not intended, represented, or defined for a specific animal class or species.
  - (vi) Mixtures of whole seeds intended to be fed to wild birds may be labeled showing, by weight percentage, the amount of seed by kind, and a weight designated as "other" that includes weed seed, other crop seed, and inert matter contained in the mixture to total one hundred percent (100%), in lieu of supplying guarantees for minimum crude protein, minimum crude fat, and maximum crude fiber. If the feed contains greater than two and five-tenths percent (2.5%) weed seed by weight, the labeling must include the statement, "Note: This feed contains more than two and five-tenths percent (2.5%) weed seed by weight, printed on the label."
- (5) Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements as provided under the provisions of Section 6(4) of the Act as follows:
- (A) The name of each ingredient as defined in the Official Publication of the Association of American

Feed Control Officials, common or usual name, or one approved by the director.

(B) Collective terms for the grouping of feed ingredients as defined in the Official Definitions of Feed Ingredients published in the Official Publication of the Association of American Feed Control Officials in lieu of the individual ingredients, provided that:

- (i) when a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label; and
- (ii) the manufacturer shall provide the feed control official, upon request, with a list of individual ingredients, within a defined group, that are or have been used at manufacturing facilities distributing in or into the state.

(6) Directions for use and precautionary statements or reference to their location if the detailed feeding directions and precautionary statements required by sections 7 and 8 of this rule appear elsewhere on the label.

(7) Name and principal mailing address of the manufacturer or person responsible for distributing the feed. The principal mailing address shall include the street address, city, state, and zip code; however, the street address may be omitted if it is shown in the current city directory or telephone directory.

(8) Net weight or quantity statement.

(b) The director or the director's agent may request labels or labeling under the following conditions:

- (1) When the license applicant is a new firm and the labeling practices of the applicant have not been observed.
- (2) When labels or labeling of a licensee have been found to be in violation.
- (3) When analytical problems are noted.
- (4) When a consumer complaint has been received.

*(State Chemist of the State of Indiana; 355 IAC 6-1-3)*

#### **355 IAC 6-1-4 Expression of guarantees**

Authority: IC 15-5-13-14

Affected: IC 15-5-13

Sec. 4. (a) The guarantees for crude protein, equivalent crude protein from nonprotein nitrogen, lysine, methionine, other amino acids, crude fat, crude fiber, and acid detergent fiber shall be in terms of percentage.

(b) Mineral guarantees as follows:

(1) When the calcium, salt, and sodium guarantees are given in the guaranteed analysis, such shall be stated and conform to the following:

(A) When the minimum is below two and five-tenths percent (2.5%), the maximum shall not exceed the minimum by more than five-tenths (0.5) percentage point.

(B) When the minimum is two and five-tenths percent (2.5%) but less than five percent (5.0%), the maximum shall not exceed the minimum by more than one (1) percentage point.

(C) When the minimum is above five percent (5.0%) or greater the maximum shall not exceed the minimum by more than twenty percent (20%) of the minimum and in no case shall the maximum exceed the minimum by more than five (5) percentage points.

(2) When stated, guarantees for minimum and maximum total sodium and salt, minimum potassium, magnesium, sulfur, phosphorus, and maximum fluoride shall be in terms of percentage. Other minimum mineral guarantees shall be stated in parts per million (ppm) when the concentration is less than ten thousand (10,000) ppm and in percentage when the concentration is ten thousand (10,000) ppm (one percent (1%)) or greater.

(3) Products labeled with a quantity statement, for example, tablets, capsules, granules, or liquid, may state mineral guarantees in milligrams per unit, for example, tablets, capsules, granules, or liquids, consistent with the quantity statement and directions for use.

(c) Guarantees for minimum vitamin content of commercial feeds shall be listed in the order specified and stated in milligrams per pound or in units consistent with those employed for the quantity statement unless otherwise specified as follows:

- (1) Vitamin A, other than precursors of vitamin A, in International Units per pound.
- (2) Vitamin D3, in products offered for poultry feeding, in International Chick Units per pound.
- (3) Vitamin D for other uses, International Units per pound.
- (4) Vitamin E, in International Units.
- (5) Concentrated oils and feed additive premixes containing vitamins A, D, and/or E may, at the option of the distributor be stated in units per gram instead of units per pound.
- (6) Vitamin B12, in milligrams or micrograms per pound.
- (7) All other vitamin guarantees shall express the vitamin activity in milligrams per pound in terms of the following:

- (A) Menadione.
- (B) Riboflavin.
- (C) D pantothenic acid.
- (D) Thiamine.
- (E) Niacin.
- (F) Vitamin B6.
- (G) Folic acid.
- (H) Choline.
- (I) Biotin.
- (J) Inositol.
- (K) P-amino benzoic acid.
- (L) Ascorbic acid.
- (M) Carotene.



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(d) Guarantees for drugs shall be stated in terms of percent by weight, except as follows:

(1) Antibiotics, present as less than two thousand (2,000) grams per ton (total) of commercial feed shall be stated in grams per ton of commercial feed.

(2) Antibiotics present at or more than two thousand (2,000) grams per ton (total) of commercial feed, shall be stated in grams per pound of commercial feed.

(3) Labels for commercial feeds containing growth promotion and/or feed efficiency levels of antibiotics, which are to be fed continuously as the sole ration, are not required to make quantitative guarantees, except as specifically noted in the federal Food Additive Regulations for certain antibiotics, wherein, quantitative guarantees are required regardless of the level or purpose of the antibiotic.

(4) The term "milligrams per pound" may be used for drugs or antibiotics in those cases where a dosage is given in milligrams in the feeding direction.

(e) Commercial feeds containing any added nonprotein nitrogen shall be labeled as follows:

(1) The following for ruminants:

(A) Complete feeds, supplements, and concentrates containing added nonprotein nitrogen and containing more than five percent (5%) protein from natural sources shall be guaranteed as crude protein, minimum, \_\_\_\_%. (This includes not more than \_\_\_\_%) equivalent protein from nonprotein nitrogen.)

(B) Mixed feed concentrates and supplements containing less than five percent (5%) protein from natural sources shall be guaranteed as follows:

(i) Equivalent crude protein from nonprotein.

(ii) Nitrogen, minimum, \_\_\_\_%.

(C) Ingredient sources of nonprotein nitrogen such as urea, diammonium phosphate, ammonium polyphosphate solution, ammoniated rice hulls, or other basic nonprotein nitrogen ingredients defined by the Association of American Feed Control Officials shall be guaranteed as follows:

(i) Nitrogen, minimum, \_\_\_\_% equivalent crude.

(ii) Protein from nonprotein nitrogen, minimum, \_\_\_\_%.

(2) The following for nonruminants:

(A) Complete feeds, supplements, and concentrates containing crude protein from all forms of nonprotein nitrogen, added as such, shall be labeled as crude protein, minimum \_\_\_\_%. (This includes not more than \_\_\_\_% equivalent crude protein that is not nutritionally available to (species of animal for which feed is intended).)

(B) Premixes, concentrates, or supplements intended for nonruminants containing more than one and twenty-five hundredths percent (1.25%) equivalent crude protein from all forms of nonprotein nitrogen,

added as such, must contain adequate directions for use and a prominent statement "WARNING: This feed must be used only in accordance with directions furnished on the label."

(f) Mineral phosphatic materials for feeding purposes shall be labeled with the guarantee for minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.

(g) Guarantees for microorganisms shall be stated in colony forming units per gram (CFU/g) when directions are for using the product in grams, or in colony forming units per pound (CFU/lb) when directions are for using the product in pounds. A parenthetical statement following the guarantee shall list each species in order of predominance.

(h) Guarantees for enzymes shall be stated in units of enzymatic activity per unit weight or volume, consistent with label directions. The source organism for each type of enzymatic activity shall be specified, such as protease (bacillus subtilis) five and five-tenths (5.5) milligrams amino acids liberated/min./milligram. If two (2) or more sources have the same type of activity, they shall be listed in order of predominance based on the amount of enzymatic activity provided. (*State Chemist of the State of Indiana; 355 IAC 6-1-4*)

### 355 IAC 6-1-5 Suitability

Authority: IC 15-5-13-14

Affected: IC 15-5-13

Sec. 5. (a) The nutritional content of a commercial feed, other than a customer-formula feed, shall be as purported or is represented to possess by its labeling. Such animal feed, its labeling, and intended use must be suitable for the intended purpose of the product.

(b) If the director has reasonable cause to believe a feed is not nutritionally suitable, then the director may request the feed manufacturer to either submit an "Affidavit of Suitability" certifying, or by an alternate procedure certify, the nutritional adequacy of the feed. The Affidavit of Suitability or alternate procedure shall be based on valid scientific evidence. The submission of a completed Affidavit of Suitability shall serve as substantiation of the suitability of the feed.

(c) If an Affidavit of Suitability, or alternative procedure acceptable to the director is not submitted by the feed manufacturer or labeler within thirty (30) days of written notification, the director may deem the feed adulterated under section 7(c) of this rule and order the feed removed from the marketplace.

(d) The Affidavit of Suitability shall contain the following information:

- (1) The feed company's name.
- (2) The feed's product name.
- (3) The name and title of the affiant submitting the document.
- (4) A statement that the affiant has knowledge of the nutritional content of the feed and based on valid scientific evidence the feed is nutritionally adequate for its intended purpose.
- (5) Date of submission.
- (6) The signature of the affiant notarized by a certified notary public.

*(State Chemist of the State of Indiana; 355 IAC 6-1-5)*

### 355 IAC 6-1-6 Ingredients

Authority: IC 15-5-13-14

Affected: IC 15-5-13

Sec. 6. (a) The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, shall be the name as defined in the Official Definitions of Feed Ingredients as published in the Official Publication of the Association of American Feed Control Officials, the common or usual name, or one approved by the director.

(b) The name of each ingredient must be shown in letters or type of the same size.

(c) No reference to quality or grade of an ingredient shall appear in the ingredient statement of a feed.

(d) The term "dehydrated" may precede the name of any product that has been artificially dried.

(e) A single ingredient product defined by the Association of American Feed Control Officials is not required to have an ingredient statement.

(f) Tentative definitions for ingredients shall not be used until adopted as official, unless no official definition exists or the ingredient has a common accepted name that requires no definition, that is, sugar.

(g) When the word "iodized" is used in connection with a feed ingredient, the feed ingredient shall contain not less than seven-thousandths percent (0.007%) iodine, uniformly distributed. *(State Chemist of the State of Indiana; 355 IAC 6-1-6)*

### 355 IAC 6-1-7 Directions for use and precautionary statements

Authority: IC 15-5-13-14

Affected: IC 15-5-13

Sec. 7. (a) Directions for use and precautionary statements on the labeling of all commercial feeds and custom-mixed feeds containing additives (including drugs, special purpose additives, or nonnutritive additives) shall:

- (1) be adequate to enable safe and effective use for the

intended purposes by users with no special knowledge of the purpose and use of such articles; and

(2) include, but not limited to, all information prescribed by all applicable regulations under the federal Food, Drug, and Cosmetic Act.

(b) Adequate directions for use and precautionary statements are required for feeds containing nonprotein nitrogen as specified in section 8 of this rule.

(c) Adequate directions for use and precautionary statements necessary for safe and effective use are required on commercial feeds distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or ration with any vitamin, mineral, or other dietary nutrient or compound. *(State Chemist of the State of Indiana; 355 IAC 6-1-7)*

### 355 IAC 6-1-8 Nonprotein nitrogen

Authority: IC 15-5-13-14

Affected: IC 15-5-13

Sec. 8. (a) Urea and other nonprotein nitrogen products defined in the official publication of the Association of American Feed Control Officials are acceptable ingredients only in commercial feeds for ruminant animals as a source of equivalent crude protein. If the commercial feed contains more than eight and seventy-five hundredths percent (8.75%) of the equivalent crude protein from all forms of nonprotein nitrogen, added as such, or the equivalent crude protein from all forms of nonprotein nitrogen, added as such, exceeds one-third ( $\frac{1}{3}$ ) of the total crude protein, the label shall bear adequate directions for safe use of feeds and a precautionary statement "CAUTION: USE AS DIRECTED". The directions for use and the caution statement shall be in type of such size so placed on the label that they will be read and understood by ordinary persons under customary conditions of purchase and use.

(b) Nonprotein nitrogen defined in the official publication of the Association of American Feed Control Officials, when so indicated, are acceptable ingredients in commercial feeds distributed as feed for nonruminant animals as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from nonprotein nitrogen sources when used in nonruminant rations shall not exceed one and twenty-five hundredths percent (1.25%) of the total daily ration.

(c) On labels such as those for medicated feeds which bear adequate feeding directions and/or warning statements, the presence of added nonprotein nitrogen shall not require a duplication of the feeding directions or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of this product due to the presence of

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**nonprotein nitrogen.** (*State Chemist of the State of Indiana; 355 IAC 6-1-8*)

### 355 IAC 6-1-9 Drug and feed additives

Authority: IC 15-5-13-14

Affected: IC 15-5-13-6; IC 15-5-13-7; IC 15-5-13-8; IC 15-5-13-9

Sec. 9. (a) A labeler of a commercial feed that contains additives (including drugs, other special purpose additives, or nonnutritive additives) may be required to submit evidence to prove the safety and efficacy of the commercial feed when used according to the directions furnished on the label.

(b) Satisfactory evidence of safety and efficacy of a commercial feed may be any of the following:

(1) When the commercial feed contains such additives, the use of which conforms to the requirements of the applicable regulation in 21 CFR, or are prior sanctioned, informal review sanctioned, or generally recognized as safe for such use.

(2) When the commercial feed is itself a drug as defined in Section 1(7) and is generally recognized as safe and effective for the labeled use or is marketed subject to an application approved by the Food and Drug Administration under 21 U.S.C. 360(b).

(3) When one (1) of the purposes for feeding a commercial feed is to impart immunity (that is to act through some immunological process) the constituents imparting immunity have been approved for that purpose through the federal Virus, Serum, and Toxins Act of 1913, as amended.

(4) When the commercial feed is a direct fed microbial product, including the following:

(A) The product meets the particular fermentation product definition.

(B) The microbial content statement, as expressed in the labeling, is limited to the statement, "Contains a source of live (viable) naturally occurring micro-organisms." This statement shall appear on the label.

(C) The source is stated with a corresponding guarantee expressed in accordance with section 4 of this rule.

(5) When the commercial feed is an enzyme product, including the following:

(A) The product meets the particular enzyme definition defined by the Association of American Feed Control Officials.

(B) The enzyme is stated with a corresponding guarantee express in accordance with section 4 of this rule.

(*State Chemist of the State of Indiana; 355 IAC 6-1-9*)

### 355 IAC 6-1-10 Adulterants

Authority: IC 15-5-13-14

Affected: IC 15-5-13-9

Sec. 10. (a) For the purpose of Section 9 of the Act,

"poisonous or deleterious substances" includes, but is not limited to, the following:

(1) Fluorine and any mineral or mineral mixture that is to be used directly for the feeding of domestic animals and in which the fluorine exceeds the following:

(A) Twenty-hundredths percent (0.20%) for breeding and dairy cattle.

(B) Thirty-hundredths percent (0.30%) for slaughter cattle.

(C) Thirty-hundredths percent (0.30%) for sheep.

(D) Forty-five hundredths percent (0.45%) for swine.

(E) Sixty-hundredths percent (0.60%) for poultry.

(2) Fluorine bearing ingredients when used in such amounts that they raise the fluorine content of the total ration (exclusive of roughage) above the following amounts:

(A) Four-thousandths percent (0.004%) for breeding and dairy cattle.

(B) Nine-thousandths percent (0.009%) for slaughter cattle.

(C) Six-thousandths percent (0.006%) for sheep.

(D) One-hundredth percent (0.01%) for lambs.

(E) Fifteen-thousandths percent (0.015%) for swine.

(F) Three-hundredths percent (0.03%) for poultry.

(3) Fluorine bearing ingredients incorporated in any feed that is fed directly to cattle, sheep, or goats consuming roughage (with or without) limited amounts of grain, that results in a daily fluorine intake in excess of fifty (50) milligrams of fluorine per one hundred (100) pounds of body weight.

(4) Soybean meal, flakes, or pellets or other vegetable meals, flakes, or pellets that have been extracted with trichlorethylene or other chlorinated solvents.

(5) Sulfur dioxide, sulfurous acid, and salts of sulfurous acid when used in or on feeds or feed ingredients that are considered or reported to be a significant source of vitamin B1 (thiamine).

(b) All screenings or byproducts of grains, and seeds containing weed seeds, when used in commercial feed or sold as such to the ultimate consumer, shall be ground fine enough or otherwise treated to destroy the viability of such weed seeds so that the finished product contains no viable prohibited noxious weed seeds, not more than fifty (50) viable restricted noxious weed seeds per pound, and not more than one hundred (100) per pound of other viable weed seeds. (*State Chemist of the State of Indiana; 355 IAC 6-1-10*)

### 355 IAC 6-1-11 Good manufacturing practices

Authority: IC 15-5-13-14

Affected: IC 15-5-13-9

Sec. 11. For the purpose of enforcement of Section 9 (9) of the Act, the director adopts the following as current good manufacturing practices:

(1) The regulations prescribing good manufacturing practices for Type B and Type C medicated feeds as published in 21 CFR 225.

(2) The regulations prescribing good manufacturing practices for Type A medicated articles as published in 21 CFR 226.

*(State Chemist of the State of Indiana; 355 IAC 6-1-11)*

**355 IAC 6-1-12 Payment of inspection fee; interstate exclusion**

Authority: IC 15-5-13-14

Affected: IC 15-5-13-11; IC 15-5-13-12

Sec. 12. Manufacturers and distributors located in Indiana who furnish substantial quantities of commercial feeds to customers in other states may apply to the director for interstate exclusion status. When so designated, the following conditions apply:

(1) Those distributors shall not be charged the inspection fee by the supplier on commercial feeds purchased from any supplier.

(2) Those distributors shall report and pay the inspection fee on all commercial feeds they distribute in Indiana each quarter including feeds they distribute under another distributor's label.

(3) No credit may be claimed on the quarterly report for payment of the inspection fee to another distributor.

(4) A list of parties designated with interstate exclusion status will be maintained and provided by the director.

*(State Chemist of the State of Indiana; 355 IAC 6-1-12)*

**355 IAC 6-1-13 Indiana commercial feed license**

Authority: IC 15-5-13-14; IC 15-5-13-3.5

Affected: IC 15-5-13-3.5

Sec. 13. (a) The application for Indiana commercial feed license shall be on forms provided by the director or forms reproduced locally by the applicant that has all the following information and in the following general order:

(1) Name, complete mailing address, and physical location of the applicant.

(2) Telephone number, FAX number, and e-mail addresses, if applicable.

(3) A list of subsidiaries located in Indiana or any out-of-state subsidiaries who distribute directly into Indiana.

(4) A designation whether the applicant manufactures or distributes commercial feeds under their label in or into Indiana.

(5) A designation whether the applicant manufactures or distributes pet foods or specialty pet foods in containers of ten (10) pounds or less or containers exceeding ten (10) pounds or bulk.

(6) A designation if the manufacturer is located in Indiana and manufactures only custom-mixed feeds.

(7) The printed name and title of the person who is the contact person for the applicant.

(8) The signature of the applicant.

*(State Chemist of the State of Indiana; 355 IAC 6-1-13)*

**Rule 2. Pet Food**

**355 IAC 6-2-1 Definitions and terms**

Authority: IC 15-5-13-14

Affected: IC 15-5-13-1

Sec. 1. The definitions in IC 15-5-13 shall apply throughout this rule in addition to the following:

(1) "All life stages" means gestation/lactation, growth, and adult maintenance life stages.

(2) "Family" means a group of products, which are nutritionally adequate for any or all life stages based on their nutritional similarity to a lead product, that has been successfully test-fed according to an AAFCO feeding protocol.

(3) "Immediate container" means the unit, can, box, tin, bag, or other receptacle or covering in which a pet food or specialty pet food is displayed for sale to retail purchasers, but does not include containers used as shipping containers.

(4) "Ingredient statement" means a collective and contiguous listing on the label of the ingredients of which the pet food or specialty pet food is composed.

(5) "Principal display panel" means the part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

*(State Chemist of the State of Indiana; 355 IAC 6-2-1)*

**355 IAC 6-2-2 Label format and labeling**

Authority: IC 15-5-13-14

Affected: IC 15-5-13-6; IC 15-5-13-8

Sec. 2. (a) Pet food and specialty pet food shall be labeled with the following information prescribed in this section:

(1) Product name and brand name, if any, on the principal display panel as stipulated in section 3 of this rule.

(2) The species of pet or specialty pet for which the food is intended conspicuously designated on the principal display panel.

(3) Quantity statement, as defined in Section 3(v) of the Model Bill, on the principal display panel.

(4) Guaranteed analysis as stipulated in section 4 of this rule.

(5) Ingredient statement as stipulated in section 5(a) of this rule.

(6) A statement of nutritional adequacy or purpose if required under section 7 of this rule.

(7) Feeding directions if required under section 8 of this rule.

(8) Name and address of the manufacturer or distributor as stipulated in section 11 of this rule.

(b) When a pet food or specialty pet food enclosed in an outer container or wrapper is intended for retail sale, all required label information shall appear on the outer container or wrapper.

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(c) A vignette, graphic, or pictorial representation on a pet food or specialty pet food label shall not misrepresent the contents of the package.

(d) The use of the word “proven” in connection with a label claim for a pet food or specialty pet food is not permitted unless the claim is substantiated by scientific or other empirical evidence.

(e) No statement shall appear upon the label or labeling of a pet food or specialty pet food which makes false or misleading comparisons between that product and any other product.

(f) A personal or commercial endorsement is permitted on a pet food or specialty pet food label provided the endorsement is not false or misleading.

(g) A statement on a pet food or specialty pet food label stating “Improved”, “New”, or similar designation shall be substantiated and limited to six (6) months production.

(h) A statement on a pet food or specialty pet food label stating preference or comparative attribute claims shall be substantiated and limited to one (1) year production, after which the claim shall be removed or resubstantiated. (*State Chemist of the State of Indiana; 355 IAC 6-2-2*)

### 355 IAC 6-2-3 Brand and product names

Authority: IC 15-5-13-14

Affected: IC 15-5-13-6; IC 15-5-13-8

Sec. 3. (a) The words “100%”, or “All”, or words of similar designation shall not be used in the brand or product name of a pet food or specialty pet food if the product contains more than one (1) ingredient, not including water sufficient for processing, decharacterizing agents, or trace amounts of preservatives and condiments.

(b) An ingredient or a combination of ingredients may form a part of the product name of a pet food or specialty pet food as follows:

(1) When the ingredients derived from animals, poultry, or fish constitutes at least ninety-five percent (95%) of the total weight of the product. Water sufficient for processing may be excluded when calculating the percentage; however, the ingredient shall constitute at least seventy percent (70%) of the total product weight.

(2) When any ingredient constitutes at least twenty-five percent (25%) of the weight of the product, provided the following:

(A) Water sufficient for processing may be excluded when calculating the percentage; however, the ingredients shall constitute at least ten percent (10%) of the total product weight.

(B) A descriptor is used with the ingredient name. This

descriptor shall imply other ingredients are included in the product formula. Examples of descriptors include the following:

- (i) Dinner.
- (ii) Platter.
- (iii) Entree.
- (iv) Formula.
- (v) Recipe.

(C) The descriptor shall be in the same size, style, and color print as the ingredient name.

(3) When a combination of ingredients that are included in the product name in accordance with this subsection meets all of the following:

(A) Each ingredient constitutes at least three percent (3%) of the product weight, excluding water sufficient for processing.

(B) The names of the ingredients appear in the order of their respective predominance by weight in the product.

(C) All such ingredient names appear on the label in the same size, style, and color print.

(c) When the name of any ingredient appears in the product name of a pet food or elsewhere on the product label and includes a descriptor, such as “with” or similar designation, the named ingredients must each constitute at least three percent (3%) of the product weight exclusive of water for processing. If the names of more than one (1) ingredient are shown, they shall appear in their respective order of predominance by weight in the product. The three percent (3%) minimum level shall not apply to claims for nutrients, such as, but not limited to, vitamins, minerals, and fatty acids, as well as condiments. The word “with,” or similar designation, and named ingredients shall be in the same size, style, color, and case print and be of no greater size than:

Panel Size	Max “with claim” Type Size
< 5 sq. in.	1/8"
5–25 sq. in.	1/4"
25–100 sq. in.	3/8"
100–400 sq. in.	1/2"
400 sq. in. +	1"

(d) A flavor designation may be included as part of the product name or elsewhere on the label of a pet food or specialty pet food when the flavor designation meets all of the following:

(1) The flavor designation:

(A) conforms to the name of the ingredient as listed in the ingredient statement; or

(B) is identified by the source of the flavor in the ingredient statement.

(2) The word “flavor” is printed in the same size type and with an equal degree of conspicuousness as the name of the flavor designation.

(3) Substantiation of the flavor designation, the flavor claim, or the ingredient source is provided upon request.

(e) The product name of the pet food or specialty pet food shall not be derived from one (1) or more ingredients unless all ingredients are included in the name, except as specified by subsection (b) or (c), provided that the name of an ingredient or combination of ingredients may be used as a part of the product name if:

- (1) the ingredient or combination of ingredients is present in sufficient quantity to impart a distinctive characteristic to the product or is present in amounts that have a material bearing upon the price of the product or upon acceptance of the product by the purchaser thereof; or
- (2) it does not constitute a representation that the ingredient or combination of ingredients is present to the exclusion of other ingredients.

(f) Contractions or coined names referring to ingredients shall not be used in the brand name of a pet food or specialty pet food unless it is in compliance with subsection (b), (c), or (d). (*State Chemist of the State of Indiana; 355 IAC 6-2-3*)

**355 IAC 6-2-4 Expression of guarantees**

Authority: IC 15-5-13-14

Affected: IC 15-5-13-6; IC 15-5-13-8

Sec. 4. (a) The guaranteed analysis shall be listed in the following order and format unless otherwise specified in this rule:

- (1) A pet food or specialty pet food label shall list the following required guarantees:
  - (A) Minimum percentage of crude protein.
  - (B) Minimum percentage of crude fat.
  - (C) Maximum percentage of crude fat, if required by section 10 of this rule.
  - (D) Maximum percentage of crude fiber.
  - (E) Maximum percentage of moisture.
  - (F) Additional guarantees shall follow moisture.
- (2) When ash is listed in the guaranteed analysis on a pet food or specialty pet food label, it shall be guaranteed as a maximum percentage and shall immediately follow moisture.
- (3) A dog or cat food label shall list other required or voluntary guarantees in the same order and units of the nutrients in the AAFCO dog (or cat) food nutrient profiles. Guarantees for substances not listed in the AAFCO dog (or cat) food nutrient profiles, or not otherwise provided for in this rule, shall immediately follow the listing of the recognized nutrients and shall be accompanied by an asterisk referring to the disclaimer "Not recognized as an essential nutrient by the AAFCO dog (or cat) food nutrient profiles.". The disclaimer shall appear immediately after the last such guarantee in the same size type as the guarantees.
- (4) A specialty pet food label shall list other required or

voluntary guarantees as required by Model Regulation 3(a) (4)X.

(b) The sliding scale method of expressing a guaranteed analysis on a pet food or specialty pet food label (for example, "Minimum crude protein 15-18%") is prohibited.

(c) The label of a pet food or a specialty pet food that is formulated as and represented to be a mineral supplement shall include minimum guarantees for all minerals from sources declared in the ingredient statement:

- (1) established by an AAFCO-recognized nutrient profile, expressed as the element in units specified in the nutrient profile; or
- (2) expressed as the element in units specified in Model Regulation 4(b) when no species-specific nutrient profile has been recognized by AAFCO; and

provided that mineral guarantees required by subdivisions (1) and (2) may be expressed in milligrams per unit, for example, tablets, capsules, granules, or liquids, consistent with those employed in the quantity statement and directions for use, and a weight equivalent, for example, one (1) fluid ounce equals twenty-eight (28) grams, for liquid products.

(d) The label of a pet food or a specialty pet food that is formulated as and represented to be a vitamin supplement shall include minimum guarantees for all vitamins from sources declared in the ingredient statement:

- (1) established by an AAFCO-recognized nutrient profile, expressed in units specified in the nutrient profile; or
- (2) expressed in units specified in Model Regulation 4(c) when no species-specific nutrient profile has been recognized by AAFCO; and

provided that vitamin guarantees required by this subsection may be expressed in approved units, for example, IU, mg, g, per unit, for example, tablets, capsules, granules, or liquids, consistent with those employed in the quantity statement and directions for use, and a weight equivalent, for example, one (1) fluid ounce equals twenty-eight (28) grams, for liquid products.

(e) When the label of a pet food or specialty pet food includes a comparison of the nutrient content of the food with levels established by an AAFCO-recognized nutrient profile, such as a table of comparison, a percentage, or any other designation referring to an individual nutrient or all of the nutrient levels, the following apply:

- (1) The product shall meet the AAFCO-recognized nutrient profile.
- (2) The statement of comparison shall be preceded by a statement that the product meets the AAFCO-recognized profile; however, the statement that the product meets the AAFCO-recognized nutrient profile is not required provided that the nutritional adequacy statement as per

## Proposed Rules

section 7(a)(1) or 7(b)(2)(A) of this rule appears elsewhere on the product label.

(3) The statement of comparison of the nutrient content shall constitute a guarantee, but need not be repeated in the guaranteed analysis.

(4) The statement of comparison may appear on the label separate and apart from the guaranteed analysis.

(f) The maximum moisture declared on a pet food or specialty pet food label shall not exceed seventy-eight percent (78.00%) or the natural moisture content of the ingredients, whichever is higher. However, pet food and specialty pet food such as, but not limited to, those consisting principally of stew, gravy, sauce, broth, aspic, juice, or a milk replacer, and that are so labeled, may contain moisture in excess of seventy-eight percent (78.00%).

(g) Guarantees for crude protein, crude fat, and crude fiber are not required when the pet food or specialty pet food is intended for purposes other than to furnish these substances or they are of minor significance relative to the primary purpose of the product, such as a mineral or vitamin supplement.

(h) Guarantees for micro-organisms and enzymes shall be stated in the format as stipulated in Model Regulations 4(g) and (h). (*State Chemist of the State of Indiana; 355 IAC 6-2-4*)

### 355 IAC 6-2-5 Ingredients

Authority: IC 15-5-13-14

Affected: IC 15-5-13-6; IC 15-5-13-8

Sec. 5. (a) Each ingredient of a pet food or specialty pet food shall be listed in the ingredient statement as follows:

(1) The names of all ingredients in the ingredient statement shall be shown in letters or type of the same size.

(2) The ingredients shall be listed in descending order by their predominance by weight in nonquantitative terms.

(3) Ingredients shall be listed and identified by the name and definition established by AAFCO.

(4) Any ingredient for which no name and definition have been so established shall be identified by the common or usual name of the ingredient.

(b) The ingredients "meat" or "meat byproducts" shall be qualified to designate the animal from which the meat or meat byproducts are derived unless the meat or meat byproducts are derived from cattle, swine, sheep, goats, or any combination thereof. For example, ingredients derived from horses shall be listed as "horsemeat" or "horsemeat byproducts".

(c) Brand or trade names shall not be used in the ingredient statement.

(d) A reference to the quality, nature, form, or other

attribute of an ingredient shall be allowed when the reference meets the following:

(1) The designation is not false or misleading.

(2) The ingredient imparts a distinctive characteristic to the pet food or specialty pet food because it possesses that attribute.

(e) A reference to quality or grade of the ingredient does not appear in the ingredient statement. (*State Chemist of the State of Indiana; 355 IAC 6-2-5*)

### 355 IAC 6-2-6 Drugs and pet food additives

Authority: IC 15-5-13-14

Affected: IC 15-5-13

Sec. 6. (a) An artificial color may be used in a pet food or specialty pet food only if it has been shown to be harmless to pets or specialty pets. The permanent or provisional listing of an artificial color in the United States Food and Drug regulations as safe for use, together with the conditions, limitations, and tolerances, if any, incorporated therein, shall be deemed to be satisfactory evidence that the color is, when used pursuant to such regulations, harmless to pets or specialty pets.

(b) Evidence may be required to prove the safety and efficacy or utility of a pet food or specialty pet food which contains additives or drugs, when used according to directions furnished on the label. Satisfactory evidence of the safety and efficacy of a pet food or specialty pet food may be established when the pet food or specialty pet food:

(1) contains such additives, the use of which conforms to the requirements of the applicable regulation in 21 CFR, or are "prior sanctioned" or "Generally Recognized as Safe" for such use; or

(2) itself is a drug or contains a drug as defined in Section 3(g) of the Model Bill and is "generally recognized as safe and effective" for the labeled use or is marketed subject to an application approved by the Food and Drug Administration under 21 U.S.C. 360(b).

(c) When a drug is included in a pet food or specialty pet food, the format required by Model Regulation 3(a)(2) for labeling medicated feeds shall be used. (*State Chemist of the State of Indiana; 355 IAC 6-2-6*)

### 355 IAC 6-2-7 Nutritional adequacy

Authority: IC 15-5-13-14

Affected: IC 15-5-13-6

Sec. 7. (a) The label of a pet food or specialty pet food that is intended for all life stages of the pet or specialty pet may include an unqualified claim, directly or indirectly, such as "complete and balanced", "perfect", "scientific", or "100% nutritious" if at least one (1) of the following apply:

(1) The product meets the nutrient requirements for all

life stages established by an AAFCO-recognized nutrient profile.

(2) The product meets the criteria for all life stages as substantiated by completion of the appropriate AAFCO-recognized animal feeding protocol.

(3) The product is a member of a product family that is nutritionally similar to a lead product that contains a combination of ingredients that has been fed to a normal animal as the sole source of nourishment in accordance with the testing procedures established by AAFCO for all life stages, provided the following:

(A) The nutritional similarity of the family product can be substantiated according to the Procedures for Establishing Pet Food Product Families developed by AAFCO.

(B) The family product meets the criteria for all life stages.

(C) Under circumstances of reasonable doubt, the (state control official) may require the manufacturer to perform additional testing of the family product in order to substantiate the claim of nutritional adequacy.

(b) The label of a pet food or specialty pet food that is intended for a limited purpose or a specific life stage, but not for all life stages, may include a qualified claim such as “complete and balanced”, “perfect”, “scientific”, or “100% nutritious” when the product and claim meets all of the following:

(1) The claim is qualified with a statement of the limited purpose or specific life stage for which the product is intended or suitable, for example, “complete and balanced for puppies (or kittens)”. The claim and the required qualification shall be juxtaposed on the same label panel and in the same size, style, and color print.

(2) The product meets at least one (1) of the following:

(A) The nutrient requirements for the limited purpose or specific life stage established by an AAFCO-recognized nutrient profile.

(B) The criteria for a limited purpose or a specific life stage as substantiated by completion of the appropriate AAFCO-recognized animal feeding protocol.

(C) The requirements of a product family which is nutritionally similar to a lead product which contains a combination of ingredients that, when fed for such limited purpose, will satisfy the nutrient requirements for such limited purpose and has had its capabilities in this regard demonstrated by adequate testing, and provided the following:

(i) The nutritional similarity of the family product can be substantiated according to the Procedures for Establishing Pet Food Product Families developed by AAFCO.

(ii) The family product meets the criteria for such limited purpose.

(iii) Under circumstances of reasonable doubt, the

(state control official) may require the manufacturer to perform additional testing for the family product to substantiate the claim of nutritional adequacy.

(c) Dog and cat food labels shall include a statement of nutritional adequacy or purpose of the product, except when the dog or cat food is clearly and conspicuously identified on the principal display panel as a “snack” or “treat”. The statement shall consist of one (1) of the following:

(1) A claim that the dog or cat food meets the requirements of one (1) or more of the recognized categories of nutritional adequacy, gestation/lactation, growth, maintenance, and all life stages. The claim shall be stated verbatim as one (1) of the following:

(A) “(Name of product) is formulated to meet the nutritional levels established by the AAFCO Dog (or Cat) Food Nutrient Profiles for \_\_\_\_.” (Blank is to be completed by using the stage or stages of the pet’s life, such as, gestation/lactation, growth, maintenance or the words “All Life Stages”).

(B) “Animal feeding tests using AAFCO procedures substantiate that (Name of Product) provides complete and balanced nutrition for \_\_\_\_.” (Blank is to be completed by using the stage or stages of the pet’s life tested, such as, gestation/lactation, growth, maintenance or the words “All Life Stages”).

(C) “(Name of Product) provides complete and balanced nutrition for \_\_\_\_ (Blank is to be completed by using the stage or stages of the pet’s life, such as gestation, lactation, growth, maintenance or the words “All Life Stages”) and is comparable in nutritional adequacy to a product which has been substantiated using AAFCO feeding tests.”.

(2) A nutritional or dietary claim for purposes other than those listed in subsection (a) or (b) if the claim is scientifically substantiated.

(3) The statement, “This product is intended for intermittent or supplemental feeding only”, if a product does not meet the requirements of subsection (a) or (b) or any other special nutritional or dietary need and so is suitable only for limited or intermittent or supplementary feeding.

(d) A product intended for use by, or under the supervision or direction of a veterinarian shall make a statement in accordance with subsection (c)(1) or (c)(3).

(e) A signed affidavit attesting that the product meets the requirements of subsection (a) or (b)(2) shall be submitted to the \_\_\_\_ upon request.

(f) If the nutrient content of a product does not meet those nutrient requirements established by an AAFCO-recognized nutrient profile, or if no requirement has been established by an AAFCO recognized nutritional authority for the life stages of the intended species, the claimed



## Proposed Rules

nutritional adequacy or purpose of the product shall be scientifically substantiated.

(g) The following AAFCO-recognized nutritional authority, nutrient profile, and/or animal feeding protocol shall be acceptable as the basis for a claim of nutritional adequacy as an AAFCO-recognized nutrient profile or nutritional authority for:

- (1) Dogs, the AAFCO Dog Food Nutrient Profiles.
- (2) Cats, the AAFCO Cat Food Nutrient Profiles.
- (3) Specialty pets, the nutrient recommendations approved by the Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences, provided that this nutrient recommendation is recognized only for the specific specialty pet for which the profile is intended.

(h) As an AAFCO-recognized animal feeding protocol, the AAFCO Dog and Cat Food Feeding Protocols. (*State Chemist of the State of Indiana; 355 IAC 6-2-7*)

### 355 IAC 6-2-8 Feeding directions

Authority: IC 15-5-13-14  
Affected: IC 15-5-13-6; IC 15-5-13-8

Sec. 8. (a) Dog or cat food, including snacks or treats, labeled as complete and balanced for any or all life stages, as provided in section 7(c)(1) of this rule, except those pet foods labeled in accordance with section 7(d) of this rule, shall list feeding directions on the product label. These directions shall be consistent with the intended use indicated in the nutritional adequacy statement unless a limited use or more limited life stage designation is declared elsewhere, for example, adult formula. These directions shall be expressed in common terms and shall appear prominently on the label. Feeding directions shall, at a minimum, state, "Feed (weight/unit of product) per (weight only) of dog (or cat)". The frequency of feeding shall also be specified.

(b) When a dog or cat food is intended for use by or under the supervision or direction of a veterinarian, the statement "Use only as directed by your veterinarian" may be used in lieu of feeding directions.

(c) Specialty pet food, including snacks or treats, labeled as complete and balanced for any or all life stages, as provided in section 7(a) of this rule, shall list feeding directions on the product label. These feeding directions shall be adequate to meet the nutrient requirements of the intended species of specialty pet as recommended by the AAFCO-recognized nutritional authority. These directions shall be expressed in common terms and shall appear prominently on the label. The frequency of feeding shall also be specified. (*State Chemist of the State of Indiana; 355 IAC 6-2-8*)

### 355 IAC 6-2-9 Statements of calorie content

Authority: IC 15-5-13-14  
Affected: IC 15-5-13-6; IC 15-5-13-8

Sec. 9. (a) Except as required in section 10 of this rule, the label of a dog or cat food may bear a statement of calorie content when the label meets all of the following:

- (1) The statement shall be separate and distinct from the "Guaranteed Analysis" and shall appear under the heading "Calorie Content".
- (2) The statement shall be measured in terms of metabolizable energy (ME) on an as fed basis and must be expressed as kilocalories per kilogram (kcal/kg) of product, and may also be expressed as kilocalories per familiar household measure, for example, cans, cups, and pounds.
- (3) The calorie content is determined by one (1) of the following methods:

(A) By calculation using the following modified Atwater formula:

$$\text{ME(kcal/kg)} = 10[(3.5 \times \text{CP}) + (8.5 \times \text{CF}) + (3.5 \times \text{NFE})]$$

Where: ME = Metabolizable energy.

CP = % crude protein "as fed".

CF = % crude fat "as fed".

NFE = % nitrogen-free extract (carbohydrate) "as fed".

The percentages of CP and CF are the arithmetic averages from proximate analyses of at least four (4) production batches of the product, and the  $\text{N} - \frac{\text{NFE}}{\text{FE}}$  is calculated as the difference between one hundred (100) and the sum of CP, CF, and the percentages of crude fiber, moisture, and ash (determined in the same manner as CP and CF).

(B) In accordance with a testing procedure established by AAFCO.

(4) An affidavit shall be provided upon request to the \_\_\_\_\_, substantiating that the calorie content was determined by either of the following:

(A) Subdivision (3)(A), in which case the results of all the analyses used in the calculation shall accompany the affidavit.

(B) Subdivision (3)(B), in which case the summary data used in the determination of calorie content shall accompany the affidavit.

(5) The calorie content statement shall appear as one (1) of the following:

(A) The claim on the label or other labeling shall be followed parenthetically by the word "calculated" when the calorie content is determined in accordance with subdivision (3)(A).

(B) The value of calorie content stated on the label that is determined in accordance with subdivision (3)(B) shall not exceed or understate the value determined in accordance with subdivision (3)(A) by more than fifteen percent (15%).

(b) Comparative claims shall not be false, misleading, or given undue emphasis and shall be based on the same methodology for the products compared. (*State Chemist of the State of Indiana; 355 IAC 6-2-9*)

**355 IAC 6-2-10 Descriptive terms**

Authority: IC 15-5-13-14

Affected: IC 15-5-13-6; IC 15-5-13-8

Sec. 10. (a) The following are requirements for calorie terms:

(1) "Light" requirements are as follows:

(A) A dog food product that bears on its label the terms "light", "lite", "low calorie", or words of similar designation shall:

- (i) contain no more than three thousand one hundred (3,100) kcal ME/kg for products containing less than twenty percent (20%) moisture, no more than two thousand five hundred (2,500) kcal ME/kg for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than nine hundred (900) kcal ME/kg for products containing sixty-five percent (65%) or more moisture;
- (ii) include on the label a calorie content statement:

(AA) in accordance with the format provided in section 9 of this rule; and

(BB) that states no more than three thousand one hundred (3,100) kcal ME/kg for products containing less than twenty percent (20%) moisture, no more than two thousand five hundred (2,500) kcal ME/kg for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than nine hundred (900) kcal ME/kg for products containing sixty-five percent (65%) or more moisture; and

(iii) include on the label feeding directions that reflect a reduction in calorie intake consistent with the intended use.

(B) A cat food product that bears on its label the terms "light", "lite", "low calorie", or words of similar designation shall:

- (i) contain no more than three thousand two hundred fifty (3,250) kcal ME/kg for products containing less than twenty percent (20%) moisture, no more than two thousand six hundred fifty (2,650) kcal ME/kg for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than nine hundred fifty (950) kcal ME/kg for products containing sixty-five percent (65%) or more moisture; and
- (ii) include on the label a calorie content statement:

(AA) in accordance with the format provided in section 9 of this rule; and

(BB) that states no more than three thousand two hundred fifty (3,250) kcal ME/kg for products

containing less than twenty percent (20%) moisture, no more than two thousand six hundred fifty (2,650) kcal ME/kg for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than nine hundred fifty (950) kcal ME/kg for products containing sixty-five percent (65%) or more moisture; and

(iii) include on the label feeding directions which reflect a reduction in calorie intake consistent with the intended use.

(2) "Less" or "reduced calories" requirements are as follows:

(A) A dog or cat food product that bears on its label a claim of "less calories", "reduced calories", or words of similar designation, shall include the following on the label:

(i) The name of the product of comparison and the percentage of calorie reduction (expressed on an equal weight basis) explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label where the term appears.

(ii) The comparative statement printed in type of the same color and style and at least half the type size used in the claim.

(iii) A calorie content statement in accordance with the format provided in section 9 of this rule.

(iv) Feeding directions that reflect a reduction in calories compared to feeding directions for the product of comparison.

(B) A comparison between products in different categories of moisture content, that is, less than twenty percent (20%), twenty percent (20%) or more but less than sixty-five percent (65%), sixty-five percent (65%) or more, is misleading.

(b) The following are requirements for fat terms:

(1) "Lean" requirements are as follows:

(A) A dog food product that bears on its label the terms "lean", "low fat", or words of similar designation shall:

- (i) contain no more than nine percent (9%) crude fat for products containing less than twenty percent (20%) moisture, no more than seven percent (7%) crude fat for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than four percent (4%) crude fat for products containing sixty-five percent (65%) or more moisture; and
- (ii) include on the product label in the guaranteed analysis A maximum crude fat guarantee:

(AA) immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in section 4(a)(1) of this rule; and

(BB) that is no more than nine percent (9%) crude fat for products containing less than twenty percent

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## Proposed Rules

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(20%) moisture, no more than seven percent (7%) crude fat for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than four percent (4%) crude fat for products containing sixty-five percent (65%) or more moisture.

(B) A cat food product that bears on its label the terms "lean", "low fat", or words of similar designation shall:

(i) contain a maximum percentage of crude fat which is no more than ten percent (10%) crude fat for products containing less than twenty percent (20%) moisture, no more than eight percent (8%) crude fat for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than five percent (5%) crude fat for products containing sixty-five percent (65%) or more moisture; and

(ii) include on the product label in the guaranteed analysis a maximum crude fat guarantee:

(AA) immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in section 4(a)(1) of this rule; and

(BB) that is no more than ten percent (10%) crude fat for products containing less than twenty percent (20%) moisture, no more than eight percent (8%) crude fat for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than five percent (5%) crude fat for products containing sixty-five percent (65%) or more moisture.

(2) "Less" or "reduced fat" requirements for a dog or cat food product that bears on its label a claim of "less fat", "reduced fat", or words of similar designation, shall include the following on the label:

(A) The name of the product of comparison and the percentage of fat reduction (expressed on an equal weight basis) explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label on where the term appears.

(B) The comparative statement printed in type of the same color and style and at least half the type size used in the claim.

(C) A maximum crude fat guarantee in the guaranteed analysis immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in section 4(a)(1) of this rule.

(c) A comparison on the label between products in different categories of moisture content, that is, less than twenty percent (20%), twenty percent (20%) or more but less than sixty-five percent (65%), sixty-five percent (65%) or more, is misleading. (*State Chemist of the State of Indiana; 355 IAC 6-2-10*)

### 355 IAC 6-2-11 Manufacturer or distributor; name and address

Authority: IC 15-5-13-14

Affected: IC 15-5-13-6

Sec. 11. (a) The label of a pet food or specialty pet food shall specify the name and address of the manufacturer or distributor. The statement of the place of business shall include the street address, city, state, and zip code; however, the street address may be omitted if such street address is shown in a current city directory or telephone directory for the city listed on the label.

(b) When a person manufactures or distributes a pet food or specialty pet food in a place other than the principal place of business, the label may state the principal place of business in lieu of the actual place where each package of such pet food or specialty pet food was manufactured or package or from where each package is to be distributed. (*State Chemist of the State of Indiana; 355 IAC 6-2-11*)

### Notice of Public Hearing

*Under IC 4-22-2-24, notice is hereby given that on November 27, 2001 at 10:00 a.m., at Purdue University, Biochemistry Building, Room A151 Conference Room, West Lafayette, Indiana the State Chemist of the State of Indiana will hold a public hearing on proposed new rules that govern feed manufacturers, distributors, licensees, and labelers of commercial feeds. Copies of these rules are now on file at the State Chemist of the State of Indiana, Purdue University, 1154 Biochemistry Building, West Lafayette and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Robert Geiger  
Feed Administrator  
State Chemist of the State of Indiana

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## TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

Proposed Rule  
LSA Document #01-250

### DIGEST

Amends 675 IAC 12-3 concerning general administrative rules. Amends 675 IAC 15-1-22 concerning the special administrative rules for industrialized building systems and mobile structure systems. Amends 675 IAC 23-1-63 concerning the annual inspection fee schedule for amusement devices to update fees to reflect current expenses and to reflect administrative changes. Effective 30 days after filing with the secretary of state.

## Proposed Rules

675 IAC 12-3-2  
 675 IAC 12-3-3  
 675 IAC 12-3-4  
 675 IAC 12-3-5  
 675 IAC 12-3-6  
 675 IAC 12-3-7

675 IAC 12-3-8  
 675 IAC 12-3-10  
 675 IAC 12-3-12  
 675 IAC 15-1-22  
 675 IAC 23-1-63

SECTION 1. 675 IAC 12-3-2 IS AMENDED TO READ AS FOLLOWS:

**675 IAC 12-3-2 Schedule of fees for site built construction**

Authority: IC 22-12-6-6  
 Affected: IC 22-12-6-4; IC 22-15-3-2

Sec. 2. (a) Every application for construction design release (ACDR) required by 675 IAC 12-6 shall be accompanied by payment to the state building commissioner fund in an amount prescribed in this section.

(b) The design release fees shall be as follows:

All Projects	Amount
Filing Fee	\$45 <del>\$69</del>
	plus
Processing Fee	<del>\$40</del> \$69 minimum*
<b>TOTAL</b>	<b><del>\$85</del> \$138 minimum*</b>

\*The minimum processing fee only applies where the categorical processing fee is less than \$50. [sic.] \$40.

(c) The categorical processing fees shall be as follows:

Category A (Normal Occupancy): All buildings and structures not specifically listed in Categories B, C, D, and E. The fee is ~~\$0.035~~ **\$0.040** times the gross square feet of floor area.

Category B (Minimal Occupancy/Area related): Generating plants, livestock sales, hangars, open parking structures, truck freight terminals, warehouses, refrigerated storage, and similar uses. The fee is ~~\$0.015~~ **\$0.020** times the gross square feet of floor area.

Category C (Cost related): Remodeling and renovation (no additions). The fee is ~~\$0.0017~~ **\$0.0020** times the construction cost. Not to exceed fees as specified for Categories A and B, calculated on the basis of the floor area of each affected story.

Category D (Minimal Occupancy/Cost related): Control towers, monuments, dust collectors, smoke stacks, towers, mausoleums, memorials, and similar uses, **grain elevators, concrete or asphalt plants, bulk product processing plants, and other occupied high volume low area structures.** The fee is ~~\$0.0011~~ **\$0.0001** times the construction cost.

Category E (Minimal Occupancy/Volume related): ~~Grain elevators, concrete or asphalt plants, bulk product processing plants, Swimming pools, and other occupied high volume low~~

~~area structures.~~ The fee is ~~\$0.0011~~ **\$0.010** times the gross cubic feet.

Category F (Flammable Liquid or Gas Facilities): Each initial installation of one (1) or more bulk storage tanks, piping or dispensing equipment for Class I, II, IIIA, and IIIB liquids, liquefied petroleum (LP) gas, or liquefied natural gas (LNG) or replacement of such tanks or piping at the same location. The fee is \$40 each tank.

(d) The special processing fees shall be as follows:

Special Processing Fees	Amount
(1) Each additional submission for a partially filed <sup>project</sup>	<del>\$70</del> <b>\$115</b>
(2) Surcharge for late filing of plans and specifications in accordance with 675 IAC 12-6-8(c) <sup>2</sup>	<del>\$40</del> <b>\$69</b>
(3) Foundation release	<del>\$60</del> <b>\$115</b>
(4) Addenda and revisions, each system modified per submission (other than compliance corrections) <sup>3</sup>	<del>\$20</del> <b>\$35</b>
(5) Fire suppression systems	
<del>Basic system, any type</del>	<del>\$45</del>
Plus each sprinkler head over 400 for water systems	\$0.10
(6) Master plans, each series or structure	<del>\$120</del> <b>\$173</b>
(7) Incomplete project filing (mailed submissions only) <sup>4</sup>	<del>\$10</del> <b>\$12</b>
(8) Returned checks	<del>\$20</del> <b>\$35</b>
(9) Reinstatement or time extension of design release	<del>\$20</del> <b>\$23</b>

Notes:

<sup>1</sup>The regular filing and processing fees are paid with the initial submission of the ACDR.

<sup>2</sup>The surcharge fee, if not collected at the time the ACDR is filed, must be paid prior to issuance of any design release.

<sup>3</sup>Systems are architectural, structural, electrical, plumbing, mechanical (HVAC), and fire protection.

<sup>4</sup>Payable when missing documents are subsequently filed.

(e) The explanation of terms shall be as follows:

(1) Square footage (floor area) shall be determined by the outside dimensions of the building or structure. This shall include usable area under the horizontal projection of the roof or floor above such as porches, canopies, and balconies.

(2) Cubic footage (volume) shall be the gross volume of the building or structure as determined by the outside dimensions of the building or structure.

(3) Costs (construction) shall be the cost of the labor and materials required to perform the stated scope of construc-

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tion. It need not include the cost of the land, interior furnishings, or processing equipment.

(f) The state building commissioner may authorize the refunding of any fee specified in this section which was paid or collected in error. (*Fire Prevention and Building Safety Commission; 675 IAC 12-3-2; filed Jan 29, 1986, 3:00 p.m.: 9 IR 1363, eff Mar 1, 1986; filed Feb 17, 1987, 3:15 p.m.: 10 IR 1386, eff Mar 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the secretary of state. LSA Document #86-152 was filed Feb 17, 1987.]; filed Jul 17, 1987, 2:45 p.m.: 10 IR 2700, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the secretary of state. LSA Document #87-54 was filed Jul 17, 1987.]; filed Jun 3, 1988, 2:15 p.m.: 11 IR 3555, eff Aug 1, 1988; filed Sep 27, 1989, 4:30 p.m.: 13 IR 294; filed Apr 22, 1996, 3:00 p.m.: 19 IR 2285)*)

SECTION 2. 675 IAC 12-3-3 IS AMENDED TO READ AS FOLLOWS:

### 675 IAC 12-3-3 Fireworks display permit fee

Authority: IC 22-11-14-2; IC 22-12-6-6  
Affected: IC 22-12-6

Sec. 3. An application for a permit to conduct a supervised public display of fireworks shall be accompanied by payment to the Fire and Building Services Fund in the amount of ~~zero~~ **sixty-nine** dollars (~~\$0~~) (**\$69**) for each such permit. (*Fire Prevention and Building Safety Commission; 675 IAC 12-3-3; filed Jan 29, 1986, 3:00 p.m.: 9 IR 1364, eff Mar 1, 1986; filed Jul 15, 1991, 5:30 p.m.: 14 IR 2234; filed Apr 22, 1996, 3:00 p.m.: 19 IR 2286*)

SECTION 3. 675 IAC 12-3-4 IS AMENDED TO READ AS FOLLOWS:

### 675 IAC 12-3-4 Variance application fees

Authority: IC 22-12-6-6  
Affected: IC 22-13-2-11

Sec. 4. (a) Every application for a variance from the rules of the commission shall be accompanied by payment to the Fire and Building Services Fund in an amount as follows:

Variance application filing fee:	<del>\$70</del> <b>\$138</b>
plus	
Plan examination and processing fee:	
Single code provision	<del>\$70</del> <b>\$138</b>
Each additional unrelated code provision	<del>\$40</del> <b>\$69</b>

(b) As used in this section, "unrelated code provision" means a provision of an adopted code or standard that covers subject matter that is not contingent upon or directly affecting the requirements of a different code provision for which a variance is being sought by the same applicant at the same time. (*Fire*

*Prevention and Building Safety Commission; 675 IAC 12-3-4; filed Jul 17, 1987, 2:45 p.m.: 10 IR 2701, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the secretary of state. LSA Document #87-54 was filed Jul 17, 1987.]; filed Jun 3, 1988, 2:15 p.m.: 11 IR 3556, eff Aug 1, 1988; filed Jul 15, 1991, 5:30 p.m.: 14 IR 2234; filed Apr 22, 1996, 3:00 p.m.: 19 IR 2286*)

SECTION 4. 675 IAC 12-3-5 IS AMENDED TO READ AS FOLLOWS:

### 675 IAC 12-3-5 Explosive magazine permit fee

Authority: IC 22-12-6-6  
Affected: IC 22-14-4-4; IC 22-14-4-5

Sec. 5. (a) An application for issuance of a regulated explosive magazine permit shall be accompanied by payment to the Fire and Building Services Fund in an amount as follows:

Type 1, 4, or 5	each <del>\$0</del> <b>\$138</b>
Type 2, 3, or indoor	each <del>\$0</del> <b>\$69</b>

(b) An application to annually renew a regulated explosive magazine permit shall be accompanied by payment to the Fire and Building Services Fund in an amount as follows:

Type 1, 4, or 5	each <del>\$0</del> <b>\$69</b>
Type 2, 3, or indoor	each <del>\$0</del> <b>\$35</b>

(*Fire Prevention and Building Safety Commission; 675 IAC 12-3-5; filed Feb 1, 1988, 2:16 p.m.: 11 IR 1789; filed Jul 15, 1991, 5:30 p.m.: 14 IR 2235; filed Apr 22, 1996, 3:00 p.m.: 19 IR 2286*)

SECTION 5. 675 IAC 12-3-6 IS AMENDED TO READ AS FOLLOWS:

### 675 IAC 12-3-6 Construction inspection fees

Authority: IC 22-12-6-6; IC 22-13-2-13  
Affected: IC 22-15-2-6

Sec. 6. (a) This section applies to any Class 1 building or structure, for which a design release is required under 675 IAC 12-6, and is located within the jurisdiction of a political subdivision that has not established a program to periodically inspect, or cause to be inspected, construction as determined under 675 IAC 12-10-9.

(b) The fees collected under section 2 of this rule for a design release shall be increased by one (1) of the following amounts, whichever is greater:

(1) ~~Forty-five Eighty~~ dollars (~~\$45~~) (**\$80**).

(2) One-half (½) of the categorical processing fee, but not more than ~~six seven hundred fifty~~ dollars (~~\$600~~); ~~for the twelve (12) month period after the start of construction.~~ (**\$750**).

(c) ~~The construction inspection fee shall be collected with the design release fee prescribed in section 2 of this rule. If the construction continues beyond twelve (12) months after the start~~

of construction; the office of the state building commissioner shall collect an additional inspection fee of fifty dollars (\$50) for each additional month or portion thereof in which construction continues. For purposes of this subsection, the start of construction shall be deemed to be the date of the first inspection by the office of the state building commissioner after the commencement of construction as defined in IC 22-12-1-7. (*Fire Prevention and Building Safety Commission; 675 IAC 12-3-6; filed Feb 1, 1988, 2:18 p.m.: 11 IR 1795, eff Apr 1, 1988; filed Apr 22, 1996, 3:00 p.m.: 19 IR 2287; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2081*)

SECTION 6. 675 IAC 12-3-7 IS AMENDED TO READ AS FOLLOWS:

**675 IAC 12-3-7 Statewide fire and building safety education fund**

**Authority:** IC 22-12-6-6  
**Affected:** IC 22-12-6-3; IC 22-12-6-4

Sec. 7. (a) This section applies to design release fees as established in section 2 of this rule. For each design release issued, ~~five~~ **twelve** dollars (~~\$5~~) (**\$12**) of the filing fee is designated for deposit in the statewide fire and building safety education fund established in IC 22-12-6-3.

(b) If, during the first twelve (12) month period after the effective date of this section and for each successive twelve (12) month period, the statewide fire and building safety education fund has on deposit an amount equal to forty thousand dollars (\$40,000), subsection (a) is suspended for the remainder of that twelve (12) month period. (*Fire Prevention and Building Safety Commission; 675 IAC 12-3-7; filed Sep 27, 1989, 4:30 p.m.: 13 IR 295*)

SECTION 7. 675 IAC 12-3-8 IS AMENDED TO READ AS FOLLOWS:

**675 IAC 12-3-8 Amusement and entertainment permit and inspection fees**

**Authority:** IC 22-12-6-7  
**Affected:** IC 22-12-6; IC 22-14-3-4

Sec. 8. (a) An application for issuance of a permit for a regulated place of amusement or entertainment shall be accompanied by payment to the fire and building services fund in an amount as follows:

(1) Category A: Places where the occupant load is based entirely on fixed seating capacity and all planned amusement or entertainment activity utilizes a single floor plan described in 675 IAC 12-9-3(a)(2). Examples are theaters and auditoriums.

<u>Occupant Load</u>	<u>Fee</u>
1-99	\$ <del>45</del> <b>\$69</b>
100-499	\$ <del>65</del> <b>\$104</b>
500-999	\$ <del>85</del> <b>\$138</b>

1,000-4,999	\$ <del>100</del> <b>\$173</b>
5,000-9,999	\$ <del>125</del> <b>\$207</b>
10,000 or more	\$ <del>150</del> <b>\$242</b>

(2) Category B: Places where the maximum occupant load is calculated under the method prescribed in the Indiana Building Code, 675 IAC 13. The occupant load may include persons seated in moveable seats or bleachers, fixed seating, persons standing, and combinations thereof. Examples include indoor stadiums, arenas, gymnasiums, halls, night-clubs, and other assembly type buildings or portions thereof. The application fee is calculated from the same schedule as Category A plus an additional ~~forty six~~ **forty six** dollars (~~\$40~~) (**\$69**) for each seating configuration or arrangement described in the floor or site plans submitted with the application under 675 IAC 12-9-3(a).

(b) An application for issuance of a special event endorsement under IC 22-14-3-4 shall be accompanied by payment to the fire and building services fund in an amount of ~~forty five~~ **sixty nine** dollars (~~\$45~~) (**\$69**) for inspection of the place of amusement or entertainment. (*Fire Prevention and Building Safety Commission; 675 IAC 12-3-8; filed Jul 15, 1991, 5:30 p.m.: 14 IR 2235; filed Apr 22, 1996, 3:00 p.m.: 19 IR 2287*)

SECTION 8. 675 IAC 12-3-10 IS AMENDED TO READ AS FOLLOWS:

**675 IAC 12-3-10 Fireworks retail stand permit fees**

**Authority:** IC 22-12-6-8  
**Affected:** IC 22-12-5

Sec. 10. An application for a fireworks retail stand permit shall be accompanied by payment to the Fire and Building Services Fund as follows:

(1) 1 to 4 retail stands	\$ <del>0</del> <b>\$276</b>
(2) 5 to 10 retail stands	\$ <del>0</del> <b>\$552</b>
(3) 11 to 20 retail stands	\$ <del>0</del> <b>\$966</b>
(4) 21 to 50 retail stands	\$ <del>0</del> <b>\$1,380</b>

plus \$~~0~~ **\$35** for each stand more than 50. (*Fire Prevention and Building Safety Commission; 675 IAC 12-3-10; filed Jul 15, 1991, 5:30 p.m.: 14 IR 2235; filed Apr 22, 1996, 3:00 p.m.: 19 IR 2287*)

SECTION 9. 675 IAC 12-3-12 IS AMENDED TO READ AS FOLLOWS:

**675 IAC 12-3-12 Returned check fee**

**Authority:** IC 22-12-6-6  
**Affected:** IC 22-12-6

Sec. 12. This section is applicable to all fees prescribed in this rule. There will be an additional surcharge of ~~twenty three~~ **thirty five** dollars (~~\$20~~) (**\$35**) for any returned check. (*Fire Prevention and Building Safety Commission; 675 IAC 12-3-12; filed Aug 10, 1994, 10:40 a.m.: 17 IR 2859; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2082*)

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SECTION 10. 675 IAC 15-1-22, AS AMENDED AT 24 IR 1023, SECTION 18, IS AMENDED TO READ AS FOLLOWS:

### 675 IAC 15-1-22 Fees

Authority: IC 22-13-2-2; IC 22-13-2-13; IC 22-13-4-2  
 Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 22. (a) The design release fees for manufacture shall be as follows:

- |                                       |   |
|---------------------------------------|---|
| (1) System plan review:               |   |
| (A) filing fee                        | <del>\$15</del> <b>\$30</b>                           |
| (B) residential, add-a-room or duplex | <del>\$185<sup>1</sup></del> <b>\$320<sup>1</sup></b> |
| (C) commercial                        | <del>\$200<sup>2</sup></del> <b>\$505<sup>2</sup></b> |
| (2) System plan review (late filing): |   |
| (A) filing fee                        | <del>\$30</del> <b>\$55</b>                           |
| (B) residential, add-a-room or duplex | <del>\$325</del> <b>\$525</b>                         |
| (C) commercial                        | <del>\$370</del> <b>\$552</b>                         |
| (3) Addenda:                          |   |
| (A) filing fee                        | <del>\$15</del> <b>\$30</b>                           |
| (B) residential, add-a-room or duplex | <del>\$50<sup>1</sup></del> <b>\$85<sup>1</sup></b>   |
| (C) commercial                        | <del>\$65<sup>2</sup></del> <b>\$105<sup>2</sup></b>  |
| (4) Addenda (late filing):            |   |
| (A) filing fee                        | <del>\$35</del> <b>\$55</b>                           |
| (B) residential, add-a-room or duplex | <del>\$85</del> <b>\$140</b>                          |
| (C) commercial                        | <del>\$100</del> <b>\$165</b>                         |

Notes:

<sup>1</sup>Includes only the original floor plan. A ~~ten fifty~~ dollar (~~\$10~~) (**\$50**) fee is charged for each additional floor plan. Crawl space or basement plans are considered to be floor plans.

<sup>2</sup>Includes not more than two (2) module units as a completed structure. A ~~ten fifty~~ dollar (~~\$10~~) (**\$50**) fee is charged for each additional module unit.

(b) The system prototype inspection fees (without a design release) shall be as follows:

- |  |                              |
|--|------------------------------|
| (1) First module unit  | <del>\$40</del> <b>\$70</b>  |
| (2) Second module unit   | <del>\$50</del> <b>\$85</b>  |
| (3) Third module unit and each additional module unit thereafter | <del>\$65</del> <b>\$105</b> |

For the purposes of this subsection, "module unit" means a structure, or other entity, regarded as an elementary structural or functional constituent of a whole industrialized building system or mobile structure.

(c) The third party inspection authorization fees shall be as follows:

- |   |                               |
|---|-------------------------------|
| (1) Original application for Indiana third party inspection authorization (if the original application for authorization is not granted, three hundred dollars (\$300) of the fee will be refunded) | <del>\$500</del> <b>\$830</b> |
| (2) Yearly third party inspection renewal   | <del>\$340</del> <b>\$550</b> |

(d) Indiana seal of acceptance fees shall be as follows:

- (1) All applications for the Indiana seal of acceptance shall be accompanied by the proper fee which includes in-state inspection and monitoring.

(2) Indiana seal of acceptance ~~\$40~~ **\$65** per seal

(e) Fees for travel shall be as follows:

- |  |   |
|--|---|
| (1) In-state or out-of-state reinspection  | <del>\$25</del> <b>\$45</b> per hour  |
| (2) Out-of-state inspection or monitoring  | <del>\$25</del> <b>\$45</b> per hour plus the actual expense incurred for the purpose of inspection or monitoring |
| (3) Mileage for out-of-state inspection/reinspection or monitoring from base station to inspection site and return | <del>\$0.28</del> per mile  |

*(Fire Prevention and Building Safety Commission; 675 IAC 15-1-22; filed Mar 25, 1986, 1:44 p.m.: 9 IR 1979, eff Jun 15, 1986; filed Sep 13, 1988, 2:33 p.m.: 12 IR 319; filed Dec 22, 1988, 3:50 p.m.: 12 IR 1207; filed Sep 27, 1989, 4:30 p.m.: 13 IR 295; filed Apr 22, 1996, 3:00 p.m.: 19 IR 2288; filed Dec 11, 2000, 2:15 p.m.: 24 IR 1023)*

SECTION 11. 675 IAC 23-1-63 IS AMENDED TO READ AS FOLLOWS:

### 675 IAC 23-1-63 Annual inspection fees

Authority: IC 22-12-6-6; IC 22-13-2-9; IC 22-15-2-6; IC 22-15-7  
 Affected: IC 22-13-2-3; IC 22-15-2-7; IC 36-7-2-9

Sec. 63. (a) The fee for an annual inspection of permanent and portable amusement devices except for those covered in subsection (b) shall be based on the size and complexity of the device as follows:

FEE	TYPE OF DEVICE	DESCRIPTION
<del>\$45</del> <b>\$144</b>	Kiddie	An amusement device designed for seventy-five pounds (75#) or less per passenger unit intended for use by children age twelve (12) and under.
<del>\$90</del> <b>\$144</b>	Major	An amusement device designed for seventy-five pounds (75#) or more intended for use by children above age twelve (12) and not listed as a spectacular amusement device.
<del>\$135</del> <b>\$144</b>	Spectacular	Includes the following list of amusement devices and any similar amusement device. <div style="margin-left: 20px;">                     Himalayas-Flying Bobs                      Sky Wheels                      Sky Divers                      Falling Stars                      High Rise, Roller Coaster                      Enterprise                      Log Flume                      Hang 10                 </div>

(b) The fee for an annual inspection of passenger tramways, aerial tramways and lifts, surface lifts and tows shall be based on mode of transportation of passengers uphill, on the surface or above the surface.

MODE OF TRANSPORTATION	FEELPER DRIVING MECHANISM
On Surface	\$55 \$144
Above Surface	\$110 \$288

(c) Reinspection fees shall be one-half (1/2) of the annual inspection fee.

(d) Subsequent inspection fee shall be ~~twenty one hundred~~ **dollars (\$20) (\$100)** per device. (*Fire Prevention and Building Safety Commission; 675 IAC 23-1-63; filed Sep 19, 1986, 9:15 a.m.: 10 IR 251, eff Nov 1, 1986; filed Sep 13, 1988, 2:32 p.m.: 12 IR 318*)

**Notice of Public Hearing**

*Under IC 4-22-2-24, notice is hereby given that on January 15, 2002 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 12, Indianapolis, Indiana; AND on March 5, 2002 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room B, Indianapolis, Indiana the Fire Prevention and Building Safety Commission will hold a public hearing on proposed amendments to sections of the general administrative rules (675 IAC 12-3), the special administrative rules for industrialized building systems and mobile structure systems (675 IAC 15-1-22), and the annual inspection fee schedule for amusement devices (675 IAC 23-1-63) to update fees to reflect current expenses and to reflect administrative changes. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W246 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Patrick Ralston  
Executive Director  
Fire Prevention and Building Safety Commission

**TITLE 760 DEPARTMENT OF INSURANCE**

**Proposed Rule**  
LSA Document #01-181

**DIGEST**

Adds 760 IAC 1-5.1 to establish standards for credit life, accident, and health insurance. Repeals 760 IAC 1-5 and 760 IAC 1-14. Effective June 1, 2002.

**760 IAC 1-5**  
**760 IAC 1-5.1**  
**760 IAC 1-14**

SECTION 1. 760 IAC 1-5.1 IS ADDED TO READ AS FOLLOWS:

**Rule 5.1. Credit Life, Accident, and Health Insurance**

**760 IAC 1-5.1-1 Purpose and authority to promulgate rule**

Authority: IC 27-1-3-7; IC 27-8-4-12  
Affected: IC 24-4.5-4-102

**Sec. 1. The purpose of this rule is to protect the interests of debtors and the public in this state by providing a system of rate, policy form, and operating standards for the regulation of consumer credit insurance. (Department of Insurance; 760 IAC 1-5.1-1)**

**760 IAC 1-5.1-2 Definitions**

Authority: IC 27-1-3-7; IC 27-8-4-12  
Affected: IC 24-4.5-4-102; IC 27-1-23-1

**Sec. 2. (a) The following definitions apply throughout this rule:**

- (1) "Affiliate" has the meaning set forth in IC 27-1-23-1.**
- (2) "Closed-end credit" means a credit transaction that does not meet the definition of open-end credit.**
- (3) "Consumer credit insurance" refers to any or all of credit life insurance and credit accident and health insurance.**
- (4) "Control" has the meaning set forth in IC 27-1-23-1.**
- (5) "Evidence of individual insurability" means a statement furnished by the debtor, as a condition of insurance becoming effective, that relates specifically to the health status or to the health or medical history of the debtor.**
- (6) "Gross debt" means the sum of the remaining payments owed to the creditor by the debtor.**
- (7) "Identifiable insurance charge" means a charge for a type of consumer credit insurance that is made to debtors having such insurance and not made to debtors not having such insurance; it includes a charge for insurance that is disclosed in the credit or other instrument furnished to the debtor that sets out the financial elements of the credit transaction and any difference in the finance, interest, service, or other similar charge made to debtors who are in like circumstances except for the insured or noninsured status of the debtor.**
- (8) "Loss ratio" means incurred claims divided by the sum of earned premiums and imputed interest earned on unearned premiums.**
- (9) "Net debt" means the amount necessary to liquidate the remaining debt in a single lump-sum payment, excluding all unearned interest and other unearned finance charges.**



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(10) "Open-end credit" means credit extended by a creditor under an agreement in which the:

(A) creditor reasonably contemplates repeated transactions;

(B) creditor imposes a finance charge from time to time on an outstanding unpaid balance; and

(C) amount of credit that may be extended to the debtor during the term of the agreement (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

(11) "Person" has the meaning set forth in IC 27-1-23-1.

(12) "Preexisting condition" means any condition for which the insured debtor received medical advice, consultation, or treatment within six (6) months before the effective date of the coverage and from which the insured debtor becomes disabled within six (6) months after the effective date of this coverage.

(b) The following definitions apply throughout section 9 of this rule:

(1) "Experience" means earned premiums and incurred losses during the experience period.

(2) "Experience period" means the most recent period of time for which earned premiums and incurred losses are reported, but not for a period longer than three (3) full years.

(3) "Incurred losses" means total claims paid during the experience period, adjusted for the change in claim reserve.

*(Department of Insurance; 760 IAC 1-5.1-2)*

### 760 IAC 1-5.1-3 Rights and treatment of debtors

Authority: IC 27-1-3-7; IC 27-8-4-12

Affected: IC 24-4.5-4-102; IC 27-1-12-37; IC 27-8-4-4

Sec. 3. (a) If a creditor makes available to the debtors more than one (1) plan of consumer credit insurance, every debtor must be informed of each plan for which the debtor is eligible and of the premium or insurance charge for each.

(b) When a creditor requires insurance as additional security for a debt, the creditor shall inform the debtor that the debtor has the option of procuring alternative coverage. The debtor shall be informed by the creditor of the right to provide alternative coverage before the transaction is completed.

(c) The following shall apply to the termination of a group consumer credit insurance policy:

(1) If a debtor is covered by a group consumer credit insurance policy providing for the payment of single premiums to the insurer, or any other premium payment method that prepays coverage beyond one (1) month, then provision shall be made by the insurer that in the event of termination of the policy for any reason, insurance coverage with respect to any debtor insured under

the policy shall be continued for the entire period for which the premium has been paid.

(2) If a debtor is covered by a group consumer credit insurance policy providing for the payment of premiums to the insurer on a monthly basis, then the policy shall provide that, in the event of termination of the policy, termination notice shall be given to the insured debtor at least thirty (30) days prior to the effective date of termination, except where replacement of the coverage by the same or another insurer in the same or greater amount takes place without lapse of coverage. The insurer shall provide or cause to be provided this required information to the debtor.

(d) If the creditor adds identifiable insurance charges or premiums for consumer credit insurance to the debt, and any direct or indirect finance, carrying, credit, or service charge is made to the debtor on the insurance charges or premiums, the creditor must remit and the insurer shall collect the premium within sixty (60) days after it is added to the debt.

(e) If the debt is discharged due to refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the refinanced debt. In all cases of termination prior to scheduled maturity, a refund of all unearned premium or unearned insurance charges paid by the debtor shall be paid or credited to the debtor as provided in section 7 of this rule. In any refinancing of the debt, the effective date of the coverage as respects any policy provision shall be deemed to be the first date on which the debtor became insured under the policy with respect to the debt that was refinanced, at least to the extent of the amount and term of the debt outstanding at the time of refinancing of the debt.

(f) A provision in an individual policy or group certificate that sets a maximum limit on total claim payments must apply only to that individual policy or group certificate.

(g) If a debtor prepays the debt in full, then any consumer credit insurance covering the debt shall be terminated and an appropriate refund of the consumer credit insurance premium shall be paid or credited to the debtor in accordance with section 7 of this rule. However, if the prepayment is a result of death or any other lump sum consumer credit insurance payment, no refund shall be required for the coverage under which the lump sum was paid. If a claim under credit accident and health coverage is in progress at the time of prepayment, the amount of refund may be determined as if the prepayment did not occur until the payment of benefits terminates. No refund need be paid during any period of disability for which credit accident and health benefits are payable. A refund shall be computed as if prepayment occurred at the end of the disability period.

(h) If a creditor has opened a line of credit for a debtor and, if permitted under IC 27-8-4-4(A) or IC 27-1-12-37(2)(F), is charging for this line of credit rather than the amount of debt in the event of the death of the debtor, the insured amount due is the amount of the established amount of credit against which premium was last charged. (Department of Insurance; 760 IAC 1-5.1-3)

**760 IAC 1-5.1-4 Determination of reasonableness of benefits in relation to premium charge**

Authority: IC 27-1-3-7; IC 27-8-4-12  
 Affected: IC 24-4.5-4-102

Sec. 4. (a) Benefits provided by consumer credit insurance policies must be reasonable in relation to the premium charged. This requirement is satisfied if the premium rate charged develops or may reasonably be expected to develop a loss ratio of not less than sixty percent (60%). With the exception of deviations approved under section 9 of this rule, the rates shown in sections 5 and 6 of this rule, as adjusted pursuant to section 8 of this rule, shall be presumed to satisfy this loss ratio standard. Anticipated losses that develop or are expected to develop a loss ratio of not less than sixty percent (60%) shall be presumed reasonable. Any insurer filing a deviation in accordance with section 9 of this rule must satisfy the sixty percent (60%) loss ratio standard on their total consumer credit insurance business, including that of affiliated insurers.

(b) If any insurer files for approval of any form providing coverage different than that described in sections 5 and 6 of this rule, the insurer shall demonstrate to the satisfaction of the commissioner that the premium rates to be charged for such coverage are:

- (1) reasonably expected to develop a loss ratio of not less than sixty percent (60%); or
- (2) actuarially consistent with the rates used for standard coverages.

(Department of Insurance; 760 IAC 1-5.1-4)

**760 IAC 1-5.1-5 Credit life insurance rates**

Authority: IC 27-1-3-7; IC 27-8-4-12  
 Affected: IC 24-4.5-4-102

Sec. 5. (a) Subject to the conditions and requirements in subsection (b) and section 9 of this rule, the following prima facie rates are considered to meet the requirements of section 4 of this rule, and may be used without filing additional actuarial support:

- (1) For monthly outstanding balance basis, fifty-three cents (\$0.53) per month per one thousand dollars (\$1,000) of outstanding insured debt on single life and eighty-eight cents (\$0.88) per month per one thousand dollars (\$1,000) of outstanding insured debt on joint life if premiums are payable on a monthly outstanding balance basis.
- (2) If the premium is charged on a single premium basis,

the rate shall be computed according to the following formula or according to a formula approved by the commissioner which produces rates substantially the same as those produced by the following formula:

$$Sp \text{ fl } \wedge_{\text{fl}}^n \left( \frac{O_p}{10} \times \frac{I_t}{I_i} \times (v^{t1}) \right)$$

$$v \text{ fl } \frac{1}{1 + (\text{dis})}$$

- Where:
- Sp = Single premium per one hundred dollars (\$100) of initial consumer credit life insurance coverage.
  - O<sub>p</sub> = 0.53, the prima facie consumer credit life insurance premium rate for monthly outstanding balance coverage from subdivision (1).
  - I<sub>t</sub> = The scheduled amount of insurance for month t.
  - I<sub>i</sub> = Initial amount of insurance. For a net insurance policy, I<sub>i</sub> equals the initial principal balance of the loan.
  - dis = .0046, representing an annual discount rate of five and three-tenths percent (5.3%) for interest plus four-tenths of one percent (0.4%) for mortality.
  - n = The number of months in the term of the insurance.

(3) If the benefits provided are other than those described in this section, premium rates for such benefits shall be actuarially consistent with the rates provided in subdivisions (1) and (2).

(4) The prima facie rates included in this subsection and any other rates approved for use that are computed in accordance with the formula in subdivision (2) are presumed sufficient to provide for up to two (2) months of delinquencies. Therefore, the determination of the premium shall not reflect delinquencies.

(b) The premium rates in subsection (a) shall apply to contracts providing credit life insurance that are offered to all eligible debtors, that do not require evidence of individual insurability from any eligible debtor electing to purchase coverage within thirty (30) days of the date the debtor becomes eligible and that contain the following provisions:

- (1) Coverage for death by whatever means caused, except that coverage may exclude death resulting from any of the following:
  - (A) War or any act of war.
  - (B) Suicide within six (6) months after the effective date of the coverage.
  - (C) A preexisting condition or conditions. For the purpose of this subsection, the following apply:

## Proposed Rules

(i) "Preexisting condition" means any condition for which the debtor received medical advice or treatment within six (6) months preceding the effective date of coverage.

(ii) No preexisting condition exclusion shall apply unless death is caused by or substantially contributed to by the preexisting condition and unless death occurs within six (6) months following the effective date of coverage.

(iii) A preexisting condition exclusion shall apply only if and to the extent that the amount of coverage to which it would otherwise apply (in the absence of this limitation) exceeds one thousand dollars (\$1,000).

(2) For the exclusions listed in subdivision (1)(B) and (1)(C), the effective date of coverage for each part of the insurance attributable to a different advance or a charge to the plan account is the date on which the advance or charge occurs.

(3) At the option of the insurer and in lieu of a preexisting condition exclusion on insurance written in connection with open-ended consumer credit, a provision may be included to limit the amount of insurance payable on death due to natural causes to the balance as it existed six (6) months prior to the date of death if there has been one (1) or more increases in the outstanding balance during the six (6) month period and if evidence of individual insurability has not been required in the six-month period prior to the date of death. This provision applies only if and to the extent that the amount of coverage to which it would otherwise apply (in the absence of this limitation) exceeds one thousand dollars (\$1,000).

(4) An age restriction providing that no insurance will become effective on debtors on or after the attainment of age sixty-six (66) and that all insurance will terminate upon attainment by the debtor of age sixty-six (66).

(c) The insurer shall apply rates as follows:

(1) If the insurer, its agent, or the application form for credit life insurance does not request or require that the debtor provide evidence of insurability, then the premium rates deemed reasonable will be the prima facie rates in subsection (a).

(2) Except as provided in subdivision (3), if the insurer, its agent, or the application form for credit life insurance requests or requires that the debtor provide evidence of insurability and the initial amount of insurance is fifteen thousand dollars (\$15,000) or less, then the premium rates deemed reasonable will be the rates in subsection (a) multiplied by ninety percent (90%).

(3) If the insurer, its agent, or the application form for credit life insurance requests or requires that the debtor provide evidence of insurability and the initial amount of insurance is greater than fifteen thousand dollars (\$15,000) or the applicant elects to purchase coverage more than thirty (30) days after the date the debtor

became eligible under a group plan of insurance, then the premium rates deemed reasonable will be the prima facie rates in subsection (a). For policies insuring open lines of credit, the insurer may require evidence of insurability for advances that increase the outstanding debt above fifteen thousand dollars (\$15,000).

(d) Insurers may use the same application forms for credit life insurance whether or not underwriting questions are asked pursuant to subsection (c). The commissioner will presume that any application form for which all relevant underwriting questions have been left unanswered represents a policy which has not been underwritten and for which prima facie rates are permissible. A form for which any relevant underwriting questions have been answered or filled in represents a policy for which premium decreases pursuant to subsection (c) are required. Insurers should maintain in their files their rules for those circumstances where underwriting questions shall be asked. Those rules shall be communicated to and followed by the insurer's agents and producers. (*Department of Insurance; 760 IAC 1-5.1-5*)

### 760 IAC 1-5.1-6 Credit accident and health insurance rates

Authority: IC 27-1-3-7; IC 27-8-4-12  
Affected: IC 24-4.5-4-102

Sec. 6. (a) Subject to the conditions and requirements in subsection (b) and section 9 of this rule, the following prima facie rates are considered to meet the requirements of section 4 of this rule, and may be used without filing additional actuarial support:

(1) If premiums are payable on a single-premium basis for the duration of the coverage, the prima facie rate per one hundred dollars (\$100) of initial insured debt for single accident and health is as set forth in the following table and rates for monthly periods other than those listed shall be interpolated or extrapolated:

Original Number of	Equal Monthly Installments	14 Day Retroactive Policy	14 Day Nonretroactive Policies	30 Day Retroactive Policies	30 Day Nonretroactive Policies
6		\$1.41	\$0.93	\$0.95	\$0.72
12		1.87	1.30	1.28	0.96
24		2.50	1.81	1.81	1.26
36		3.07	2.36	2.32	1.68
48		3.40	2.69	2.65	1.98
60		3.67	2.95	2.92	2.24
72		3.91	3.18	3.16	2.47
84		4.12	3.40	3.37	2.69
96		4.32	3.60	3.57	2.89
108		4.51	3.79	3.76	3.08
120		4.69	3.96	3.93	3.25

(2) If premiums are paid on the basis of a premium rate per month per thousand of outstanding insured gross debt, these premiums shall be computed according to the following formula or according to a formula approved by

the commissioner, that produces rates actuarially consistent with the single premium rates in subdivision (1):

$$OP_n \text{ fl } \frac{10SP_n}{\left\{ \underset{\text{tfl}}{\wedge} \left[ \frac{(v^{1/n} \times (n/tl - 1))}{n} \right] \right\}}$$

$$v \text{ fl } \frac{1}{1 + (\text{dis})}$$

Where:  $SP_n$  = Single premium rate per one hundred dollars (\$100) of initial insured debt repayable in  $n$  equal monthly installments as shown in subdivision (1).

$OP_n$  = Monthly outstanding balance premium rate per one thousand dollars (\$1,000).

$n$  = The number of months in the term of the insurance.

$\text{dis}$  = .0043, representing an annual discount rate of five and three-tenths percent (5.3%) for interest.

(3) If the coverage provided is a constant maximum indemnity for a given period of time, the actuarial equivalent of subdivisions (1) and (2) shall be used.

(4) If the coverage provided is a combination of a constant maximum indemnity for a given period of time after which the maximum indemnity begins to decrease in even amounts per month, an appropriate combination of the premium rate for a constant maximum indemnity for a given period of time and the premium rate for a maximum indemnity that decreases in even amounts per month shall be used.

(5) The outstanding balance rate for credit accident and health insurance may be either a term-specified rate or may be a single composite term outstanding balance rate.

(6) The prima facie rates included in subdivision (1) and any other rates approved for use that are computed in accordance with the formula in subdivision (2) are presumed sufficient to provide for up to two (2) months of delinquencies. Therefore, the determination of premium shall not reflect delinquencies.

(b) Subject to the conditions and requirements in subsection (c) and section 9 of this rule, the prima facie rates for credit accident and health insurance calculated as shown in this subsection are considered to meet the requirements of section 4 of this rule in the situation where the insurance is written on an open-end loan. These prima facie rates and the formulae used to calculate them may be used without filing additional actuarial support. Other formulae to convert from a closed-end credit rate to an open-end credit rate may be used if approved by the commissioner. The following establishes the prima facie rates for credit accident and health insurance on an open-end loan:

(1) If the maximum benefit of the insurance equals the net debt on the date of disability, the term of the loan is calculated according to the formula:

$$1/(\text{minimum payment percent})$$

The prima facie rate is determined by applying the calculated term to the rates shown in subsection (a). A composite minimum payment percentage may be used in place of the minimum payment percentage for a specific credit transaction.

(2) If the maximum benefit of the insurance equals the outstanding balance of the loan on the date of disability plus any interest accruing on that amount during disability, the term of the insurance ( $n$ ) is estimated by using the following formula:

$$n = \ln\{1 - (1000i/x)\} / \ln(v)$$

Where:  $i$  = Interest rate on the account or a composite interest rate used for the type of policy.

$x$  = Monthly payment per one thousand dollars (\$1000) of coverage consistent with the term calculated above.

$$v = 1/(1 + i).$$

The calculated value of the term is used to look up an initial rate in subsection (a). The final prima facie rate is calculated by multiplying the initial rate by:

$$\text{the adjustment } n/a_n$$

Where:  $n$  = The term calculated as per the equation in this subsection.

$$a_n = (1 - v)^n/i.$$

(c) If the accident and health coverage is sold on a joint basis (involving two (2) people), the rate for the joint coverage shall be filed with the commissioner prior to use.

(d) If the benefits provided are other than those described in subsection (a) or (b), rates for those benefits shall be actuarially consistent with rates provided in subsection (a) and (b).

(e) The premium rates in subsection (a) shall apply to contracts providing credit accident and health insurance that are offered to all eligible debtors, that do not require evidence of individual insurability from any eligible debtor electing to purchase coverage within thirty (30) days of the date the debtor becomes eligible and that contain the following provisions:

(1) Coverage for disability by whatever means caused, except that coverage may be excluded for disabilities resulting from:

(A) normal pregnancy;

(B) war or any act of war;

(C) elective surgery;

(D) intentionally self-inflicted injury;

(E) sickness or injury caused by or resulting from the use of alcoholic beverages or narcotics (including

hallucinogens) unless they are administered on the advice of and taken as directed, by a licensed physician other than the insured;

(F) flight in any aircraft other than a commercial scheduled aircraft; or

(G) a preexisting condition.

(2) For the exclusion listed in subdivision (1)(G), the effective date of coverage for each part of the insurance attributable to a different advance or a charge to the plan account is the date on which the advance or charge occurs.

(3) A definition of disability providing that for the first twelve (12) months of disability, total disability shall be defined as the inability to perform the essential functions of the insured's own occupation. Thereafter, it shall mean the inability of the insured to perform the essential functions of any occupation for which he or she is reasonably suited by virtue of education, training, or experience.

(4) No employment requirement more restrictive than one requiring that the debtor be employed full time on the effective date of coverage and for at least twelve (12) consecutive months prior to the effective date of coverage. As used in this subdivision, "full time" means a regular work week of not less than thirty (30) hours.

(5) An age restriction providing that no insurance will become effective on debtors on or after the attainment of age sixty-six (66) and that all insurance will terminate upon attainment by the debtor of age sixty-six (66).

(6) A daily benefit of not less than one-thirtieth (1/30) of the monthly benefit payable under the policy.

(f) Requirements for applying rates shall be as follows:

(1) If the insurer, its agent, or the application form for credit life insurance does not request or require that the debtor provide evidence of insurability, then the premium rates deemed reasonable will be the prima facie rates in subsection (a).

(2) Except as provided in subdivision (3) if the insurer, its agent, or the application form for credit life insurance requests or requires that the debtor provide evidence of insurability and the initial amount of insurance is fifteen thousand dollars (\$15,000) or less, then the premium rates deemed reasonable will be the rates in subsection (a) multiplied by ninety percent (90%).

(3) If the insurer, its agent, or the application form for credit life insurance requests or requires that the debtor provide evidence of insurability and the initial amount of insurance is greater than fifteen thousand dollars (\$15,000) or the applicant elects to purchase coverage more than thirty (30) days after the date the debtor became eligible under a group plan of insurance, then the premium rates deemed reasonable will be the prima facie rates in subsection (a). For policies insuring open lines of credit, the insurer may require evidence of insurability for advances that increase the outstanding debt above fifteen thousand dollars (\$15,000).

(g) Insurers may use the same application forms for credit accident and health insurance whether or not underwriting questions are asked pursuant to subsection

(f). The commissioner will presume that any application form for which all relevant underwriting questions have been left unanswered represents a policy that has not been underwritten and for which prima facie rates are permissible. A form for which any relevant underwriting questions have been answered or filled in represents a policy for which premium decreases pursuant to subsection (f) are required. Insurers should maintain in their files their rules for those circumstances where underwriting questions shall be asked. Those rules shall be communicated to and followed by the insurer's agents or other producers.

*(Department of Insurance; 760 IAC 1-5.1-6)*

#### **760 IAC 1-5.1-7 Refund formulas**

Authority: IC 27-1-3-7; IC 27-8-4-12

Affected: IC 24-4.5-4-102; IC 27-8-4-8

Sec. 7. (a) In the event of termination, no charge for consumer credit insurance may be made for the first fifteen (15) days of a month and a full month may be charged for sixteen (16) days or more of a month.

(b) The requirement of IC 27-8-4-8B that refund formulas be filed with the commissioner shall be considered fulfilled if the refund formulas are set forth in the individual policy or group certificate filed with the commissioner.

(c) Refund formulas must develop refunds that are at least as favorable to the debtor as refunds equal to the premium cost of scheduled benefits subsequent to the date of cancellation or termination, computed at the schedule of premium rates in effect on the date of issue.

(d) No refund of one dollar (\$1) or less need be made.

*(Department of Insurance; 760 IAC 1-5.1-7)*

#### **760 IAC 1-5.1-8 Experience reports and adjustment of prima facie rates**

Authority: IC 27-1-3-7; IC 27-8-4-12

Affected: IC 24-4.5-4-102

Sec. 8. (a) Each insurer doing insurance business in this state shall annually file with the commissioner and the National Association of Insurance Commissioners (NAIC) Support and Services Office a report of consumer credit insurance written on a calendar year basis. The report shall utilize the Credit Insurance Supplement - Annual Statement Blank as approved by the NAIC, and shall contain data separately for each state, rather than an allocation of the company's countrywide experience. The filing shall be made in accordance with and no later than the due date in the Instructions to the Annual Statement.

(b) The commissioner will, on a triennial basis, review the

loss ratio standards set forth in section 4 of this rule and the prima facie rates set forth in sections 5 and 6 of this rule and determine the rate of expected claims on a statewide basis, compare such rate of expected claims with the rate of actual claims for the preceding three (3) years determined from the incurred claims and earned premiums at prima facie rates reported in the Annual Statement Supplement or other available source, and publish in the Indiana Register the adjusted actual statewide prima facie rates to be used by insurers during the next triennium. The rates will reflect the difference between actual claims based on experience and expected claims based on the loss ratio standards set forth in section 4 of this rule applied to the prima facie rates set forth in sections 5 and 6 of this rule.

(c) The commissioner will, on a triennial basis, review the discount rates for interest included in the formulae in sections 5(a) and 6(a) of this rule, and adjust those discount rates to equal the average of the rates being paid at that time on three (3) year United States Treasury Notes as reported in the Wall Street Journal on the last day of sale in the most recent three (3) calendar years. The commissioner shall publish the revised discount rates in the Indiana Register. (*Department of Insurance; 760 IAC 1-5.1-8*)

**760 IAC 1-5.1-9 Use of rates; direct business only**

Authority: IC 27-1-3-7; IC 27-8-4-12  
Affected: IC 24-4.5-4-102

Sec. 9. (a) An insurer that files rates or has rates on file that are equivalent to the prima facie rates shown in sections 5 and 6 of this rule, to the extent adjusted pursuant to section 8 of this rule, may use those rates without further proof of their reasonableness.

(b) An insurer may file for approval of and use rates that are higher than the prima facie rates shown in sections 5 and 6 of this rule, to the extent adjusted pursuant to section 8 of this rule, as long as the filed rates are consistent with section 4 of this rule. If rates higher than the prima facie rates shown in sections 5 and 6 of this rule, to the extent adjusted pursuant to section 8 of this rule, are filed for approval, the filing shall specify the account or accounts to which the rates apply. The rates may be applied:

- (1) uniformly to all accounts of the insurer;
- (2) on an equitable basis approved by the commissioner to only one (1) or more accounts of the insurer for which the experience has been less favorable than expected;
- (3) according to a case-rating procedure on file with the commissioner.

(c) The approval period of deviated rates are established as follows:

- (1) A deviated rate will be in effect for a period of time not longer than the experience period used to establish the rate, that is, one (1) year, two (2) years, or three (3)

years. An insurer may file for a new rate before the end of a rate period, but not more often than once during any twelve (12) month period.

(2) Notwithstanding the provision of subsection (a), if an account changes insurers, the rate approved to be used for the account by the prior insurer is the maximum rate that may be used by the succeeding insurer for the remainder of the rate approval period approved for the prior insurer or until a new rate is approved for use on the account, if sooner.

(d) An insurer may at any time use a rate for an account that is lower than its filed rate without notice to the commissioner. (*Department of Insurance; 760 IAC 1-5.1-9*)

**760 IAC 1-5.1-10 Supervision of consumer credit insurance operations**

Authority: IC 27-1-3-7; IC 27-8-4-12  
Affected: IC 24-4.5-4-102

Sec. 10. (a) Each insurer transacting credit insurance in this state shall be responsible for conducting a thorough periodic review of creditors with respect to their credit insurance business with such creditors, to assure compliance with the insurance laws of this state and the rules promulgated by the commissioner.

(b) Written records of such reviews shall be maintained by the insurer for a period of no less than five (5) years for review by the commissioner. (*Department of Insurance; 760 IAC 1-5.1-10*)

**760 IAC 1-5.1-11 Prohibited transactions**

Authority: IC 27-1-3-7; IC 27-8-4-12  
Affected: IC 24-4.5-4-102; IC 27-4-1

Sec. 11. The following practices, when engaged in by insurers in connection with the sale or placement of consumer credit insurance, or as an inducement thereto, shall be considered unfair methods of competition subject to the provisions of IC 27-4-1:

- (1) The offer or grant by an insurer to a creditor of any special advantage or any service not set out in either the group insurance contract or in the agency contract, other than the payment of agent's commissions.
- (2) Agreement by an insurer to deposit with a bank or financial institution money or securities of the insurer with the design or intent that the same shall affect or take the place of a deposit of money or securities that otherwise would be required of the creditor by the bank or financial institution as a compensating balance or offsetting deposit for a loan or other advancement.
- (3) Deposit by an insurer of money or securities without interest or at a lesser rate of interest than is currently being paid by the creditor, bank, or financial institution to other depositors of like amounts for similar durations.

## Proposed Rules

This subsection shall not be construed to prohibit the maintenance by an insurer of such demand deposits or premium deposit accounts as are reasonably necessary for use in the ordinary course of the insurer's business.

(Department of Insurance; 760 IAC 1-5.1-11)

### 760 IAC 1-5.1-12 Implementation

Authority: IC 27-1-3-7; IC 27-8-4-12

Affected: IC 24-4.5-4-102

**Sec. 12. (a) Approval of all forms and premium rates not in compliance with this rule is hereby withdrawn as of June 1, 2002.**

**(b) Any deviations thought to be appropriate by an insurer as a result of promulgation of this rule shall be filed in accordance with section 9 of this rule no later than April 1, 2002.** (Department of Insurance; 760 IAC 1-5.1-12)

SECTION 2. THE FOLLOWING ARE REPEALED: 760 IAC 1-5; 760 IAC 1-14.

SECTION 3. SECTIONS 1 through 2 of this document take effect June 1, 2002.

### Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on December 6, 2001 at 10:00 a.m., at the Department of Insurance, 311 West Washington Street, Suite 300, Indianapolis, Indiana the Department of Insurance will hold a public hearing on proposed new rules regarding credit life, accident, and health insurance. Copies are available at the Web site for the Department of Insurance at [www.in.gov/idoi](http://www.in.gov/idoi). Copies of these rules are now on file at the Department of Insurance, 311 West Washington Street, Suite 300 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Sally McCarty  
Commissioner  
Department of Insurance

## TITLE 836 INDIANA EMERGENCY MEDICAL SERVICES COMMISSION

### Proposed Rule

LSA Document #01-296

### DIGEST

Amends 836 IAC 3 concerning the certification and standards of air ambulance providers. Repeals 836 IAC 3-6-1. Effective 30 days after filing with the secretary of state.

836 IAC 3-1-1  
836 IAC 3-2-1  
836 IAC 3-2-2  
836 IAC 3-2-3  
836 IAC 3-2-4  
836 IAC 3-2-5  
836 IAC 3-3-2

836 IAC 3-3-3  
836 IAC 3-3-4  
836 IAC 3-3-5  
836 IAC 3-3-6  
836 IAC 3-3-7  
836 IAC 3-6-1

SECTION 1. 836 IAC 3-1-1 IS AMENDED TO READ AS FOLLOWS:

### 836 IAC 3-1-1 Definitions

Authority: IC 16-31-2-7

Affected: IC 16-31-3-20

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

~~(1)~~ "Air-medical crew member" means a person who is certified by the commission as a paramedic or is a registered nurse or physician with an unlimited license to practice medicine.

(1) "14 CFR 135 and 119" means air carriers with reference to F.A.R. 135 and 119, and holding a current F.A.A. air carrier certificate, with approved air ambulance operations-helicopter or air ambulance operation-airplane operations specifications.

(2) "Advanced life support fixed-wing ambulance service provider" means a service provider that utilizes fixed-wing aircraft to provide airport to airport transports where the patients involved require a stretcher or cot and are being transported to or from a definite care medical setting.

(3) "Advanced life support rotorcraft ambulance service provider" means a service provider that utilizes rotorcraft aircraft to respond directly to the scene of a medical emergency either as an initial first responder or as a secondary responder and are utilized to airlift critically ill or injured patients directly to or between definitive care facilities or to a point of transfer with another more appropriate form of transportation.

~~(2)~~ (4) "Air-medical director" means a physician with an unlimited license to practice medicine in Indiana and who has an active role in the delivery of emergency care. The licensed physician shall be within an air ambulance service who is ultimately responsible for patient care during each transport. The air-medical director is responsible for directly overseeing and assuring that appropriate aircraft, air-medical crew member, personnel, and equipment are provided for each patient transported by the air ambulances within the air-medical services as well as the performance of air-medical crew members: personnel.

(5) "Air-medical personnel" means a person who is certified by the commission as a paramedic or is a registered nurse or physician with an unlimited license to practice medicine.

(6) "Certificate" or "certification" means authorization in written form issued by the commission to a person to furnish, operate, conduct, maintain, advertise, promote, or otherwise engage in providing emergency medical services as a rotorcraft or fixed-wing ambulance service provider as part of a regular course of doing business, either paid or voluntary.

(7) "F.A.A." means the Federal Aviation Administration.

(8) "F.A.R." means the federal aviation regulations, including, but not limited to, 14 CFR.

(9) "Fixed-wing ambulance" means a propeller or jet airplane.

(10) "Flight physiology" means the physiological stress of flight encountered during air medical operations to include, but not be limited to, temperature, pressure, stresses of barometric pressure changes, hypoxia, thermal and humidity changes, gravitational forces, noise, vibration, fatigue, and volume and mass of gases.

(11) "Principal operations base" means the operator's principal base of operations where required management personnel and records are maintained.

(3) (12) "Rotorcraft ambulance" means an aircraft capable of vertical takeoffs and landings with the capability of hovering.

(4) "Rotorcraft ambulance service provider" means a service provider that utilizes rotorcraft aircraft to respond directly to the scene of a medical emergency either as an initial first responder or as a secondary additional responder and are utilized to airlift critically ill or injured patients directly to or between definitive care facilities or to a point of transfer with another more appropriate form of transportation.

(5) "Fixed-wing ambulance" means a propeller or jet aircraft.

(6) "Fixed-wing ambulance service provider" means a service provider, that utilizes fixed-wing aircraft to provide airport to airport transports where the patients involved are being transported to or from a definite care medical setting.

(7) "Certified" or "certification" means authorization in written form issued by the commission to a person to furnish, operate, conduct, maintain, advertise, or otherwise engage in providing emergency medical services as a rotorcraft or fixed-wing ambulance service provider as part of a regular course of doing business, either paid or voluntary.

(8) "ATCO" means air taxi and commercial operators; with reference to air taxi and commercial operators; operations certificate outlined in Federal Aviation Regulations, Part 135.

(9) "F.A.A." means the Federal Aviation Administration.

(10) "F.A.R." means the federal aviation regulations, including, but not limited to; the following parts:

(A) F.A.R. relative to the certification of pilots and instructors.

(B) F.A.R. relative to medical standards and certification of pilots and other F.A.A. related personnel.

(C) F.A.R. relative to general operating and flight rules.

(D) F.A.R. relative to air taxi and commercial operators of small aircraft.

(11) "A.G.L." means above ground level.

(12) "Local flying area" means an area to be determined by

the emergency medical services operators in statute miles not to exceed a twenty-five (25) mile radius from the dispatch point.

(13) "Cross-country" means any area outside the local flying area previously determined by the operator.

(14) "Principal operations base" means the operator's principal base of operations where required management personnel and records are maintained.

(15) "EMS landing site" means a suitable area free of obstruction, allowing for safe operation to land and takeoff a helicopter for the purpose of EMS operation.

(16) "Flight time" means the period of time from the moment the aircraft first moves under its own power for the purpose of flight until the moment it comes to rest at the next point of landing.

(17) "Pilot rest time" means the period of time that a pilot completes the required continual uninterrupted rest in any twenty-four (24) consecutive hour period of an assignment.

(18) "Pilot assignment" means the period of time that a pilot is assigned to perform duty at the designated location.

(19) "Pilot duty time" means the period of time that the operator assigns the pilot either flight time duty or other duties.

(20) "Pilot-in-command" means a qualified pilot who is responsible for the operation of the aircraft.

*(Indiana Emergency Medical Services Commission; 836 IAC 3-1-1; filed Oct 11, 1988, 11:05 a.m.: 12 IR 366; filed May 15, 1998, 10:25 a.m.: 21 IR 3917)*

SECTION 2. 836 IAC 3-2-1 IS AMENDED TO READ AS FOLLOWS:

**836 IAC 3-2-1 General requirements for air ambulances**

Authority: IC 16-31-2-7; IC 16-31-3-20

Affected: IC 16-31

Sec. 1. (a) Any organization providing, or seeking to provide, rotorcraft ambulance services utilizing rotorcraft aircraft is required to be certified as an advanced life support rotorcraft ambulance service provider organization by the commission. The advanced life support rotorcraft ambulance service provider organization shall be certified in accordance with this article pursuant to IC 16-31 as appropriate.

(b) Certification by the commission as an advanced life support rotorcraft ambulance service provider is not required for the following:

(1) A person who provides advanced life support while assisting the case of major catastrophe, disaster, whereby persons who are certified to provide emergency medical services or advanced life support are insufficient or are unable to cope with the situation.

(2) An agency or instrumentality of the United States as defined in 836 IAC 2-1-1(4).

(c) The provider of rotorcraft ambulance services shall ensure



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that the aircraft used in conjunction with the provision of advanced life support services meets the guidelines as specified in this article pursuant to IC 16-31, and is certified by the commission. Each rotorcraft ambulance service provider shall meet all applicable parts of F.A.A. regulation and shall hold a valid ~~ATCO operations~~ **14 CFR 135 air carrier certificate or shall have a contract with the holder of a 14 CFR 135 air carrier certificate to provide aviation services under their certificate. Either must also have current F.A.A. approved air ambulance operations specifications.**

(d) Advanced life support rotorcraft ambulance service provider organizations will have a contract with one (1) or more supervising hospitals for the following services:

- (1) Continuing education.
- (2) Audit and review.
- (3) Medical control and direction.
- (4) Provide liaison and direction for supply of medications, fluids, and other items utilized by the organization.
- (5) Safety and survival programs and education.

The contract shall include a detailed description of how such services will be provided to the advanced life support rotorcraft ambulance service provider organization. In those cases where more than one (1) hospital contracts, or seeks to contract, with an advanced life support rotorcraft ambulance service provider organization as a supervising hospital, an interhospital agreement will be provided to the commission that clearly defines the specific duties and responsibilities of each hospital to ensure medical, safety, and administrative accountability of system operation. A contract is not required when the hospital and the provider are the same organization.

(e) The advanced life support rotorcraft ambulance service provider organization will have an air-medical director provided by the advanced life support rotorcraft ambulance service provider organization, or jointly with the supervising hospital, who shall be a physician who holds a currently valid unlimited license to practice medicine **in Indiana** and has an active role in the delivery of emergency care, and has knowledge of air transport problems and ~~principles of pressure phenomena:~~ **flight physiology**. The air-medical director is responsible for providing competent medical direction and overall supervision of the medical aspects of the advanced life support rotorcraft ambulance service provider organization. The duties and responsibilities of the air-medical director include, but are not limited to, the following:

- (1) Assuming all medical control and authority over any and all patients treated and transported by the rotorcraft ambulance service.
- (2) Providing liaison with physicians.
- (3) Assuring that the drugs, medications, supplies, and equipment are available to the advanced life support rotorcraft ambulance service provider organization.
- (4) Monitoring and evaluating overall **medical** operations.
- (5) Assisting in the coordination and provision of continuing education.

(6) Providing information concerning the operation of the advanced life support rotorcraft ambulance service provider organization to the commission.

(7) Providing individual consultation to the air-medical personnel.

(8) Participating on the ~~assessment~~ **medical control** committee of the supervising hospital in ~~the monthly~~ **at least quarterly** audit and review of cases treated by air-medical personnel.

(9) Attesting to the competency of ~~air crewmember(s)~~ **air-medical personnel** affiliated with the advanced life support rotorcraft ambulance service provider organization.

(10) Designating an ~~individual(s)~~ **individual or individuals** to assist in the performance of these duties.

(f) Each rotorcraft ambulance service provider will designate one (1) person to assume responsibility for in-service training. This person shall be certified as a paramedic, a registered nurse, or a licensed physician, and actively ~~provides~~ **provide** patient care during air ambulance transport.

(g) A rotorcraft ambulance service provider shall not engage in conduct or practices detrimental to the health and safety of emergency patients or to members of the general public while in the course of business or service as a rotorcraft ambulance service provider.

(h) The advanced life support rotorcraft ambulance service provider organization shall have an areawide plan to provide safety education and coordinate rotorcraft ambulance service with emergency medical services rescue, law enforcement, mutual aid back-up systems, and central dispatch when available.

(i) Each advanced life support rotorcraft ambulance service provider organization shall do the following:

(1) Maintain an adequate number of trained personnel and aircraft to provide continuous twenty-four (24) hour advanced life support services.

(2) Notify the commission in writing within thirty (30) days of a paramedic's affiliation or termination of employment, or for any reason that has prohibited a certified individual from performing the procedures required of a paramedic pursuant to 836 IAC 2.

(j) Each rotorcraft ambulance service provider shall designate one (1) person to assume the responsibilities for establishment of a safety committee consisting of the following:

(1) ~~Pilot(s):~~ **Pilot or pilots.**

(2) ~~Aircrewmember(s):~~

(3) ~~Hospital administrator(s):~~

(4) ~~Air-medical director(s):~~

(2) **Air-medical personnel.**

(3) **Aircraft maintenance technician or technicians.**

(4) **Communications personnel.**

The safety committee shall meet at least ~~monthly~~ **quarterly** and

may be concurrent and in conjunction with the audit/review committee. (*Indiana Emergency Medical Services Commission; 836 IAC 3-2-1; filed Oct 11, 1988, 11:05 a.m.: 12 IR 367; filed May 15, 1998, 10:25 a.m.: 21 IR 3918*)

SECTION 3. 836 IAC 3-2-2 IS AMENDED TO READ AS FOLLOWS:

**836 IAC 3-2-2 Certification; application**

**Authority:** IC 16-31-2-7; IC 16-31-3-20  
**Affected:** IC 16-31; IC 34-6-2-49

Sec. 2. (a) Application for certification as an advanced life support rotorcraft ambulance service provider will be made on forms prescribed by the commission and include, but not be limited to, the following:

(1) A narrative summary of plans for providing rotorcraft ambulance services, including the following:

(A) The staffing pattern of air-medical **crew member personnel** and pilots.

(B) Defined area of primary and secondary response and an areawide coordination plan.

(C) Base of operations, **a description of the visual flight rules weather minimums for both cross-county and local flight, and the definition of the "local flying area" quoted from the approved F.A.A. Part 135 operations specifications.**

(D) Aircraft types and identification numbers.

(E) A listing of all personnel and their qualifications by category who will regularly serve as pilots ~~air-crewmembers~~, and ~~other medical crewmembers~~ **air-medical personnel** on the aircraft.

(F) **A copy of the patient care transport record to be utilized on each transport.**

(2) Plans and methodologies to ensure that the trained personnel are provided with continuing education relative to their level of training. Continuing education on air transportation problems and ~~pressure phenomena~~ **flight physiology** shall be provided on an annual basis. Continuing education will be ~~under the direct supervision of~~ **approved by** the advanced life support rotorcraft ambulance service provider organization air-medical director with the cooperation of the supervising hospital.

(3) A listing of all on-board life support and medical communications equipment available, including a list of drugs and medications to be carried on each aircraft.

(4) When appropriate, a copy of the contract between the advanced life support rotorcraft ambulance service provider organization and the supervising ~~hospital(s)~~ **hospital or hospitals.**

(5) A copy of all treatment protocols and standing orders (if applicable) under which all nonphysician personnel operate.

(6) The insurance requirement of IC 16-31 is satisfied if the rotorcraft ambulance service provider:

(A) has in force and effect public liability insurance according to:

Type of Liability	Minimum Limits	
	Each Person	Each Occurrence
Bodily injury liability excluding passengers	\$75,000	\$300,000
Passenger bodily injury liability	\$75,000	\$75,000 times 75% of total number of passenger seats installed in the aircraft
Property damage		\$100,000

(B) combined coverage of a single limit of liability for each occurrence at least equal to the required minimums stated in clause (A) for bodily injury excluding passengers, passenger bodily injury, and property damage; or

(C) is a governmental entity within the meaning of ~~IC 34-4-16.5-1~~ **IC 34-6-2-49.**

(7) The insurance coverage specified in subdivision (6) shall be for each and every aircraft owned and/or operated by or for the rotorcraft ambulance service provider.

(b) Upon approval, an advanced life support rotorcraft ambulance service provider organization will be issued certification for the provision of advanced life support services as required in 836 IAC 2 and this article.

(c) The certificate issued pursuant to this article is valid for a period of ~~one (1) year~~ **two (2) years** from the date of issue and ~~is~~ **shall be** prominently displayed at the place of business.

(d) Application for certification renewal shall be made not less than sixty (60) days prior to the expiration date of the current certificate. Application for renewal shall be made on such forms prescribed by the commission and shall show evidence of compliance with this article as set forth for original certification. (*Indiana Emergency Medical Services Commission; 836 IAC 3-2-2; filed Oct 11, 1988, 11:05 a.m.: 12 IR 368; filed May 15, 1998, 10:25 a.m.: 21 IR 3919*)

SECTION 4. 836 IAC 3-2-3 IS AMENDED TO READ AS FOLLOWS:

**836 IAC 3-2-3 Minimum specifications**

**Authority:** IC 16-31-2-7; IC 16-31-3-20  
**Affected:** IC 16-31

Sec. 3. (a) The rotorcraft ambulance performance characteristics are inherent in the type of aircraft selected by the rotorcraft ambulance service provider. The aircraft and its equipment and operations shall be in compliance with prevailing F.A.R. for the type of aircraft in question and flying conditions under which the aircraft will be operated as specified in the ~~ATCO operating~~ **14 CFR 135 air carrier** certificate of the air ambulance service provider.

(b) The aircraft shall be capable of carrying a minimum of one (1) patient on a litter in a horizontal position located so as not to obstruct the pilot's vision or interfere with the perfor-

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mance of any member of the flight crew or required ~~medical crew(s)~~: **air-medical personnel.**

(c) There shall exist a means of securing each litter and attached patient securely to either the floor (deck), walls (bulkhead), seats, or specific litter rack or any combination thereof which shall comply with an acceptable method using either approved data from the aircraft manufacturer or data approved by the F.A.A. If data approved by the F.A.A. is required, a **field approval or supplemental type certificate (STC) should shall** be obtained.

(d) There shall be demonstrable unobstructed vertical space at the head and thorax areas of the upper surface of a ~~litter(s)~~ **litter or litters** to allow for performance of advanced life support cardiac care.

(e) Both the head and thorax of a secured patient shall be accessible by a minimum of two (2) ~~aircrewmembers~~ **air-medical personnel** at one (1) time.

(f) The patient compartment shall have lighting available for patient observation (a minimum of forty (40) foot-candles at the level of the patient is recommended). Lighting shall be such as to not interfere with the pilots vision and will be focused, shielded, diffused, or colored illumination.

(g) The patient compartment shall have fresh air ventilation for ~~patient and crew~~ **the comfort of all persons on board.**

(h) The patient compartment shall have temperature regulation to assure ~~patient and crew~~ **the comfort of all persons on board.**

(i) The aircraft shall have one (1) door demonstrably large enough for ease of patient litter loading and unloading in the supine position.

(j) The electrical system of the aircraft shall be capable of supporting all of the ancillary equipment without the threat of overload or systems failure.

(k) Other specialized equipment may be required to conduct certain operations. The installation of this equipment shall comply with an acceptable method using either approved data from the aircraft manufacturer or data approved by the F.A.A. If data approved by the F.A.A. is required, a **field approval or supplemental type certificate (STC) should shall** be obtained.

(l) The aircraft shall have a searchlight rated as a minimum of four hundred thousand (400,000) candlepower or greater, manipulated by the pilot with a minimum movement of ninety (90) degrees vertical and one hundred eighty (180) degrees horizontal with the capability of illuminating the proposed landing site.

(m) The aircraft shall have air to ground communication capability to allow the pilot to communicate with all of the following ground personnel:

- (1) Law enforcement.
- (2) Fire/rescue.
- (3) Ambulances.
- (4) ~~Hospital(s)~~: **Hospital or hospitals.**

(n) The aircraft shall be equipped with adequate patient restraint(s) to preclude interference with the crew or aircraft flight controls.

(o) The aircraft shall have an intercommunications system. (*Indiana Emergency Medical Services Commission; 836 IAC 3-2-3; filed Oct 11, 1988, 11:05 a.m.: 12 IR 369; filed May 15, 1998, 10:25 a.m.: 21 IR 3920*)

SECTION 5. 836 IAC 3-2-4 IS AMENDED TO READ AS FOLLOWS:

### 836 IAC 3-2-4 Operating procedures; flight and medical

Authority: IC 16-31-2-7; IC 16-31-3-20

Affected: IC 4-21.5-1

Sec. 4. (a) Each organization shall maintain accurate records concerning the emergency care provided to each patient within the state **as well as the following:**

**(1) All advanced life support rotorcraft ambulance service providers shall utilize a patient care transport record.**

**(2) All advanced life support rotorcraft ambulance service providers shall participate in the emergency medical service system review by:**

**(A) collecting all data elements prescribed by the commission; and**

**(B) reporting that information according to the procedure and schedules prescribed by the commission.**

~~(b) Data shall be maintained to record the number of runs, including the following:~~

~~(1) Cardiac:~~

~~(2) Trauma, including the following:~~

~~(A) Automobile accidents:~~

~~(B) Other:~~

~~(3) Overdose:~~

~~(4) Medical emergencies, for example, diabetic or respiratory:~~

~~(5) Miscellaneous, for example, obstetrical cases:~~

~~(6) Number defibrillated:~~

~~(7) Number requiring CPR only:~~

~~(8) Number resuscitated from cardiopulmonary arrest improved to having a palpable pulse and hospital admission:~~

~~(9) Operational difficulties, for example:~~

~~(A) safety problems;~~

~~(B) equipment problems;~~

~~(C) communication problems; or~~

~~(D) other persons on the scene:~~

~~(e)~~ **(b)** Premises will be maintained, suitable to the conduct of a rotorcraft ambulance service, with provision for adequate storage hangars, padding, tie-down, and/or maintenance of rotorcraft ambulances and the on-board equipment.

~~(d)~~ **(c)** Each rotorcraft ambulance service provider shall have a periodic maintenance program as outlined for each specific aircraft certified by the commission in compliance with F.A.A. guidelines and manufacturer's service recommendations (MSR) as a minimum to assure that each rotorcraft ambulance, including equipment, is maintained in good, safe working condition and that rigid sanitation conditions and procedures are in effect at all times.

~~(e)~~ **(d)** All rotorcraft ambulance service provider premises, records, hangars, padding, and tie-down facilities, and rotorcraft ambulances will be made available for inspection by the director or the director's authorized representative at any time during regularly scheduled business hours.

~~(f)~~ Each rotorcraft ambulance service provider shall establish procedures to ensure that visual flight rules (VFR) flights adhere to the following weather minimums:

- ~~(1)~~ Day local flights, five hundred (500) feet and one (1) mile.
- ~~(2)~~ Day cross-country flights, eight hundred (800) feet and two (2) miles.
- ~~(3)~~ Night local flights, eight hundred (800) feet and two (2) miles.
- ~~(4)~~ Night cross-country flights, one thousand (1,000) feet and three (3) miles.

~~(g)~~ Rotorcraft ambulance flights conducted under instrument flying rules will be flown with strict adherence to existing F.A.R.s.

~~(h)~~ Each rotorcraft ambulance service provider shall establish procedures to insure that continuous flight following is maintained and documented.

~~(i)~~ **(e)** A determination of noncompliance with F.A.R. may result in immediate suspension of commission certification as a rotorcraft ambulance service provider.

~~(j)~~ Rotorcraft ambulance service providers shall provide for inspection by the director or the director's authorized representative, proof of compliance with all required F.A.A. inspection programs, at place of operation during regular business hours.

~~(k)~~ **(f)** Each rotorcraft ambulance service provider shall make available to the commission for inspection at place of operation during regular business hours any manual of operations required under F.A.R.

~~(l)~~ **(g)** Commission certification as a rotorcraft ambulance service provider may be terminated upon the date specified in the notice.

~~(m)~~ **(h)** Each rotorcraft ambulance service provider shall establish equipment checklist procedures to ensure the following:

- (1) Electronic and mechanical equipment are in proper operating condition.
- (2) Rotorcraft ambulances shall be maintained in safe operating conditions at all times.
- (3) Emergency patient care equipment required for rotorcraft ambulance certification is maintained in minimum quantities either directly on board the rotorcraft ambulance or available at the time of patient transport.

~~(n)~~ **(i)** Each rotorcraft ambulance service provider shall ensure that rigid sanitation conditions and procedures are in effect at all times. The following sanitation standards apply to all rotorcraft ambulances:

- (1) The interior and the equipment within the aircraft are clean and maintained in good working order at all times.
- (2) Freshly laundered linens are used on all litters, and pillows and linens shall be changed after each patient is transported.
- (3) When the aircraft has been utilized to transport a patient known to have a communicable disease, the aircraft shall be cleansed and all contact surfaces be washed with soap and water and disinfected.

~~(o)~~ **(j)** A rotorcraft ambulance service provider shall not operate a rotorcraft ambulance in Indiana if the aircraft does not meet the certification requirements of this article and does not have a certificate issued pursuant to this article; however, a rotorcraft ambulance service provider may operate, for a period not to exceed ~~thirty (30)~~ **one hundred eighty (180)** consecutive days, a noncertified rotorcraft ambulance if the noncertified rotorcraft ambulance is used to replace a certified rotorcraft ambulance that has been temporarily taken out of service ~~for repair or maintenance provided~~ **providing** the following:

- (1) The replacement rotorcraft ambulance meets all certification requirements of this article.
- (2) The rotorcraft ambulance service provider ~~notifies~~ **shall notify** the commission, ~~by letter delivered to the commission office, or postmarked in writing,~~ within ~~fifteen (15) days~~ **seventy-two (72) hours** of the ~~date~~ **time** the replacement rotorcraft is placed in service. The ~~letter written notice~~ shall identify **the following**:
  - (A)** The replacement date.
  - (B)** The certification number of the replaced rotorcraft ambulance. ~~and~~
  - (C)** The aircraft identification number of the replacement rotorcraft.
  - (D)** ~~The make and type of the replacement rotorcraft ambulance.~~

**Upon receipt of the notification, a temporary certificate shall be issued effective the date the certified rotorcraft ambulance was replaced.** Temporary certification will not exceed ~~thirty (30)~~ **one hundred eighty (180)** days, and, upon

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return to service, the use of the replacement rotorcraft ambulance shall cease. If the replaced rotorcraft ambulance is not returned to service within the ~~thirty (30)~~ **one hundred eighty (180)** day period, use of the replacement rotorcraft ambulance shall cease **unless certification is approved in accordance with this article.**

(p) **(k)** After proper notice and hearing, the commission may suspend or revoke a rotorcraft ambulance service provider certificate issued under this article and/or impose a penalty of up to five hundred dollars (\$500) in accordance with 836 IAC 1 and 836 IAC 2 for failure to comply and maintain compliance with, or for violation of any applicable provisions, standards, or other requirements of 836 IAC 1, 836 IAC 2, or this article pursuant to IC 4-21.5-1.

(q) **(l)** The commission may initiate proceedings to suspend or revoke a rotorcraft ambulance service provider certificate upon its own motion, or on the verified written complaint of any interested person. All such proceedings shall be held and conducted in accordance with the provisions of IC 4-21.5-1.

(r) **(m)** Notwithstanding this section, the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a rotorcraft ambulance service provider certificate without hearing for a period not to exceed ~~thirty (30)~~ **ninety (90)** days upon notice to the certificate holder. Upon suspension, revocation, or termination of a certificate, the provision of such service shall cease.

(s) **(n)** A rotorcraft ambulance service provider organization owner or lessee seeking certification of a rotorcraft ambulance may petition the commission for exemption from one (1) or more of the specifications or requirements listed in this article. The commission may approve one (1) or more of the requested exemptions and grant certification. However, the commission may restrict any ~~exemption(s)~~ **exemption or exemptions** approved under this ~~this~~ article. ~~Exemption(s)~~ **Exemptions** requested will not be approved if, in the opinion of the commission, the ~~exemption(s)~~ **exemption or exemptions** would impair the capabilities of the rotorcraft ambulance service provider to provide proper emergency patient care. (*Indiana Emergency Medical Services Commission; 836 IAC 3-2-4; filed Oct 11, 1988, 11:05 a.m.; 12 IR 370; filed May 15, 1998, 10:25 a.m.; 21 IR 3920*)

SECTION 6. 836 IAC 3-2-5 IS AMENDED TO READ AS FOLLOWS:

### 836 IAC 3-2-5 Staffing

Authority: IC 16-31-2-7; IC 16-31-3-20

Affected: IC 4-21.5-1

Sec. 5. (a) Each certified rotorcraft ambulance, while transporting an emergency patient, will be staffed by no less than three (3) people ~~and that have completed air-medical ori-~~

**ented training as prescribed by the air-medical director. Staffing will include the following requirements:**

(1) The first person shall be a properly certified pilot ~~The pilot of the rotorcraft ambulance shall possess a minimum of a Class II F.A.A. medical certificate, certification appropriate to the class of aircraft to be piloted, a valid commercial operators certificate, and two thousand (2,000) hours of rotorcraft flight experience. The staffing pattern of pilots shall provide for a minimum of ten (10) hours of continuous, uninterrupted rest in any twenty-four (24) hour period. Additionally, the pilot shall meet or exceed the following requirements in addition to those specified by the F.A.A.:~~

(A) If less than one hundred (100) hours in aircraft type:  
(i) factory school or equivalent (ground and flight);  
(ii) fifteen (15) hours as pilot-in-command in aircraft type prior to emergency medical services missions; and  
(iii) one (1) flight hour of local area orientation; or

(B) If over one hundred (100) hours in aircraft type; then:  
(i) current F.A.R. Part 135 check ride; or  
(ii) one (1) flight hour of local area orientation.

(C) The pilot shall participate in an orientation program covering flight and medical operations:

**who shall complete an orientation program covering flight and air-medical operations as prescribed by the air-medical director.**

(2) The second person shall be an ~~Indiana-certified~~ **currently certified, registered or licensed as one (1) of the following:**

(A) a paramedic;

(B) a registered nurse; or

(C) a physician with a valid unlimited license to practice medicine;

**and completed air-medical oriented training as prescribed by the air-medical director. within the state the air-ambulance is stationed and operating.**

(3) The third person shall be any appropriate personnel required to properly care for the medical needs of the patient at the discretion of the air-medical director. ~~If the aircraft routinely provides transport above two thousand (2,000) feet AGL, The air-medical personnel on board the aircraft shall be trained in air transport problems and principles of pressure phenomena.~~ **flight physiology.**

(b) The advanced life support rotorcraft ambulance service provider organization shall notify the commission in writing within thirty (30) days of any change in the advanced life support services provided.

(c) After proper notice and hearing, the commission may levy penalties up to five hundred dollars (\$500) in accordance with 836 IAC 1-2-4 or 836 IAC 2-13-1 or suspend or revoke a certificate issued under 836 IAC 1, 836 IAC 2, and this article for failure to comply and maintain compliance with, or for violation of any applicable provisions, standards, or other requirements of 836 IAC 1, 836 IAC 2, and this article.

(d) The commission may initiate proceedings to suspend or

revoke a certificate upon its own motion, or on the verified written complaint of any interested person, and all such proceedings will be held in and conducted in accordance with the provisions of IC 4-21.5-1.

(e) Notwithstanding 836 IAC 1, 836 IAC 2, or this article, the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a certificate without a hearing for a period not to exceed thirty (30) days upon notice to the certificate holder.

(f) Upon suspension, revocation, or termination of a certificate, the provision of advanced life support services shall cease. (*Indiana Emergency Medical Services Commission; 836 IAC 3-2-5; filed Oct 11, 1988, 11:05 a.m.: 12 IR 372; filed May 15, 1998, 10:25 a.m.: 21 IR 3922*)

SECTION 7. 836 IAC 3-2-6 IS AMENDED TO READ AS FOLLOWS:

**836 IAC 3-2-6 Equipment list**

Authority: IC 16-31-2-7; IC 16-31-3-20  
Affected: IC 16-31-3-20

Sec. 6. (a) The advanced life support rotorcraft ambulance service provider organization shall ensure that the following basic life support and advanced life support equipment is carried on-board each rotorcraft ambulance at the time of dispatch:

- (1) Portable suction ~~with appropriate catheters and tips apparatus~~, capable of a minimum vacuum of three hundred (300) millimeters of mercury, **equipped with wide-bore tubing and other rigid and soft pharyngeal suction tips.**
- (2) Oropharyngeal airways (adult, child, and infant sizes).
- (3) Nasopharyngeal airways (small, 20-24 french; medium, 26-30 french; large, 30 french or greater).
- ~~(4) Pocket mask w/O<sub>2</sub> inlet.~~
- ~~(5) (4) Bag mask with reservoir (adult, child, and infant sizes): ventilation units, hand operated, one (1) unit in each of the following sizes, each equipped with clear face masks and oxygen reservoirs with oxygen tubing:~~
  - (A) Adult.
  - (B) Child.
  - (C) Infant (mask only).
  - (D) Neonatal (mask only).
- ~~(6) (5) Portable oxygen with appropriate cannulas or mask, etc: equipment of at least three hundred (300) liters capacity (D size cylinder) with yoke, medical regulator, pressure gauge, and nondependent flowmeter.~~
- (6) Oxygen delivery devices shall include the following:
  - (A) High concentration devices, two (2) each, in adult, child, and infant sizes.
  - (B) Low concentration devices, two (2) in adult size.
- (7) Blood pressure cuffs or stethoscope manometer, one (1) each in the following cuff sizes:

- (A) Large adult.
- (B) Adult.
- (C) Child. and infant sizes):
- (8) Stethoscope in adult size.**
- ~~(8) Bandages and dressings (9) Wound care supplies to include but not limited to, the following:~~
  - (A) Sterile gauze pads (4 × 4).
  - ~~(B) Nonsterile gauze pads (4 × 4):~~
  - ~~(C) Soft roller bandage (2 inches × 4 yards):~~
  - ~~(D) Absorbent trauma dressings:~~
  - ~~(E) (B) Airtight dressing.~~
  - ~~(F) Sterile burn sheets (commercial or hospital prepared are acceptable):~~
  - (C) Adhesive tape, two (2) rolls.**
  - ~~(9) (D) Bandage shears, tape, or safety pins:~~
  - ~~(10) Adult and pediatric anti-shock trousers:~~
  - ~~(11) (10) Rigid extrication collars, small, medium, and large two (2) each capable of the following sizes:~~
    - (A) Pediatric.
    - (B) Small.
    - (C) Medium.
    - (D) Large.
  - ~~(12) Splints, wood, wire, ladder, plastic, or pneumatic in appropriate quantities as required:~~
  - ~~(13) (11) Portable defibrillator with self-contained cardiac monitor and E.C.G. strip writer and equipped with adult and pediatric defibrillation pads or paddles, appropriate for both adult and pediatric defibrillation, that will not interfere with the aircraft's electrical and radio system.~~
  - ~~(14) Tracheal suction catheters:~~
  - ~~(15) (12) Endotracheal intubation devices, including the following equipment: to include~~
    - (A) Laryngoscopes with spare batteries and bulbs. for each;
    - (B) Laryngoscope blades (adult and pediatric, curved and straight).
    - (C) Disposable endotracheal tubes, in adult, child, and infant sizes a minimum of two (2) each, sterile packaged, in sizes 3, 4, 5, 6, 7, 8, and 9 millimeters inside diameter.
  - ~~(16) (13) Medications, intravenous fluids, administration sets, syringes, and needles will be specified by the air-medical director identifying types and quantities.~~

(b) Additional equipment and supplies approved by the supervising hospital shall be identified by the rotorcraft ambulance service provider organization's air-medical director and reported in writing to the commission for initial certification and recertification.

~~(c) Controlled drugs shall not be left on unattended aircraft unless adequate security precautions have been taken as described in the application for advanced life support rotorcraft ambulance service provider organization and approved by the commission. A closed compartment, substantially constructed and equipped with a secure locking device, may be provided~~

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within the aircraft for storage of drugs when the aircraft is not in use or unattended.

(c) All drugs shall be supplied by the supervising hospital, or by written arrangement with a supervising hospital, on an even exchange basis. Lost, stolen, or misused drugs shall only be replaced on order of the advanced life support rotorcraft ambulance service provider organization air-medical director. **All medications and advanced life support equipment are to be supplied by order of the medical director. Accountability for distribution, storage, ownership, and security of medications is subject to applicable requirements as determined by the Indiana board of pharmacy and the drug enforcement administration.** (*Indiana Emergency Medical Services Commission; 836 IAC 3-2-6; filed Oct 11, 1988, 11:05 a.m.: 12 IR 373; filed May 15, 1998, 10:25 a.m.: 21 IR 3923*)

SECTION 8. 836 IAC 3-2-7 IS AMENDED TO READ AS FOLLOWS:

### 836 IAC 3-2-7 Communications systems requirements

Authority: IC 16-31-2-7; IC 16-31-3-20  
Affected: IC 16-31-3-20

Sec. 7. (a) Each rotorcraft ambulance shall have all communications equipment required under ~~F.A.R. Part 14~~ CFR 135 for the type of aircraft and service provided. In addition the rotorcraft ambulance shall have radio communications equipment that allows it to communicate directly with Indiana hospitals utilizing either the Indiana hospital emergency radio network (IHERN) system or the ultrahigh frequency medical communications channels used for advanced life support.

(b) Transmitters are to operate with an output power not to exceed ten (10) watts as applicable to FCC rules and regulations.

(c) The rotorcraft ambulance service provider shall maintain a dispatch and tactical communications system with the capability to provide a coordinated voice communications linkage within the ~~defined local~~ flying area of the rotorcraft ambulance service provider. These channel(s) will be used exclusively for dispatch and tactical communications and shall be apart from any involved in the IHERN.

(d) Authorization(s) for the use of any frequencies necessary for the required communications linkages with ground personnel identified in section 3(m) of this rule shall be part of the areawide coordinated plan identified in section 2(a)(1)(B) of this rule. (*Indiana Emergency Medical Services Commission; 836 IAC 3-2-7; filed Oct 11, 1988, 11:05 a.m.: 12 IR 373; filed May 15, 1998, 10:25 a.m.: 21 IR 3923*)

SECTION 9. 836 IAC 3-2-8 IS ADDED TO READ AS FOLLOWS:

### 836 IAC 3-2-8 Penalties

Authority: IC 16-31-3-14  
Affected: IC 4-21.5-3; IC 16-31-2-7; IC 16-31-2-9; IC 16-31-3-17; IC 16-31-10-1

Sec. 8. (a) The commission or director may penalize an ambulance service provider, or a person certified under this article, up to five hundred dollars (\$500) per occurrence for a violation of patient care standards, protocols, operating procedures, or rules established by the commission.

(b) A penalty may be imposed only after a hearing or the imposition of a penalty resulting from a hearing has been held by the commission, director, or the director's designee pursuant to IC 4-21.5-3.

(c) As used in this section, "per occurrence" means a violation of patient care standards, protocols, operating procedures, or rules established by the commission that remains uncorrected for each twenty-four (24) hour period after identification by the director or the director's designee.

(d) The director or commission may assess penalties up to five hundred dollars (\$500) per occurrence for the following violations:

- (1) Air ambulance specifications.
- (2) Emergency care equipment.
- (3) Operating procedures.
- (4) Patient care standards or protocols.
- (5) Training requirements.
- (6) Individual certification requirements.
- (7) Failure to comply with this title.

(*Indiana Emergency Medical Services Commission; 836 IAC 3-2-8*)

SECTION 10. 836 IAC 3-3-1 IS AMENDED TO READ AS FOLLOWS:

### 836 IAC 3-3-1 General requirements for air ambulances

Authority: IC 16-31-2-7; IC 16-31-3-20  
Affected: IC 16-31-3-20

Sec. 1. (a) Any organization based in Indiana providing, or seeking to provide, fixed-wing air ambulance services utilizing fixed-wing aircraft is required to be certified as an advanced life support fixed-wing air ambulance service provider organization by the commission. The advanced life support fixed-wing air ambulance service provider organization shall be certified in accordance with this article pursuant to IC 16-31 as appropriate.

(b) Certification by the commission as an advanced life support fixed-wing air ambulance service provider is not required for the following:

- (1) A person who provides advanced life support while assisting the case of major catastrophe or disaster, whereby persons who are certified to provide emergency medical

services or advanced life support are insufficient or are unable to cope with the situation.

(2) An agency or instrumentality of the United States as defined in 836 IAC 2-1-1(d).

(c) The provider of fixed-wing air ambulance services shall ensure that the aircraft used in conjunction with the provision of advanced life support services meets the guidelines as specified in this article pursuant to IC 16-31 and is certified by the commission. Each fixed-wing air ambulance service provider shall meet all applicable parts of F.A.A. regulation and shall hold a valid ~~ATCO operations~~ **14 CFR 135 air carrier certificate or shall have a contract with the holder of a 14 CFR 135 air carrier certificate to provide aviation services under their certificate. Either must also have current F.A.A. approved air ambulance operations specifications.**

(d) Advanced life support fixed-wing air ambulance service provider organizations will have a contract with one (1) or more supervising hospitals for the following services:

- (1) Continuing education.
- (2) Audit and review.
- (3) Medical control and direction.
- (4) Provide liaison and direction for supply of medications, fluids, and other items utilized by the organization.
- (5) Safety and survival programs and education.

The contract will include a detailed description of how such services will be provided to the advanced life support fixed-wing air ambulance service provider organization. In those cases where more than one (1) hospital contracts, or seeks to contract, with an advanced life support fixed-wing air ambulance service provider organization as a supervising hospital, an interhospital agreement will be provided to the commission that clearly defines the specific duties and responsibilities of each hospital to ensure medical, safety, and administrative accountability of system operation. A contract is not required when the hospital and the provider are the same organization.

(e) The advanced life support fixed-wing air ambulance service provider organization will have an air-medical director provided by the advanced life support fixed-wing air ambulance service provider organization, or jointly with the supervising hospital, who shall be a physician who holds a currently valid unlimited license to practice medicine and has an active role in the delivery of emergency care, and has knowledge of air transport problems and ~~principles of pressure phenomena:~~ **flight physiology**. The air-medical director is responsible for providing competent medical direction and overall supervision of the medical aspects of the advanced life support fixed-wing air ambulance service provider organization. The duties and responsibilities of the air-medical director include, but are not limited to, the following:

- (1) Assume all medical control and authority over any and all patients treated and transported by the fixed-wing air ambulance service.
- (2) Providing liaison with physicians.

(3) Assuring that the drugs, medications, supplies, and equipment are available to the advanced life support fixed-wing air ambulance service provider organization.

(4) Monitoring and evaluating overall operations.

(5) Assisting in the coordination and provision of continuing education.

(6) Providing information concerning the operation of the advanced life support fixed-wing air ambulance service provider organization to the commission.

(7) Providing individual consultation to the air-medical personnel.

(8) Participating on the assessment committee of the supervising hospital in ~~the monthly~~ **at least quarterly** audit and review of cases treated by air-medical personnel.

(9) Attesting to the competency of air ~~crewmember(s)~~ **crewmembers** affiliated with the advanced life support fixed-wing air ambulance service provider organization.

(10) Designating an ~~individual(s)~~ **individual or individuals** to assist in the performance of these duties.

(f) Each fixed-wing air ambulance service provider shall designate one (1) person to assume responsibility for in-service training. This person shall be certified as a paramedic, a registered nurse, or a licensed physician, and actively ~~provides~~ **provide** patient care during air transport.

(g) A fixed-wing air ambulance service provider shall not engage in conduct or practices detrimental to the health and safety of emergency patients or to members of the general public while in the course of business or service as a fixed-wing air ambulance service provider.

(h) Each advanced life support fixed-wing air ambulance service provider organization shall do the following:

(1) Maintain an adequate number of trained personnel and aircraft to provide advanced life support services as ~~advertized~~ **advertised** and specified in the fixed-wing air ambulance service provider's application for certification or certification renewal.

(2) Notify the commission in writing within thirty (30) days of a paramedic's affiliation or termination of employment or for any reason that has prohibited a certified individual from performing the procedures required of a paramedic pursuant to 836 IAC 2.

(i) Each fixed-wing air ambulance service provider shall designate one (1) person to assume the responsibilities for establishment of a safety committee consisting of the following:

(1) ~~Pilot(s):~~ **Pilot or pilots.**

(2) ~~Aircrewmember(s):~~

(3) ~~Hospital administrator(s):~~

(4) ~~Air-medical director(s):~~

**(2) Air-medical personnel.**

**(3) Aircraft maintenance technician or technicians.**

**(4) Communications personnel.**



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The safety committee shall meet at least ~~monthly~~ **quarterly** and may be concurrent and in conjunction with the audit/review committee. (*Indiana Emergency Medical Services Commission; 836 IAC 3-3-1; filed Oct 11, 1988, 11:05 a.m.: 12 IR 374; filed May 15, 1998, 10:25 a.m.: 21 IR 3924*)

SECTION 11. 836 IAC 3-3-2 IS AMENDED TO READ AS FOLLOWS:

### 836 IAC 3-3-2 Certification; application

Authority: IC 16-31-2-7; IC 16-31-3-20

Affected: IC 16-31

Sec. 2. (a) Application for certification as an advanced life support fixed-wing air ambulance service provider will be made on forms prescribed by the commission and include, but not be limited to, the following:

(1) A narrative summary of plans for providing fixed-wing air ambulance services, including the following:

(A) The staffing pattern of air-medical ~~crew member~~ **personnel** and pilots.

(B) Base of operations.

(C) Aircraft types and identification numbers.

(D) A listing of all personnel and their qualifications by category who will regularly serve as pilots ~~aircrewmembers~~, and ~~other medical crewmembers~~ **air-medical personnel** on the aircraft.

(E) **A description of the weather minimums for both cross-country and local flights.**

(F) **A copy of the patient care transport record to be utilized on each transport.**

(2) Plans and methodologies to ensure that the trained personnel are provided with continuing education relative to their level of training. Continuing education on air transportation problems and ~~pressure phenomena~~ **flight physiology** shall be provided on an annual basis. Continuing education will be ~~under the direct supervision of~~ **approved by** the advanced life support fixed-wing air ambulance service provider organization air-medical director with the cooperation of the supervising hospital.

(3) A listing of all on-board life support and medical communications equipment available, including a list of drugs and medications to be carried on each aircraft.

(4) When appropriate, a copy of the contract between the advanced life support fixed-wing air ambulance service provider organization and the supervising ~~hospital(s)~~ **hospital or hospitals.**

(5) A copy of all treatment protocols and standing orders (if applicable) under which all nonphysician personnel will operate.

(6) The insurance requirement of IC 16-31 is satisfied if the fixed-wing air ambulance service provider:

(A) has in force and effect public liability insurance according to:

### Minimum Limits

Type of Liability	Each Person	Each Occurrence
Bodily injury liability excluding passengers	\$75,000	\$300,000
Passenger bodily injury liability	\$75,000	\$75,000 times 75% of total number of passenger seats installed in the aircraft
Property damage		\$100,000

(B) combined coverage of a single limit of liability for each occurrence, at least equal to the required minimums stated in clause (A) for bodily injury excluding passengers, passenger bodily injury, and property damage; or  
(C) is a governmental entity within the meaning of ~~IC 34-4-16.5-1~~ **IC 34-6-2-49.**

(7) The insurance coverage specified in subdivision (6) shall be for each and every aircraft owned and/or operated by or for the fixed-wing air ambulance service provider.

(b) Upon approval, an advanced life support fixed-wing air ambulance service provider organization will be issued certification for the provision of advanced life support services as required in 836 IAC 2 and this article.

(c) The certificate issued pursuant to these rules and regulations this article is valid for a period of ~~one (1) year~~ **two (2) years** from the date of issue and is prominently displayed at the place of business.

(d) Application for certification renewal shall be made not less than sixty (60) days prior to the expiration date of the current certificate. Application for renewal shall be made on such forms prescribed by the commission and shall show evidence of compliance with ~~these rules and regulations~~ this article as set forth for original certification. (*Indiana Emergency Medical Services Commission; 836 IAC 3-3-2; filed Oct 11, 1988, 11:05 a.m.: 12 IR 375; filed May 15, 1998, 10:25 a.m.: 21 IR 3925*)

SECTION 12. 836 IAC 3-3-3 IS AMENDED TO READ AS FOLLOWS:

### 836 IAC 3-3-3 Minimum specifications

Authority: IC 16-31-2-7; IC 16-31-3-20

Affected: IC 16-31-3-20

Sec. 3. (a) The fixed-wing ambulance performance characteristics are inherent in the type of aircraft selected by the fixed-wing air ambulance service provider. The aircraft and its equipment and operations shall be in compliance with prevailing F.A.R. for the type of aircraft in question and flying conditions under which the aircraft will be operated as specified in the ~~ATCO operating~~ **14 CFR 135 air carrier** certificate of the fixed-wing air ambulance service provider.

(b) The aircraft shall be capable of carrying a minimum of one (1) patient on a litter in a horizontal position located so as not to obstruct the pilot's vision or interfere with the performance of any member of the flight crew **or required air-medical personnel**.

(c) There shall exist a means of securing each litter and attached patient securely to either the floor (deck), walls (bulkhead), seats, or specific litter rack or any combination thereof which shall comply with an acceptable method using either approved data from the aircraft manufacturer or data approved by the F.A.A. If data approved by the F.A.A. is required, a **field approval or** supplemental type certificate (STC) ~~should~~ **shall** be obtained.

(d) There shall be demonstrable unobstructed vertical space at the head and thorax areas of the upper surface of a ~~litter(s)~~ **litter or litters** to allow for performance of advanced life support cardiac care.

(e) Both the head and thorax of the secured patient shall be accessible by a minimum of two (2) ~~aircrewmembers~~ **air-medical personnel** at one (1) time.

(f) The patient compartment shall have lighting available for patient observation (a minimum of forty (40) foot-candles at the level of the patient is recommended). Lighting shall be such as to not interfere with the pilots vision and will be focused, shielded, diffused, or colored illumination.

(g) The patient compartment shall have fresh air ventilation for ~~patient and crew~~ **the comfort of all persons on board**.

(h) The patient compartment shall have temperature regulation to assure ~~patient and crew~~ **the comfort of all persons on board**.

(i) The aircraft shall have one (1) door demonstrably large enough for ease of litter patient loading and unloading in the supine position.

(j) The electrical system of the aircraft shall be capable of supporting all of the ancillary equipment without the threat of overload or systems failure.

(k) Other specialized equipment may be required to conduct certain operations. The installation of this equipment shall comply with an acceptable method using either approved data from the aircraft manufacturer or data approved by the F.A.A. If data approved by the F.A.A. is required, a **field approval or** supplemental type certificate (STC) ~~should~~ **shall** be obtained.

(l) The aircraft shall be equipped with adequate patient ~~restraint(s)~~ **restraints** to preclude interference with the crew or aircraft flight controls.

(m) The aircraft shall have an intercommunications system. (*Indiana Emergency Medical Services Commission; 836 IAC 3-3-3; filed Oct 11, 1988, 11:05 a.m.: 12 IR 376; filed May 15, 1998, 10:25 a.m.: 21 IR 3926*)

SECTION 13. 836 IAC 3-3-4 IS AMENDED TO READ AS FOLLOWS:

**836 IAC 3-3-4 Operating procedures; flight and medical**  
**Authority:** IC 16-31-2-7; IC 16-31-3-20  
**Affected:** IC 4-21.5-1

Sec. 4. (a) Each organization shall maintain accurate records concerning the emergency care provided to each patient within the state **as well as the following:**

**(1) All advanced life support fixed-wing ambulance service providers shall utilize a patient care transport record.**

**(2) All advanced life support fixed-wing ambulance providers shall participate in the emergency medical service system review by:**

**(A) collecting all data elements prescribed by the commission; and**

**(B) reporting that information according to the procedures and schedules prescribed by the commission.**

~~(b) Data shall be maintained to record the number of runs, including the following:~~

~~(1) Cardiac;~~

~~(2) Trauma, including the following:~~

~~(A) Automobile accidents;~~

~~(B) Other;~~

~~(3) Overdose;~~

~~(4) Medical emergencies, for example, diabetic or respiratory;~~

~~(5) Miscellaneous, for example, obstetrical cases;~~

~~(6) Number defibrillated;~~

~~(7) Number requiring CPR only;~~

~~(8) Number resuscitated from cardiopulmonary arrest improved to having a palpable pulse and hospital admission;~~

~~(9) Operational difficulties, for example:~~

~~(A) safety problems;~~

~~(B) equipment problems;~~

~~(C) communication problems; or~~

~~(D) other persons on the scene;~~

~~(b)~~ **(b)** Premises shall be maintained, suitable to the conduct of a fixed-wing air ambulance service, with provision for adequate storage ~~hangars, padding, tie-down,~~ and/or maintenance of fixed-wing ambulances and the on-board equipment.

~~(c)~~ **(c)** Each fixed-wing air ambulance service provider shall have a periodic maintenance program as outlined for each specific aircraft certified by the commission in compliance with F.A.A. and manufacturer's service recommendations (MSR) guidelines as a minimum to assure that each fixed-wing ambulance, including equipment, is maintained in good, safe

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working condition. ~~and that rigid sanitation conditions and procedures are in effect at all times.~~

~~(e)~~ **(d)** All fixed-wing air ambulance service provider premises, records, hangars, padding, and tie-down facilities, and fixed-wing ambulances shall be made available for inspection by the director or his authorized representative at any time during regularly scheduled business hours.

~~(f)~~ Each fixed-wing air ambulance service provider shall establish procedures and equipment to ensure that flights adhere to the F.A.A rules for visual flying rules and instrument flying rules weather minimums.

~~(g)~~ Each fixed-wing air ambulance service provider shall comply with all F.A.R. required.

~~(h)~~ **(e)** A determination of noncompliance with F.A.R. may result in immediate suspension of commission certification as a fixed-wing air ambulance service provider.

~~(i)~~ Fixed-wing air ambulance service providers shall provide for inspection by the director or the director's authorized representative, proof of compliance with all required F.A.A. inspection programs, at place of operation during regular business hours.

~~(j)~~ **(f)** Each fixed-wing air ambulance service provider shall make available to the commission for inspection at place of operation during regular business hours any manual of operations required under F.A.R.

~~(k)~~ **(g)** Commission certification as a fixed-wing air ambulance service provider may be terminated upon the date specified in the notice.

~~(l)~~ **(h)** Each fixed-wing air ambulance service provider shall establish equipment checklist procedures to ensure the following:

- (1) Electronic and mechanical equipment are in proper operating condition.
- (2) Fixed-wing ambulances shall be maintained in safe operating conditions at all times.
- (3) Emergency patient care equipment required for fixed-wing ambulance certification is maintained in minimum quantities either directly on board the fixed-wing ambulance or available at the time of patient transport.

~~(m)~~ **(i)** Each fixed-wing air ambulance service provider shall ensure that rigid sanitation conditions and procedures are in effect at all times. The following sanitation standards apply to all fixed-wing ambulances:

- (1) The interior and the equipment within the aircraft are clean and maintained in good working order at all times.
- (2) Freshly laundered linens are used on all litters, and pillows and linens shall be changed after each patient is transported.

(3) When an aircraft has been utilized to transport a patient known to have a communicable disease, the aircraft shall be cleansed and all contact surfaces be washed with soap and water and disinfected.

~~(n)~~ **(j)** A fixed-wing air ambulance service provider shall not operate a fixed-wing ambulance in Indiana if the fixed-wing ambulance does not meet the certification requirements of this article and does not have a certificate issued pursuant to this article; however, a fixed-wing air ambulance service provider may operate, for a period not to exceed ~~thirty (30)~~ **one hundred eighty (180)** consecutive days, a ~~noncertified temporary replacement~~ fixed-wing ambulance if the ~~noncertified temporary replacement~~ fixed-wing ambulance is used to replace a certified fixed-wing ambulance that has been temporarily taken out of service ~~for repair or maintenance, provided providing~~ the following:

(1) The replacement fixed-wing ambulance shall meet all certification requirements of this article.

(2) The fixed-wing air ambulance service provider ~~notifies~~ **shall notify** the commission, ~~by letter delivered to the commission office, or postmarked in writing,~~ within ~~fifteen (15)~~ **seventy-two (72) hours** of the ~~date~~ **time** the replacement fixed-wing ambulance is placed in service. The ~~letter~~ **written notice** shall identify **the following**:

**(A)** The replacement date.

**(B)** The certification number of the replaced fixed-wing ambulance. ~~and~~

**(C)** The aircraft identification number of the replacement fixed-wing ambulance.

**(D)** ~~The make and type of the replacement fixed-wing ambulance.~~

**Upon receipt of the notification, a temporary certificate shall be issued effective the date the certified rotorcraft ambulance was replaced.** Temporary certification will not exceed ~~thirty (30)~~ **one hundred eighty (180)** days, and, upon return to service, the use of the replacement fixed-wing ambulance shall cease. If the replaced fixed-wing ambulance is not returned to service within the ~~thirty (30)~~ **one hundred eighty (180)** day period, use of the replacement fixed-wing ambulance shall cease, **unless certification is approved in accordance with this article.**

~~(o)~~ **(k)** After proper notice and hearing, the commission may suspend or revoke a fixed-wing air ambulance service provider certificate issued under this article and/or impose a penalty of up to five hundred dollars (\$500) in accordance with 836 IAC 1 and 836 IAC 2 for failure to comply and maintain compliance with, or for violation of any applicable provisions, standards, or other requirements of 836 IAC 1, 836 IAC 2, or this article pursuant to IC 4-21.5-1.

~~(p)~~ **(l)** The commission may initiate proceedings to suspend or revoke a fixed-wing air ambulance service provider certificate upon its own motion or on the verified written complaint of

any interested person. All such proceedings shall be held and conducted in accordance with the provisions of IC 4-21.5-1.

(¶) **(m)** Notwithstanding this section, the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a fixed-wing air ambulance service provider certificate without hearing for a period not to exceed ~~thirty (30)~~ **ninety (90)** days upon notice to the certificate holder. Upon suspension, revocation, or termination of a certificate, the provision of such service shall cease.

(¶) **(n)** A fixed-wing air ambulance service provider owner or lessee seeking certification of a fixed-wing ambulance may petition the commission for exemption from one (1) or more of the specifications or requirements listed in this article. The commission may approve one (1) or more of the requested exemptions and grant certification. However, the commission may restrict any ~~exemption(s)~~ **exemption or exemptions** approved under this ~~rule (836 IAC 3):~~ **Exemption(s) article. Exemptions** requested will not be approved if, in the opinion of the commission, the ~~exemption(s)~~ **exemption or exemptions** would impair the capabilities of the fixed-wing air ambulance service provider to provide proper patient care. (*Indiana Emergency Medical Services Commission; 836 IAC 3-3-4; filed Oct 11, 1988, 11:05 a.m.: 12 IR 376; filed May 15, 1998, 10:25 a.m.: 21 IR 3926*)

SECTION 14. 836 IAC 3-3-5 IS AMENDED TO READ AS FOLLOWS:

**836 IAC 3-3-5 Staffing**

Authority: IC 16-31-2-7; IC 16-31-3-20  
Affected: IC 4-21.5-1; IC 16-31-3-14

Sec. 5. (a) Each certified fixed-wing ambulance while transporting an emergency patient shall be staffed by no less than ~~two (2)~~ **three (3)** people and include the following requirements:

(1) The first person shall be a properly certified pilot ~~The pilot of the fixed-wing air ambulance shall possess a minimum of a Class H F.A.A. medical certificate; certification appropriate to the class of aircraft to be piloted; and a valid commercial operators certificate. The staffing pattern of pilots shall provide for a minimum of ten (10) hours of continuous uninterrupted rest in any twenty-four (24) hour period. Additionally, the pilot shall meet or exceed the following requirements in addition to those specified by the F.A.A.:~~

- (A) If less than one hundred (100) hours is aircraft type:
  - (i) factory school or equivalent (ground and flight); and
  - (ii) fifteen (15) hours as pilot-in-command in aircraft type prior to EMS missions;
- (B) If over one hundred (100) hours in aircraft type, then current F.A.R. Part 135 check ride;

**who shall complete an orientation program covering flight, and air-medical operations as prescribed by the air-medical director.**

(2) The second person shall be an Indiana certified paramedic or registered nurse or a physician with a valid unlimited license to practice medicine.

(3) ~~At The discretion of the air-medical director, a third person shall be any appropriate personnel to properly care for the medical needs of the patient may be as required on board the fixed-wing aircraft in the patient compartment. If the aircraft routinely provides transport above two thousand (2,000) feet AGL, the medical personnel on board the aircraft shall be trained in air transport problems and principles of pressure phenomena.~~

**(4) All medical personnel on board the aircraft must be trained in air transport problems and principles of flight physiology.**

(b) The advanced life support fixed-wing air ambulance service provider organization shall notify the commission in writing within thirty (30) days of any change in the advanced life support services provided.

(c) After proper notice and hearing, the commission may levy penalties up to five hundred dollars (\$500) in accordance with 836 IAC 1-2-4 or 836 IAC 2-13-1 or suspend or revoke a certificate issued under 836 IAC 1, 836 IAC 2, and this article for failure to comply and maintain compliance with, or for violation of any applicable provisions, standards, or other requirements of 836 IAC 1 and 836 IAC 2.

(d) The commission may initiate proceedings to suspend or revoke a certificate upon its own motion or on the verified written complaint of any interested person, and all such proceedings will be held in and conducted in accordance with the provisions of IC 4-21.5-1.

(e) Notwithstanding 836 IAC 1 and 836 IAC 2, the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a certificate without a hearing for a period not to exceed thirty (30) days upon notice to the certificate holder.

(f) Upon suspension, revocation, or termination of a certificate, the provision of advanced life support services shall cease. (*Indiana Emergency Medical Services Commission; 836 IAC 3-3-5; filed Oct 11, 1988, 11:05 a.m.: 12 IR 378; filed May 15, 1998, 10:25 a.m.: 21 IR 3928*)

SECTION 15. 836 IAC 3-3-6 IS AMENDED TO READ AS FOLLOWS:

**836 IAC 3-3-6 Equipment list**

Authority: IC 16-31-2-7; IC 16-31-3-20  
Affected: IC 16-31-3-20

Sec. 6. (a) The advanced life support fixed-wing air ambulance service provider organization shall ensure that the following basic life support and advanced life support equip-

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ment is available on-board each aircraft and is appropriate for the age and medical condition of the patient to be transported, at the time of transport:

- (1) Portable ~~or fixed~~ suction with appropriate catheters and ~~tips~~ **apparatus**, capable of a minimum vacuum of three hundred (300) millimeters of mercury, **equipped with wide-bore tubing and other rigid and soft pharyngeal suction tips.**
- (2) Oropharyngeal airways (**adult, child, and infant sizes**).
- (3) Nasopharyngeal airways (**small, 20-24 french; medium, 26-30 french; large, 30 french or greater**).
- (4) Pocket mask w/O<sub>2</sub> inlet.
- (5) (4) Bag mask with reservoir ventilation units, hand operated, one (1) unit in each of the following sizes, each equipped with clear face masks and oxygen reservoirs with oxygen tubing:
  - (A) Adult.
  - (B) Child.
  - (C) Infant (mask only).
  - (D) Neonatal (mask only).
- (6) (5) Portable oxygen equipment with appropriate cannulas or mask of at least three hundred (300) liters capacity (D size cylinder) with yoke, medical regulator, pressure gauge, and nondependent flowmeter.
- (6) Oxygen delivery device shall include the following:
  - (A) High concentration devices, two (2) each, in adult, child, and infant sizes.
  - (B) Low concentration devices, two (2) in adult size.
- (7) Blood pressure cuffs or stethoscope manometer, one (1) each in the following cuff sizes:
  - (A) Large adult.
  - (B) Adult.
  - (C) Child.
- (8) Stethoscope in adult size.
- (8) Bandages and dressings
- (9) Wound care supplies to include but not limited to; the following:
  - (A) Sterile gauze pads (4 × 4).
  - (B) Nonsterile gauze pads (4 × 4).
  - (C) Soft roller bandage (2 × 4 yards).
  - (D) Absorbent trauma dressings.
  - (E) (B) Airtight dressing.
  - (F) Sterile burn sheets (commercial or hospital prepared are acceptable).
  - (9) (C) Bandage shears.
  - (D) Adhesive tape, or safety pins: two (2) rolls.
- (10) Rigid extrication collars, ~~small, medium, and large~~ (pediatric sizes are recommended) two (2) each capable of the following sizes:
  - (A) Pediatric.
  - (B) Small.
  - (C) Medium.
  - (D) Large.
- (11) Splints, wood, wire, ladder, plastic, or pneumatic in appropriate quantities as required.

(12) Urinal or bedpan.

(13) (11) Portable defibrillator with self-contained cardiac monitor and E.C.G. strip writer **and equipped with defibrillation pads or paddles, appropriate for both adult and pediatric defibrillation**, that will not interfere with the aircraft's electrical and radio system. (~~Pediatric paddles are recommended.~~)

(14) Tracheal suction catheters.

(15) (12) Endotracheal intubation devices, including the following equipment: to include

(A) Laryngoscopes with spare batteries and bulbs. for each;

(B) Laryngoscope blades (**adult and pediatric, curved and straight**).

(C) Disposable endotracheal tubes, a minimum of two (2) each, sterile packaged, in sizes 3, 4, 5, 6, 7, 8, and 9 millimeters inside diameter.

(16) (13) Medications, intravenous fluids, administration sets, syringes, and needles will be specified by the air-medical director identifying types and quantities.

(b) Additional equipment and supplies approved by the supervising hospital shall be identified by the fixed-wing air ambulance service provider organization air-medical director and reported in writing to the commission for initial certification and recertification.

(c) Controlled drugs will not be left on unattended aircraft unless adequate security precautions have been taken as described in the application for advanced life support fixed-wing air ambulance service provider organization and approved by the commission. A closed compartment, substantially constructed and equipped with a secure locking device, may be provided within the aircraft for storage of drugs when the aircraft is not in use or unattended.

(d) (c) All drugs shall be supplied by the supervising hospital, or by written arrangement with a supervising hospital, on an even exchange basis. Lost, stolen, or misused drugs shall only be replaced on order of the advanced life support fixed-wing air ambulance service provider organization medical director. **All medications and advanced life support equipment are to be supplied by order of the medical director. Accountability for distribution, storage, ownership, and security of medications is subject to applicable requirements as determined by the Indiana board of pharmacy and the drug enforcement administration.** (*Indiana Emergency Medical Services Commission; 836 IAC 3-3-6; filed Oct 11, 1988, 11:05 a.m.: 12 IR 379; filed May 15, 1998, 10:25 a.m.: 21 IR 3929*)

SECTION 16. 836 IAC 3-3-7 IS AMENDED TO READ AS FOLLOWS:

### 836 IAC 3-3-7 Communications systems requirements

Authority: IC 16-31-2-7; IC 16-31-3-20

Affected: IC 16-31-3-20

Sec. 7. (a) Each fixed-wing ambulance shall have all communications equipment required under F.A.R. Part 14 CFR 135 for the type of aircraft and service provided. In addition, the fixed-wing ambulance shall have radio communications equipment that allows it to communicate directly with Indiana hospitals utilizing either the Indiana hospital emergency radio network (IHERN) system, the ultrahigh frequency medical communications channels used for advanced life support, or air-to-ground radio telephone.

(b) Transmitters are to operate with an output power not to exceed ten (10) watts as applicable to FCC rules and regulations.

(c) The fixed-wing air ambulance service provider shall maintain a dispatch and tactical communications system with the capability to provide a voice communications linkage with the fixed-wing air ambulance service provider's base station. This channel will be used exclusively for dispatch and tactical communications and shall be apart from any involved in the IHERN.

**(d) In addition to subsection (a), each multi-engine fixed-wing air ambulance shall be equipped with a minimum of two (2) VHF aircraft band transceivers and two (2) independently functioning audio panels, allowing each required pilot to communicate with ground resources separately.** *(Indiana Emergency Medical Services Commission; 836 IAC 3-3-7; filed Oct 11, 1988, 11:05 a.m.: 12 IR 380; filed May 15, 1998, 10:25 a.m.: 21 IR 3929)*

SECTION 17. 836 IAC 3-3-8 IS ADDED TO READ AS FOLLOWS:

**836 IAC 3-3-8 Penalties**

Authority: IC 16-31-3-14

Affected: IC 4-21.5-3; IC 16-31-2-7; IC 16-31-2-9; IC 16-31-3-17; IC 16-31-10-1

**Sec. 8. (a) The commission or director may penalize an ambulance service provider, or a person certified under this article, up to five hundred dollars (\$500) per occurrence for a violation of patient care standards, protocols, operating procedures, or rules established by the commission.**

(b) A penalty may be imposed only after a hearing or the imposition of a penalty resulting from a hearing has been held by the commission, director, or the director's designee pursuant to IC 4-21.5-3.

(c) As used in this section, "per occurrence" means a violation of patient care standards, protocols, operating procedures, or rules established by the commission that remains uncorrected for each twenty-four (24) hour period after identification by the director or the director's designee.

**(d) The director or commission may assess penalties up to five hundred dollars (\$500) per occurrence for the following violations:**

- (1) Air ambulance specifications.**
- (2) Emergency care equipment.**
- (3) Operating procedures.**
- (4) Patient care standards or protocols.**
- (5) Training requirements.**
- (6) Individual certification requirements.**
- (7) Failure to comply with this title.**

*(Indiana Emergency Medical Services Commission; 836 IAC 3-3-8)*

SECTION 18. 836 IAC 3-5-1 IS AMENDED TO READ AS FOLLOWS:

**Rule 5. Registry for Out-of-State Advanced Life Support Fixed-Wing Ambulance Service Provider**

**836 IAC 3-5-1 Certificate of registry**

Authority: IC 16-31-2-7; IC 16-31-3-20

Affected: IC 16-31-3-20

Sec. 1. (a) Application for ~~certification~~ **certificate of registry** as a fixed-wing ambulance service provider shall be made on forms prescribed by the commission and include, but are not limited to, a narrative summary of plans for providing fixed-wing ambulance services, including the following:

- (1) The staffing pattern of personnel.
- (2) Base of operations and a level of care to be provided.
- (3) The training and experience of the applicant in the transportation and care of patients.
- (4) A description and general location of each aircraft to be used as an air ambulance, including the make, model, year of manufacture, insignia, name or monogram, or other distinguishing characteristics.
- (5) Types and quantity of medical equipment on board.
- (6) Proof of current valid certification or license issued by another state.
- (7) Other information as requested by the commission.

(b) Upon approval by the commission, the fixed-wing ambulance service provider shall be ~~certified~~ **registered** by the commission. ~~and a certificate will be issued.~~

(c) Each fixed-wing ambulance shall comply with all applicable F.A.A. and F.A.R. requirements pertaining to operating as a commercial air transport service.

**(d) Certificate of registry is required for all advanced life support fixed-wing ambulance service providers based outside of Indiana and transporting patients originating in Indiana.** *(Indiana Emergency Medical Services Commission; 836 IAC 3-5-1; filed Oct 11, 1988, 11:05 a.m.: 12 IR 380; filed May 15, 1998, 10:25 a.m.: 21 IR 3930)*

SECTION 19. 836 IAC 3-6-1 IS REPEALED.

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## Proposed Rules

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### Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on November 27, 2001 at 10:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 1, Indianapolis, Indiana the Indiana Emergency Medical Services Commission will hold a public hearing on proposed amendments concerning the certification and standards of air ambulance providers. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Rooms E208 and E239 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Rodney Coats  
Chairman  
Indiana Emergency Medical Services Commission

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### TITLE 836 INDIANA EMERGENCY MEDICAL SERVICES COMMISSION

#### Proposed Rule

LSA Document #01-297

#### DIGEST

Amends 836 IAC 1 concerning the certification of ambulance service providers, including the application process, requirements for ambulances, emergency care equipment, and basic life support nontransport providers. Amends 836 IAC 2 concerning the certification process of advanced life support providers. Adds 836 IAC 4-7-3.5, 836 IAC 4-9-2.5, and 836 IAC 4-10 concerning the certification and in-service requirements for emergency medical services personnel. Effective 30 days after filing with the secretary of state.

<b>836 IAC 1-2-1</b>	<b>836 IAC 2-4.1-2</b>
<b>836 IAC 1-3-5</b>	<b>836 IAC 2-7.1-1</b>
<b>836 IAC 1-11-1</b>	<b>836 IAC 4-7-3.5</b>
<b>836 IAC 1-11-2</b>	<b>836 IAC 4-9-2.5</b>
<b>836 IAC 1-11-3</b>	<b>836 IAC 4-10</b>
<b>836 IAC 2-2-1</b>	

SECTION 1. 836 IAC 1-2-1 IS AMENDED TO READ AS FOLLOWS:

#### 836 IAC 1-2-1 General certification provisions

Authority: IC 16-31-2-7  
Affected: IC 4-21.5; IC 16-31-3

Sec. 1. (a) A person shall not engage in the business or service of providing emergency ambulance services upon any public way of the state unless they hold a valid certificate issued by the commission for engaging in such a business or service as an ambulance service provider.

(b) A certificate is not required for a person who provides emergency ambulance service, an emergency medical technician, or an ambulance when:

- (1) rendering assistance to persons certified to provide emergency ambulance service or to emergency medical technicians;
- (2) operating from a location or headquarters outside Indiana to provide emergency ambulance services to patients who are picked up outside Indiana for transportation to locations within Indiana;
- (3) providing emergency medical services during a major catastrophe or disaster with which persons or ambulance services are insufficient or unable to cope;
- (4) an agency or instrumentality of the United States and any emergency medical technicians or ambulances of such agency or instrumentality are not required to be certified or to conform to the standards prescribed under 836 IAC 1-1-1(3); or
- (5) transportation of a patient from another state into Indiana and returned.

(c) Each ambulance, while transporting a patient, shall be staffed by not less than two (2) persons, one (1) of whom shall be a certified emergency medical technician and who shall be in the patient compartment unless an exemption is approved by the commission through subsection (g).

(d) After notice and hearing, the commission may and is authorized to suspend or revoke a certificate issued under IC 16-31 or impose a fine of up to five hundred dollars (\$500) in accordance with section 4 of this rule, or both, for:

- (1) fraud or misrepresentation in procuring certification; **or**
- (2) failure to comply and maintain compliance with, or for violation of, any applicable provisions, standards, or other requirement of IC 16-31 or this title.

The commission may initiate proceedings to suspend or revoke a certificate upon its own motion, or on the verified written complaint of any interested person, and all such proceedings shall be held and conducted in accordance with IC 4-21.5.

(e) Notwithstanding the provision of subsection (d), the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a certificate without hearing for a period not to exceed ninety (90) days upon notice to the certificate holder.

(f) Upon suspension, revocation, or termination of a certificate, the provision of such service shall cease.

(g) An ambulance service provider seeking certification of a land ambulance specially staffed, equipped, or uniquely designed to provide interhospital emergency transportation of critical care patients, for example:

- (1) coronary care;
- (2) high risk infant;
- (3) poisoning;

(4) psychiatric; and  
 (5) alcohol and drug overdose;

may petition the commission for exemption from one (1) or more of the specifications or requirements listed in this article. The ambulance service provider shall submit with the application a description of the medical capability of each person who usually staffs the patient compartment when transporting an emergency patient and a description of radio communications capabilities. The commission may approve one (1) or more of the requested exemptions and grant certification. However, the commission may restrict any exemption(s) approved under this article. Exemption(s) requested shall not be approved if, in the opinion of the commission, the exemption(s) would impair the capabilities of the ambulance service provider to provide proper emergency patient care.

(h) An ambulance service provider seeking certification for other than a land or air ambulance may petition the commission for any exemptions from one (1) or more of the requirements set forth in this article and 836 IAC 2.

(i) Each emergency patient shall be transported in a certified ambulance.

(j) Notify the commission in writing within thirty (30) days of any changes in items listed in section 2(a) of this rule.

(k) Notify the commission in writing immediately of change in medical director, including medical director approval form and protocols.

(l) Each ambulance service provider shall secure a medical director who shall be a physician with an unlimited license to practice medicine in Indiana and who has an active role in the delivery of emergency care. The duties and responsibilities of the medical director are as follows:

- (1) Provide liaison between the local medical community and the emergency medical service provider.
- (2) Assure compliance with defibrillation training standards and curriculum established by the commission.
- (3) Monitor and evaluate the day-to-day medical operations of the emergency medical service organization.
- (4) Assist in the continuing education programs of the emergency medical service organization.
- (5) Provide technical assistance concerning the delivery of automated defibrillation and other medical issues.
- (6) Provide individual consultation to the emergency medical personnel affiliated with the emergency medical service organization.
- (7) Participate in the audit and review of cases treated by the emergency medical personnel of the emergency medical service organization.
- (8) Assure compliance with approved medical standards established by the commission performed by organization.
- (9) Establish protocols for automatic defibrillation, airway

management, ~~wound care, patient stabilization,~~ patient-assisted medications, and emergency medical technician-administered medications as approved by the commission.  
*(Indiana Emergency Medical Services Commission; Emergency Medical Services Rule I, A; filed Jun 5, 1975, 11:57 a.m.: Rules and Regs. 1976, p. 84; filed Dec 15, 1977: Rules and Regs. 1978, p. 244; filed Dec 15, 1977: Rules and Regs. 1978, p. 245; filed Nov 3, 1980, 3:55 p.m.: 3 IR 2192; errata, 4 IR 531; filed Oct 13, 1981, 10:05 a.m.: 4 IR 2419; filed Dec 2, 1983, 2:43 p.m.: 7 IR 352; errata, 7 IR 1254; filed Dec 13, 1985, 9:13 a.m.: 9 IR 1036; filed Aug 18, 1986, 1:00 p.m.: 10 IR 24; filed May 15, 1998, 10:25 a.m.: 21 IR 3866; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2719)*

SECTION 2. 836 IAC 1-3-5 IS AMENDED TO READ AS FOLLOWS:

**836 IAC 1-3-5 Emergency care equipment**

**Authority:** IC 16-31-2-7  
**Affected:** IC 16-31-3

Sec. 5. Each and every ambulance will have the following minimum emergency care equipment, and this equipment shall be assembled and readily accessible:

- (1) Respiratory and resuscitation equipment as follows:
  - (A) Portable suction apparatus, capable of a minimum vacuum of three hundred (300) millimeters mercury, equipped with wide-bore tubing and both rigid and soft pharyngeal suction tips.
  - (B) On-board suction, capable of a minimum vacuum of three hundred (300) millimeters mercury, equipped with wide-bore tubing and both rigid and soft pharyngeal suction tips.
  - (C) Bag-mask ventilation units, hand operated, one (1) unit in each of the following sizes, each equipped with clear face masks and oxygen reservoirs with oxygen tubing:
    - (i) Adult.
    - (ii) Child.
    - (iii) Infant.
    - (iv) Neonatal (mask only).
  - (D) Oropharyngeal airways, two (2) each of adult, child, and infant.
  - (E) One (1) pocket mask with one-way valve.
  - (F) Portable oxygen equipment of at least three hundred (300) liters capacity (D size cylinder) with yoke, medical regulator, pressure gauge, and nondependent flowmeter.
  - (G) On-board oxygen equipment of at least three thousand (3,000) liters capacity (M size cylinder) with yoke, medical regulator, pressure gauge, and nondependent flowmeter.
  - (H) Oxygen delivery devices shall include the following:
    - (i) High concentration devices, two (2) each, adult, child, and infant.
    - (ii) Low concentration devices, two (2) each, adult.
  - (I) Nasopharyngeal airways, two (2) each of the following with water soluble lubricant:



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- (i) Small (20-24 french).
- (ii) Medium (26-30 french).
- (iii) Large (31 french or greater).
- (J) Bulb syringe individually packaged in addition to obstetrics kit.
- (K) Nonvisualized airway minimum of two (2) with water soluble lubricant.
- (L) ~~Beginning January 1, 2000, every ambulance shall be required to have a~~ Semiautomatic or automated external defibrillator and a minimum of two (2) sets of pads.
- (2) Wound care supplies as follows:
  - (A) Multiple trauma dressings, two (2) approximately ten (10) inches by thirty-six (36) inches.
  - (B) Fifty (50) sterile gauze pads, three (3) inches by three (3) inches or larger.
  - (C) Bandages, four (4) soft roller self-adhering type, two (2) inches by four (4) yards minimum.
  - (D) Airtight dressings, four (4), for open chest wounds.
  - (E) Adhesive tape, two (2) rolls.
  - (F) Burn sheets, two (2), sterile.
  - (G) Triangular bandages, four (4).
  - (H) Bandage shears, one (1) pair.
- (3) Patient stabilization equipment as follows:
  - (A) Traction splint, lower extremity, limb-supports, padded ankle hitch, and traction strap, or equivalent, one (1) assembly in adult size.
  - (B) Upper and lower extremity splinting devices, two (2) each.
  - (C) One (1) splint device intended for the unit-immobilization of head-neck and torso. These items shall include the splint itself and all required accessories to provide secure immobilization.
  - (D) One (1) long back board with accessories to provide secure spinal immobilization.
  - (E) Rigid extrication collar, two (2) each capable of the following sizes:
    - (i) Pediatric.
    - (ii) Small.
    - (iii) Medium.
    - (iv) Large.
  - (F) One (1) ambulance litter with side rails, head-end elevating capacity, mattress pad, and a minimum of three (3) adjustable restraints to secure the chest, hip, and knee areas.
- (4) Medications limited to, if approved by medical director, the following:
  - (A) Baby aspirin, eighty-one (81) milligrams each.
  - (B) Activated charcoal.
  - (C) Instant glucose.
- (5) Personal protection/universal precautions equipment, minimum of two (2) each, including the following:
  - (A) Gowns.
  - (B) Face masks and shields.
  - (C) Gloves.
  - (D) Biohazard bags.
  - (E) Antimicrobial hand cleaner.

- (6) Miscellaneous items as follows:
  - (A) Obstetrical kit, sterile, one (1).
  - (B) Clean linens consisting of the following:
    - (i) Pillow.
    - (ii) Pillow case.
    - (iii) Sheets and blankets.
  - (C) Blood pressure manometer, one (1) each in the following cuff sizes:
    - (i) Large adult.
    - (ii) Adult.
    - (iii) Pediatric.
  - (D) Stethoscopes, one (1) each in the following sizes:
    - (i) Adult.
    - (ii) Pediatric.
  - (E) Sharps collector, one (1) being a minimum of seven (7) inches in height.
  - (F) A current copy of the basic life support protocols.

*(Indiana Emergency Medical Services Commission; Emergency Medical Services Rule II, E; filed Jun 5, 1975, 11:57 a.m.: Rules and Regs. 1976, p. 93; filed May 10, 1977, 10:52 a.m.: Rules and Regs. 1978, p. 219; filed Nov 3, 1980, 3:55 p.m.: 3 IR 2200; filed Dec 2, 1983, 2:43 p.m.: 7 IR 355; errata, 7 IR 1254; filed Dec 13, 1985, 9:13 a.m.: 9 IR 1045; filed Aug 18, 1986, 1:00 p.m.: 10 IR 31; filed May 15, 1998, 10:25 a.m.: 21 IR 3875; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2727)*

SECTION 3. 836 IAC 1-11-1 IS AMENDED TO READ AS FOLLOWS:

### **Rule 11. Emergency Medical Services Nontransport Providers**

#### **836 IAC 1-11-1 General certification provisions**

**Authority:** IC 16-31-2-7

**Affected:** IC 4-21.5; IC 4-33; IC 5-2-5-1; IC 16-21; IC 16-31; IC 22-12-1-12

Sec. 1. (a) An organization eligible to be a certified emergency medical services nontransport provider shall be an established emergency services organization and shall be one (1) of the following:

- (1) Fire department as defined in IC 22-12-1-12.
- (2) Law enforcement agency as defined in IC 5-2-5-1.
- (3) Hospital as licensed under IC 16-21.
- (4) Any provider organization certified under IC 16-31.
- (5) Indiana gaming organizations as defined in IC 4-33.
- (6) Other organizations approved by the commission.

(b) Notwithstanding subsection (a), the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a certificate without hearing for a period not to exceed ~~thirty (30)~~ **ninety (90)** days upon notice to the certificate holder.

(c) Upon suspension, revocation, or termination of a certificate, the provision of such service shall cease.

(d) After notice and hearing, the commission may, and is authorized to, suspend or revoke a certificate issued under IC 16-31 or impose a fine of up to five hundred dollars (\$500) in accordance with section 5 of this rule, or both, for:

- (1) fraud or misrepresentation in procuring certification; or
- (2) failure to comply and maintain compliance with, or for violation of, any applicable provision, standard, or other requirement of IC 16-31 or this title.

The commission may initiate proceedings to suspend or revoke a certificate upon its own motion, or on the verified written complaint of any interested person, and all such proceedings shall be held and conducted in accordance with IC 4-21.5. (*Indiana Emergency Medical Services Commission; 836 IAC 1-11-1; filed May 15, 1998, 10:25 a.m.: 21 IR 3887; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2728*)

SECTION 4. 836 IAC 1-11-2 IS AMENDED TO READ AS FOLLOWS:

**836 IAC 1-11-2 Application for certification; renewal**

**Authority:** IC 16-31-2-7

**Affected:** IC 16-31-3-2; IC 16-31-3-8

Sec. 2. (a) Application for emergency medical services nontransport provider certification shall be made on forms as prescribed by the commission, and the applicant shall comply with the following requirements:

- (1) Applicants shall complete the required forms and submit the forms to the director not less than sixty (60) days prior to the requested effective date of the certificate.
- (2) Each emergency medical services vehicle, with its equipment as required by this article, shall be made available for inspection by the director or the director's duly authorized representative.
- (3) The premises on which emergency medical services vehicle supplies are stored shall be open during operating hours to the director or the director's duly authorized representative, for inspection.
- (4) A complete listing of affiliated personnel to be utilized as emergency medical technicians, first responders, and emergency medical services vehicle drivers shall be submitted to the director. The director shall be notified in writing within thirty (30) days of any change in personnel.
- (5) Each application shall include the following information:
  - (A) A description of the service area.
  - (B) Hours of operation.
  - (C) Number and location of emergency medical services vehicles.
  - (D) Organizational structure, including names, addresses, and telephone numbers of the owner, chief executive officer, chief operations officer, training officer, and medical director.
  - (E) Current Federal Communications Commission license or letter of authorization.
  - (F) Location of emergency medical services nontransport provider's records.

(G) Proof of insurance coverage in adequate amounts as specified in subsection (d) shall be submitted with the application and shall be renewed thirty (30) days prior to the expiration of the current insurance.

(H) Other information as required by the commission.

(b) Upon approval, a certificate shall be issued by the director. The certificate shall be valid for a period of ~~one (1)~~ **year two (2) years** unless earlier revoked or suspended by the commission and shall be prominently displayed at the place of business.

(c) Application for emergency medical services nontransport provider certification renewal shall be made not less than sixty (60) days prior to the expiration date of the current certificate to assure continuity of certification. Application for renewal shall be made on forms as prescribed by the commission and shall indicate compliance with the requirements set forth for original certification.

(d) Emergency medical services nontransport providers in states immediately adjacent to Indiana who will be providing emergency medical services vehicle service within Indiana under a contract with an Indiana local unit of government shall be certified by the Indiana emergency medical services commission in accordance with this article or apply for waiver of this article so long as the following requirements are met:

- (1) The Indiana local unit of government shall meet the following requirements:
  - (A) Notify the Indiana emergency medical services commission of the intent to provide emergency medical services to residents of their area of responsibility when such services will be provided by an emergency medical services vehicle service in an adjacent state not certified by the Indiana emergency medical services commission and said emergency medical services vehicle service is unable to comply with this article for certification.
  - (B) Provide a copy of a legally binding contract for services that outlines the conditions under which emergency medical services will be provided.
  - (C) Show proof of the issuance of public notice that describes any and all differences between the state standards in existence for the contracted provider of emergency medical service and the standards adopted by the commission.
  - (D) The commission may issue certification under this provision for a period of ~~one (1) year~~ **two (2) years**.
- (2) The commission may revoke certification of the contracted emergency medical services nontransport provider immediately upon determining that the contracted emergency medical services nontransport provider is in violation of existing adjacent state rules and regulations regarding the provision of emergency medical services.
- (3) Violations of Indiana patient care standards or standards existing under the contracted emergency medical services

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nontransport providers state rules and regulations are subject to the provision and levying of fines as described in 836 IAC 1-2-4 at the discretion of the director and shall be the responsibility of the Indiana local unit of government as the contractee.

**(e) Emergency medical services nontransport providers shall submit a copy of an agreement between the nontransporting organization and an ambulance service provider certified pursuant to IC 16-31. The agreement shall ensure that the nontransporting organization can be assured that patients treated shall be transported in a timely and safe manner. The agreement shall not preclude another ambulance service provider, if available, from transporting the patients.** (*Indiana Emergency Medical Services Commission; 836 IAC 1-11-2; filed May 15, 1998, 10:25 a.m.: 21 IR 3887*)

SECTION 5. 836 IAC 1-11-3 IS AMENDED TO READ AS FOLLOWS:

### **836 IAC 1-11-3 Emergency medical services nontransport provider operating procedures**

**Authority:** IC 16-31-2-7

**Affected:** IC 16-18-2-7; IC 16-31-3-2; IC 34-6-2-49

Sec. 3. (a) The emergency medical services nontransport provider's premises shall be maintained, suitable to the conduct of the emergency medical services vehicle service, with provision for adequate storage and maintenance of equipment.

(b) Each emergency medical services nontransport provider shall provide for a periodic maintenance program to assure that all equipment is maintained in good working condition and that rigid sanitation procedures are in effect at all times.

(c) All emergency medical services nontransport provider premises, records, and equipment shall be made available for inspection by the commission, director, or a duly authorized representative at any time during operating hours.

(d) The insurance requirement of IC 16-31-3-2(a) is satisfied if the emergency medical services nontransport provider:

- (1) has in force and effect public liability insurance in the sum of not less than three hundred thousand dollars (\$300,000) combined single limit, issued by an insurance company licensed to do business in Indiana; or
- (2) is a government entity within the meaning of IC 34-6-2-49. Coverage shall be for each emergency medical services vehicle owned or operated by or for the emergency medical services nontransport provider.

(e) Each emergency medical services nontransport provider shall provide and maintain a communication system that meets or exceeds the requirements set forth in 836 IAC 1-4. The emergency medical services nontransporting vehicles are not

required to be equipped with the Indiana hospital emergency radio network frequency (155.340 MHZ) as specified in 836 IAC 1-4-2(c)(2).

(f) Each emergency medical services nontransport provider shall designate one (1) person as the organization's training officer to assume responsibility for in-service training. This person shall be certified as a first responder, an emergency medical technician, an advanced emergency medical technician, a paramedic, a registered nurse, a certified physician assistant, or a licensed physician who is actively involved in the delivery of emergency medical services with that organization. The training officer shall be responsible for the following:

- (1) Provide and maintain records of in-service training offered by the provider organization.
- (2) Maintain the following in-service training session information:
  - (A) Summary of the program content.
  - (B) Names of instructors.
  - (C) Names of those attending.
  - (D) Date, time, and location of in-service training sessions.
- (3) Sign individual emergency medical technician training records or reports to verify actual time in attendance at training sessions.

(g) An emergency medical services nontransport provider shall not act in a reckless or negligent manner so as to endanger the health or safety of emergency patients or members of the general public while in the course of business as an emergency medical services nontransport provider.

(h) Each emergency medical services nontransport provider shall notify the director within thirty (30) days of the present and past specific location of any emergency medical services vehicle if the location of the emergency medical services vehicle is changed from that specified in the provider's application for emergency medical services nontransport provider certification or certification renewal.

(i) Each emergency medical services nontransport provider shall ensure that rigid sanitation procedures are in effect at all times. The following sanitation standards apply to all emergency medical services vehicles:

- (1) The equipment within the vehicle shall be clean and maintained in good working order at all times.
- (2) Closed compartments shall be provided within the vehicle for medical supplies.
- (3) Closed containers shall be provided for soiled supplies.
- (4) Implements inserted into the patient's nose or mouth shall be single-service, wrapped, and properly stored and handled. Multi-use items are to be kept clean and sterile when indicated and properly stored.
- (5) The equipment, utilized to treat a patient known to have a communicable disease or suffered exposure to hazardous material or biohazard material, shall be cleansed in accor-

dance with current decontamination and disinfecting standards. All hazardous and biohazard materials shall be disposed of in accordance with current hazardous and biohazard disposition standards.

(j) An emergency medical services nontransport provider shall not engage in the provision of advanced life support as defined in IC 16-18-2-7.

(k) Each emergency medical services nontransport provider, under the responsibility of its chief executive officer and medical director, shall conduct quarterly audit and review to assess, monitor, and evaluate the quality of patient care as follows:

- (1) The audit and review shall provide the following:
  - (A) An environment that encourages personnel to deliver care consistent with established standards of care.
  - (B) A systematic means of measuring and evaluating the quality of patient care.
  - (C) A tool to provide personnel with feedback and methods of action for improving practices and services.
  - (D) A method of identifying needs to staff development programs, basic training, in-service, and orientation.
  - (E) A method for describing patient care outcomes.
- (2) The audit and review shall be conducted under the direction of one (1) of the following:
  - (A) The emergency medical services nontransport provider's medical director.
  - (B) An emergency room committee that is supervised by a medical director. Emergency medical services personnel shall serve as members on the committee.
  - (C) The emergency medical services nontransport provider that establishes a committee of individuals within the services.

(l) Each emergency medical services nontransport provider shall secure a medical director who shall be a physician with an unlimited license to practice medicine in Indiana. The duties and responsibilities of the medical director are as follows:

- (1) Provide liaison between the local medical community and the emergency medical services provider.
- (2) Assure compliance with defibrillation training standards and curriculum established by the commission.
- (3) Monitor and evaluate the day-to-day medical operations of the emergency medical services organization.
- (4) Assist in the continuing education programs of the emergency medical services organization.
- (5) Provide technical assistance concerning the delivery of automated defibrillation and other medical issues.
- (6) Provide individual consultation to the emergency medical personnel affiliated with the emergency medical services organization.
- (7) Participate in the audit and review of cases treated by the emergency medical defibrillation personnel of the emergency medical services organization.

- (8) Assure compliance with approved medical standards established by the commission performed by the organization.
- (9) Establish protocols for automatic defibrillation, airway management, ~~wound care, patient stabilization,~~ and medication administration as approved by the commission.

(m) All records shall be retained for a minimum of three (3) years, except for the following records which shall be retained for a minimum of seven (7) years:

- (1) Audit and review records.
- (2) Run reports.
- (3) Training records.

(n) Each emergency medical services nontransport provider shall employ at least one (1) certified person trained in the use of the automated defibrillator. Only trained, certified emergency medical services personnel shall use an automated defibrillator.

(o) Each emergency medical services nontransport provider shall maintain, in a manner prescribed by the commission, accurate records, including a run report form, concerning the assessment and treatment of each emergency patient treated. The run report form shall include the following information about the patient:

- (1) Name.
- (2) Identification number.
- (3) Age.
- (4) Sex.
- (5) Race.
- (6) Physician of the patient.
- (7) Date of birth.
- (8) Address, including zip code.
- (9) Location of incident.
- (10) Chief complaint.
- (11) History, including the following:
  - (A) Current medical condition and medications.
  - (B) Past pertinent medical conditions and allergies.
- (12) Physical examination section.
- (13) Treatment given section.
- (14) Vital signs, including the following:
  - (A) Pulse.
  - (B) Respirations.
  - (C) Level of consciousness.
  - (D) Skin temperature and color.
  - (E) Pupillary reactions.
  - (F) Ability to move.
  - (G) Presence or absence of breath sounds.
  - (H) The time of observation and a notation of the quality for each vital sign should also be included.
- (15) Responsible guardian.
- (16) Name of patient attendants, including emergency medical services certification numbers.
- (17) Vehicle emergency medical services certification number.
- (18) Responding service delivery times, including the following:

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- (A) Time of receipt of call.
- (B) Time dispatched.
- (C) Time arrived scene.
- (D) Time of patient released to transporting emergency medical services.
- (E) Time vehicle available for next response.

(19) Date of service.

(20) The report form shall provide space for narrative description of the situation and the care rendered by the nontransport unit.

(p) A signed statement for refusal of treatment or transportation services, or both, shall be maintained as part of the run documentation.

(q) All emergency medical services nontransport providers shall participate in the emergency medical services system review by:

- (1) collecting all data elements prescribed by the commission; and
- (2) reporting that information according to procedures and schedules prescribed by the commission.

(r) Each emergency medical services nontransport provider shall comply with the general certification provision of this article. (*Indiana Emergency Medical Services Commission; 836 IAC 1-11-3; filed May 15, 1998, 10:25 a.m.: 21 IR 3888; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2729*)

SECTION 6. 836 IAC 2-2-1 IS AMENDED TO READ AS FOLLOWS:

### 836 IAC 2-2-1 General requirements for paramedic organizations

Authority: IC 16-31-2-7

Affected: IC 4-21.5; IC 16-31-3

Sec. 1. (a) Certification by the commission is required for any ambulance service provider who seeks to provide advanced life support services as a paramedic organization unless provisional certification is issued pursuant to subsection (p).

(b) If the paramedic organization also provides transportation of emergency patients, the paramedic organization shall be certified as an ambulance service provider in accordance with the requirements specified in 836 IAC 1 pursuant to IC 16-31. The paramedic nontransport organizations shall meet the requirements specified in 836 IAC 1-2-2(a) and 836 IAC 1-11-3(o) through 836 IAC 1-11-3(q).

(c) The paramedic organization shall ensure that:

- (1) ambulances used are certified and meet the requirements specified in 836 IAC 1-3; and
- (2) all nontransport emergency medical services vehicles used for the provision of advanced life support meet all of the requirements in 836 IAC 2-14.

(d) Paramedic organizations shall have a contract, or interde-

partmental memo if hospital based, with one (1) or more supervising hospitals for the following services:

- (1) Continuing education.
- (2) Audit and review.
- (3) Medical control and direction.
- (4) Provision of arrangements and the supervision of arrangements for the supply of medications and other items utilized by emergency medical service clinical personnel in the provision of advanced life support service.
- (5) Provision to allow the paramedics affiliated with the supervised paramedic organization to function within the appropriate hospital department in order to obtain continuing practice in their clinical skills.

The contract or interdepartmental memo shall include a detailed description of how such services shall be provided to the paramedic organization. In those cases where more than one (1) hospital contracts, or seeks to contract, with a paramedic provider organization as a supervising hospital, an interhospital agreement shall be provided to the commission that shall clearly define the specific duties and responsibilities of each hospital to ensure medical and administrative accountability of system operation.

(e) The paramedic organization shall have a medical director provided by the paramedic organization, or jointly with the supervising hospital, who shall be a physician who holds a currently valid unlimited license to practice medicine in Indiana and has an active role in the delivery of emergency care. The medical director is responsible for providing competent medical direction as established by the medical control committee. Upon establishment of a medical control policy, the paramedic organization medical director and the chief executive officer have the duty to enact the policy within the paramedic organization and accordingly enforce the policy. The duties and responsibilities of the medical director include, but are not limited to, the following:

- (1) Provide liaison with physicians and the medical community.
- (2) Assure that the drugs, medications, supplies, and equipment are available to the paramedic organization.
- (3) Monitor and evaluate day-to-day medical operations of paramedic organizations.
- (4) Assist in the provision and coordination of continuing education.
- (5) Provide information concerning the operation of the paramedic organization.
- (6) Provide individual consultation to paramedics.
- (7) Participate in at least quarterly audit and review of cases treated by paramedics of the ~~supervising hospital~~ **provider organization**.
- (8) Attest to the competency of paramedics affiliated with the paramedic organization to perform skills required of a paramedic under ~~836 IAC 2-6~~ **836 IAC 4-9-5**.
- (9) Establish protocols for advanced life support.
- (10) Establish and publish a list of medications, including minimum quantities and dosages to be carried on vehicle.

(f) The paramedic organization shall maintain a communications system that shall be available twenty-four (24) hours a day between the paramedic organization and the emergency department, or equivalent, of the supervising hospital using UHF (ultra high frequency) voice communications. The communications system shall be licensed by the Federal Communications Commission.

(g) Each paramedic organization shall do the following:

(1) Maintain an adequate number of trained personnel and emergency response vehicles to provide continuous, twenty-four (24) hour advanced life support services.

(2) Notify the commission in writing within thirty (30) days of assigning any individual to perform the duties and responsibilities required of a paramedic. This notification shall be signed by the provider organization and medical director of the provider organization.

(3) Notify the commission in writing within thirty (30) days of a paramedic's termination of employment or for any reason which prohibits a certified individual from performing the procedures required of a paramedic.

(h) Each ambulance used for the purpose of providing advanced life support services, when dispatched on an emergency run, shall be staffed by not less than two (2) persons, one

(1) of whom is certified as a paramedic and the other certified as an emergency medical technician pursuant to IC 16-31, except, if the ambulance is used in conjunction with a nonambulance vehicle certified by the commission for the provision of advanced life support, it shall be staffed by at least one (1) emergency medical technician certified pursuant to IC 16-31. However, each nontransport vehicle used for the purpose of providing advanced life support services when dispatched on an emergency run need only to be staffed, as a minimum, by a certified paramedic.

(i) When advanced life support services administered by paramedics at the scene of an accident or illness are continued en route to an emergency facility, as a minimum, the patient compartment of the ambulance shall be staffed by not less than one (1) person who is certified as a paramedic.

(j) The paramedic organization shall notify the commission in writing within thirty (30) days of any change in the services provided.

(k) No certification is required for the following:

(1) A person who provides advanced life support while assisting in the case of a major catastrophe or disaster, whereby persons who are certified to provide emergency medical services or advanced life support are insufficient or are unable to cope with the situation.

(2) An agency or instrumentality of the United States and any paramedics of such agency or instrumentality is not required to be certified nor to conform to the standards prescribed in this article.

(l) After proper notice and hearing, the commission may:

(1) levy penalties up to five hundred dollars (\$500) in accordance with 836 IAC 1-2-4 and 836 IAC 2-13-1; or

(2) suspend or revoke a certificate issued under this article for:

(A) fraud or misrepresentation in procuring certification;

(B) failure to comply and maintain compliance; or

(C) violation of any applicable provisions, standards, or other requirements of this article.

(m) The commission may initiate proceedings to levy fines up to five hundred dollars (\$500) in accordance with 836 IAC 1-2-4 and 836 IAC 2-13-1 or suspend or revoke a certificate upon its own motion or on the verified written complaint of any interested person, and all such proceedings shall be held and conducted in accordance with the provisions of IC 4-21.5.

(n) Notwithstanding the provisions of this article, the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a certificate without hearing for a period not to exceed ~~thirty (30)~~ **ninety (90)** days upon notice to the certificate holder.

(o) Upon suspension, revocation, or termination of a certificate, the provision of advanced life support services shall cease.

(p) The director may issue a provisional certification for the provision of advanced life support as a paramedic organization to an ambulance service provider certified pursuant to IC 16-31 only, or to an advanced emergency medical technician organization certified pursuant to IC 16-31, for the purpose of prehospital training of paramedic students when in the presence of a preceptor or preceptors approved by the commission, upon demonstration by the applicant to the satisfaction of the director that the ambulance to be used for such training is certified pursuant to IC 16-31 and meets the requirements of subsection (f) and section 3 of this rule, and that the ambulance service provider or advanced emergency medical technician organization has and shall maintain an adequate number of paramedic students, preceptors, and ambulances to provide continuous twenty-four (24) hour advanced life support service. Application for provisional certification shall be made on such forms as prescribed by the commission, which shall be fully completed. The director may issue a provisional certificate for a period not to exceed sixty (60) days beyond the date of the paramedic course completion as identified on the approved course application. However, the director shall not issue a provisional certificate for a period exceeding twenty-four (24) consecutive months from the starting date of the course as identified on the approved course application. The issuance of a temporary or full certification invalidates any provisional certification.

(q) The paramedic organization shall, with medical director and chief executive officer approval, allow a graduate of an Indiana approved paramedic course to perform advanced life support under the direction of a preceptor. This person shall be

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actively pursuing certification as an Indiana certified paramedic. This provision shall be limited from one (1) year from date of course completion as indicated on course report.

(r) Provide for a periodic maintenance program to assure that emergency response vehicles, including equipment, are maintained in good working condition and that strict sanitation procedures are in effect at all times.

(s) Paramedic organization premises, records, parking, or garaging facilities and response vehicles shall be available for inspection by the director, or the director's duly authorized representative, at any time during operating hours.

(t) Each paramedic organization shall have in force and effect public liability insurance in the sum as described in 836 IAC 1-2-3(g) pursuant to IC 16-31. Such proof of insurance shall be made on a form prescribed by the commission.

(u) Each nontransport vehicle used for the purpose of providing advanced life support services when dispatched on an emergency run need only to be staffed, as a minimum, by a certified paramedic. (*Indiana Emergency Medical Services Commission; Advanced Life Support Rule I, A; filed Jan 21, 1977, 11:30 a.m.: Rules and Regs. 1978, p. 200; filed Dec 15, 1977: Rules and Regs. 1978, p. 250; filed Nov 3, 1980, 3:55 p.m.: 3 IR 2216; filed Oct 13, 1981, 10:05 a.m.: 4 IR 2434; errata, 5 IR 400; filed Dec 2, 1983, 2:43 p.m.: 7 IR 364; errata, 7 IR 1254; filed Dec 13, 1985, 9:13 a.m.: 9 IR 1062; filed Aug 18, 1986, 1:00 p.m.: 10 IR 41; filed Oct 11, 1988, 11:05 a.m.: 12 IR 358; filed May 15, 1998, 10:25 a.m.: 21 IR 3892; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2733*)

SECTION 7. 836 IAC 2-4.1-2 IS AMENDED TO READ AS FOLLOWS:

### 836 IAC 2-4.1-2 Certification as a supervising hospital; renewal

Authority: IC 16-31-2-7  
Affected: IC 16-31-3

Sec. 2. Hospitals seeking commission certification shall meet the following minimum requirements:

(1) Have an emergency department open and staffed by a physician twenty-four (24) hours a day.

(2) The hospital's administration shall have approved a written contractual agreement, **or interdepartmental memo if hospital based**, with one (1) or more emergency medical services provider organizations that furnish advanced life support service. The contract shall include a detailed description of the following services to be provided by the hospital to the certified emergency medical service provider organization:

- (A) Continuing education.
- (B) Audit and review.
- (C) Medical control and direction.

(D) Provision of arrangements and the supervision of arrangements for the supply of medications and other items utilized by emergency medical service clinical personnel in the provision of advanced life support service.

(E) Provision and supervision of arrangements that allow the emergency medical services clinical personnel affiliated with the supervised emergency medical service provider to function within appropriate hospital departments in order to obtain continuing practice in their clinical skills.

(3) Provide and maintain a voice communication system between the emergency medical service provider organization response personnel and the hospital's emergency department. The communications system shall be licensed by the Federal Communications Commission.

(4) The hospital shall provide a physician or physician designate, authorized in writing by the hospital's medical staff, who is at all times immediately available to supervise the medical procedures performed by the emergency medical service provider organization's clinical personnel via the voice communication system.

(5) The hospital shall establish a process for the audit and review of medical procedure performed by the clinical personnel of the emergency medical service provider organization. **in order to Requirements for audit and review are as follows:**

(A) **The audit shall** ensure an appropriate level of compliance with medical protocols and appropriate level of skill in the performance of medical techniques by those personnel.

(B) **The results of the audit shall be reviewed with the emergency medical service personnel.**

(C) **Documentation for the audit shall include the following:**

(i) **The criteria used to select audited runs.**

(ii) **Problem identification and resolution.**

(iii) **Date of review.**

(iv) **Attendance at the review.**

(v) **A summary of the discussion at the review.**

(D) **The audit and review shall be conducted by the medical control committee as defined in subdivision (9).**

(6) The supervising hospital shall ~~do the following annually:~~ **(A) review and approve the in-service of the certified paramedics affiliated with the competency of the clinical personnel of the emergency medical services provider organization.**

~~(B) (7) Send a roster of clinical personnel affiliated whose sole advanced life support affiliation is with the supervising hospital. and emergency medical services provider organizations to the commission.~~

~~(7) (8) The supervising hospital shall report in writing any changes, including affiliated clinical personnel, within thirty (30) days.~~

~~(8) (9) The supervising hospital shall establish a medical control committee for audit and review of medical procedures perform by the advanced life support personnel and establish policies for medical direction and control. The membership~~

of the medical control committee shall be as follows:

- (A) Medical director of provider organization.
- (B) Emergency department supervisory personnel.
- (C) Provider organization supervisory personnel.
- (D) EMS educator.
- (E) Advanced life support personnel of appropriate level from provider organization.

*(Indiana Emergency Medical Services Commission; 836 IAC 2-4.1-2; filed May 15, 1998, 10:25 a.m.: 21 IR 3899; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2737)*

SECTION 8. 836 IAC 2-7.1-1 IS AMENDED TO READ AS FOLLOWS:

**Rule 7.1. Advanced EMT Provider Organizations; Requirements, Standards**

**836 IAC 2-7.1-1 General requirements for advanced emergency medical technician organizations**

**Authority:** IC 16-31-2-7  
**Affected:** IC 4-21.5; IC 16-31-3

Sec. 1. (a) The advanced emergency medical technician provider organization certification provides authority to perform skills set forth and approved by the commission for which certification is granted. The medical director may limit the skills according to local protocols.

(b) Certification by the commission is required for any ambulance service provider who seeks to provide advanced life support services as an advanced emergency medical technician organization unless provisional certification is issued pursuant to subsection (o).

(c) If the advanced emergency medical technician organization also provides transportation of emergency patients, the advanced emergency medical technician organization shall be certified as an ambulance service provider in accordance with the requirements specified in 836 IAC 1. The advanced emergency medical technician nontransport organization shall meet the requirements specified in 836 IAC 1-2-2(a), and 836 IAC 1-11-3(o) through 836 IAC 1-11-3(q).

(d) The advanced emergency medical technician organization shall ensure that:

- (1) the ambulances used are certified and meet the requirements specified in 836 IAC 1-3; and
- (2) all nontransport emergency medical services vehicles used for the provision of advanced life support meet all of the requirements required in 836 IAC 2-14.

(e) The advanced emergency medical technician organization shall have agreed by contract or interdepartmental memo if it is a hospital based organization with one (1) or more supervising hospitals for the following services:

- (1) Continuing education.
- (2) Audit and review.
- (3) Medical control and direction.
- (4) Liaison and direction for supply of intravenous fluids and other items utilized by advanced emergency medical technicians.
- (5) Provision to allow the advanced emergency medical technicians affiliated with the supervised advanced emergency medical technician organization to function within appropriate hospital departments in order to obtain continuing practice in their clinical skills.

The contract shall include a detailed description of how such services shall be provided to the advanced emergency technician organization. In those cases where more than one (1) hospital contracts, or seeks to contract with, an advanced emergency medical technician organization as a supervising hospital, an interhospital agreement shall be provided to the commission that shall clearly define the specific duties and responsibilities of each hospital to ensure medical and administrative accountability of system operation.

(f) The advanced emergency medical technician organization shall have a medical director provided by the advanced emergency medical technician organization, or jointly with the supervising hospital, who is a physician who

- (+) holds a currently valid unlimited license to practice medicine in Indiana and
- (=) has an active role in the delivery of emergency care.

The medical director is responsible for providing competent medical direction as established by the medical control committee and overall supervision of the medical aspect of the advanced emergency medical technician organization. Upon establishment of a medical control policy, the advanced emergency medical technician organization medical director and the chief executive officer have the duty to enact the policy within the advanced emergency medical technician organization and accordingly enforce the policy. The duties and responsibilities of the medical director include, but are not limited to, the following:

- (A) (1) Providing liaison with physicians.
- (B) (2) Assuring that appropriate intravenous solutions, supplies, and equipment are available to the advanced emergency medical technician organization.
- (C) (3) Monitor and evaluate day-to-day medical operation.
- (D) (4) Assist the supervising hospital in the coordination of in-service training programs.
- (E) (5) Provide information concerning the operation of the advanced emergency medical technician organization.
- (F) (6) Provide individual consultation to advanced emergency medical technicians.
- (G) (7) Assure continued competence of advanced emergency medical technicians affiliated with, or employed by, the advanced emergency medical technician organization.
- (H) (8) Participate in the quarterly audit and review of



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cases treated by advanced emergency medical technicians **of the provider organization.**

~~(9)~~ **(9)** Establish protocols for advanced life support.

~~(10)~~ **(10)** Establish and publish a list of intravenous fluids and administration supplies, including minimum quantities to be carried on the vehicle.

(g) Each advanced emergency medical technician organization shall:

(1) maintain an adequate number of trained personnel and emergency response vehicles to provide continuous twenty-four (24) hour advanced life support services;

(2) notify the commission in writing within thirty (30) days of assigning any individual to perform the duties and responsibilities required of an advanced emergency medical technician, and this notification shall be signed by the provider organization and medical director of the provider organization; and

(3) notify the commission in writing within thirty (30) days if an advanced emergency medical technician:

(A) terminates employment; ~~or~~

(B) **terminates** affiliation; or

(C) for any reason is prohibited from performing the procedures for which certification was granted.

(h) When advanced life support services administered by advanced emergency medical technicians at the scene of an accident or illness are continued en route to an emergency facility, as a minimum, the patient compartment of the ambulance shall be staffed by not less than one (1) person certified as an advanced emergency medical technician.

(i) The advanced emergency medical technician organization shall notify the commission in writing within thirty (30) days of any change in the advanced life support services provided for which certification was granted.

(j) No certification is required for the following:

(1) ~~For~~ A person who provides advanced life support while assisting in the case of a major catastrophe disaster whereby persons who are certified to provide emergency medical services or advanced life support are insufficient or are unable to cope with the situation.

(2) ~~For~~ An agency or instrumentality of the United States and any advanced emergency medical technicians of such agency or instrumentality **is are** not required to be certified nor to conform to the standards prescribed in this article unless the agency or instrumentality seeks to provide service to citizens of Indiana off of the federal area.

(k) After proper notice and hearing, the commission may:

(1) levy penalties up to five hundred dollars (\$500) in accordance with 836 IAC 1-2-4 and 836 IAC 2-13-1; or

(2) suspend or revoke a certificate issued under this article for:

(A) fraud or misrepresentation in procuring certification;

(B) failure to comply and maintain compliance with; or

(C) violation of any applicable provisions, standards, or other requirements of this article.

(l) The commission may initiate proceedings to suspend or revoke a certificate upon its own motion or on the verified written complaint of any interested person, and all such proceedings shall be held and conducted in accordance with IC 4-21.5.

(m) Notwithstanding the provisions of this article, the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a certificate without hearing for a period not to exceed ~~thirty (30)~~ **ninety (90)** days upon notice to the certificate holder.

(n) Upon suspension, revocation, or termination of a certificate, the provision of advanced life support services shall cease.

(o) The director may issue a provisional certification for the provision of advanced life support as an advanced emergency medical technician organization to an ambulance service provider certified pursuant to IC 16-31 for the purpose of prehospital training of advanced emergency medical technician students when in the presence of a preceptor approved by the commission upon demonstration by the applicant to the satisfaction of the director that:

(1) the ambulance to be used for such training is certified pursuant to IC 16-31 and meets the requirements of this article; and

(2) the ambulance service provider has and will maintain an adequate number of advanced emergency medical technician students, preceptors, and ambulances to provide continuous twenty-four (24) hour advanced life support service.

Application for provisional certification shall be made on forms as prescribed by the commission, which shall be fully completed. The director may issue a provisional certificate for a period not to exceed sixty (60) days beyond the date the advanced emergency medical technician course completion as identified on the approved course application. However, the director shall not issue a provisional certificate for a period exceeding six (6) consecutive months from the starting date of the course as identified on the approved course application. The issuance of certification invalidates any provisional certification.

(p) Provide for a periodic maintenance program to assure that:

(1) emergency response vehicles, including equipment, are maintained in good working condition; and

(2) applicable sanitation procedures are in effect at all times.

(q) Advanced emergency medical technician organization premises, records, parking, or garaging facilities and response vehicles shall be available for inspection by the director, or the director's duly authorized representative, at any time during operating hours.

(r) Each advanced emergency medical technician organization shall have in force and effect public liability insurance in the sum as described in 836 IAC 1-2-3(g) pursuant to IC 16-31. Such proof of insurance shall be made on a form prescribed by the commission.

(s) The advanced emergency medical technician organization shall maintain a communications system that shall be available twenty-four (24) hours a day between the advanced emergency medical technician organization and the emergency department, or equivalent, of the supervising hospital using voice communications. The communications system shall be licensed by the Federal Communications Commission.

(t) Each nontransport vehicle used for the purpose of providing advanced life support services when dispatched on an emergency run need only to be staffed, as a minimum, by a certified advanced emergency medical technician. (*Indiana Emergency Medical Services Commission; 836 IAC 2-7.1-1; filed Apr 6, 1988, 9:55 a.m.: 11 IR 2875; filed May 15, 1998, 10:25 a.m.: 21 IR 3904; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2738*)

SECTION 9. 836 IAC 4-7-3.5 IS ADDED TO READ AS FOLLOWS:

**836 IAC 4-7-3.5 Continuing education requirements**

Authority: IC 16-31-2-7  
Affected: IC 16-31-3

**Sec. 3.5. Advanced emergency medical technicians seeking certification renewal shall meet or exceed the minimum requirements in this section to maintain their certification. Concurrent emergency medical technician certification shall be maintained if the individual completes and reports to the commission fifty-six (56) hours of continuing education according to the following:**

- (1) Participate in a minimum of thirty-four (34) hours of any combination of lecture, critiques, skills proficiency examination, continuing education course, or teach sessions that review subject matter presented in the Indiana basic emergency medical technician curriculum.
- (2) Participate in a minimum of ten (10) hours of any combination of lecture, critiques, skills proficiency examination, or teaching sessions that review subject matter presented in the Indiana advanced emergency medical technician curriculum.
- (3) Participate in a minimum of twelve (12) hours of audit and review.
- (4) Participate in any update course as prescribed by the commission.
- (5) Successfully complete a proficiency evaluation that tests the skills presented in the Indiana basic emergency medical technician curriculum and the Indiana advanced emergency medical technician curriculum.

(*Indiana Emergency Medical Services Commission; 836 IAC 4-7-3.5*)

SECTION 10. 836 IAC 4-9-2.5 IS ADDED TO READ AS FOLLOWS:

**836 IAC 4-9-2.5 Inactive status for Indiana certified paramedic**

Authority: IC 16-31-2-7  
Affected: IC 16-31-3

**Sec. 2.5. (a) A paramedic requesting inactive paramedic status shall be currently certified in Indiana as a paramedic and be an individual who has previously recertified as a paramedic in Indiana at least one (1) time. The individual's certification must be in good standing with the commission at the time inactive status is granted. Applicants for inactive status do not have to be affiliated with a paramedic provider organization. Applicants wanting inactive status shall submit a request in writing to the commission.**

**(b) If a paramedic wants to keep an active emergency medical technician certification, the paramedic shall meet the requirements set forth in 836 IAC 4.4.**

**(c) Paramedics on inactive status must collect the following continuing education hours during the inactive period, and the continuing education hours must be reported to the commission prior to the expiration date of the certificate:**

- (1) Collect and report continuing education requirements listed in section 5(b)(1) through (5)(b)(3) of this rule.
- (2) Collect and report twelve (12) additional continuing education hours.

**(d) Paramedics with an inactive status wishing to return to active status must meet the following requirements:**

- (1) Comply with subsection (b) during inactive status.
- (2) Be affiliated with an Indiana certified paramedic provider organization or an Indiana certified paramedic supervising hospital by submitting a signed application for advanced life support.
- (3) Submit in writing a verified statement attesting to the applicants competency in skills listed in section 5(b)(5) of this rule signed by the paramedic provider medical director.

Upon completion of these requirements, the emergency medical technician certification will become active. (*Indiana Emergency Medical Services Commission; 836 IAC 4-9-2.5*)

SECTION 11. 836 IAC 4-10 IS ADDED TO READ AS FOLLOWS:

**Rule 10. Penalties**

**836 IAC 4-10-1 Penalties**

Authority: IC 16-31-3-14  
Affected: IC 4-21.5-3; IC 16-31-2-7; IC 16-31-2-9; IC 16-31-3-17; IC 16-31-10-1

**Sec. 1. (a) The commission or director may penalize a**

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## Proposed Rules

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person certified under this article, up to five hundred dollars (\$500) per occurrence for a violation of patient care standards, protocols, or rules established by the commission.

(b) A penalty may be imposed only after a hearing or the imposition of a penalty resulting from a hearing has been held by the commission, director, or the director's designee pursuant to IC 4-21.5-3.

(c) As used in this section, "per occurrence" means a violation of patient care standards, protocols, or rules established by the commission that remains uncorrected for each twenty-four (24) hour period after identification by the director or the director's designee.

(d) The director or commission may assess penalties up to five hundred dollars (\$500) per occurrence for the following violations:

- (1) Patient care standards or protocols.
- (2) Training requirements.
- (3) Individual certification requirements.
- (4) Failure to comply with this title.

(Indiana Emergency Medical Services Commission; 836 IAC 4-10-1)

### *Notice of Public Hearing*

*Under IC 4-22-2-24, notice is hereby given that on November 27, 2001 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 1, Indianapolis, Indiana the Indiana Emergency Medical Services Commission will hold a public hearing on proposed amendments concerning the certification of ambulance service providers. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Rooms E208 and E239 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Rodney Coats  
Chairman  
Indiana Emergency Medical Services Commission

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## TITLE 840 INDIANA STATE BOARD OF HEALTH FACILITY ADMINISTRATORS

**Proposed Rule**  
LSA Document #01-244

### DIGEST

Adds 840 IAC 1-3-2 to establish new fees charged and collected by the board. Repeals 840 IAC 1-3-1. Effective 30 days after filing with the secretary of state.

840 IAC 1-3-1

840 IAC 1-3-2

SECTION 1. 840 IAC 1-3-2 IS ADDED TO READ AS FOLLOWS:

840 IAC 1-3-2 Fees

Authority: IC 25-1-8-2; IC 25-19-1-8; IC 25-19-1-12

Affected: IC 25-19-1-5; IC 25-19-1-9

Sec. 2. (a) The board shall charge and collect the following fees:

Application for licensure	\$100
Application to repeat jurisprudence examination	\$100
Application to repeat national examination	\$50
License renewal	\$100 biennially
Provisional license	\$100
Preceptor application	\$50
Temporary permit	\$50
Verification of licensure	\$10
Duplicate wall license	\$10
Application for continuing education sponsorship	\$100
Continuing education sponsorship renewal	\$100 annually

(b) Applicants required to take the national examination for licensure shall pay a fee directly to a professional examination service in the amount set by the examination service. (Indiana State Board of Health Facility Administrators; 840 IAC 1-3-2)

SECTION 2. 840 IAC 1-3-1 IS REPEALED.

### *Notice of Public Hearing*

*Under IC 4-22-2-24, notice is hereby given that on December 4, 2001 at 10:55 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Indiana State Board of Health Facility Administrators will hold a public hearing on proposed new rules to establish fees charged and collected by the board. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W041 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Lisa R. Hayes  
Executive Director  
Health Professions Bureau

**TITLE 844 MEDICAL LICENSING BOARD OF  
INDIANA**

**Proposed Rule**  
LSA Document #01-245

DIGEST

Adds 844 IAC 6-2-2 concerning fees related to licensure as a physical therapist and certification as a physical therapist's assistant. Repeals 844 IAC 6-2-1. Effective 30 days after filing with the secretary of state.

**844 IAC 6-2-1**  
**844 IAC 6-2-2**

SECTION 1. 844 IAC 6-2-2 IS ADDED TO READ AS FOLLOWS:

**844 IAC 6-2-2 Fees**

Authority: IC 25-1-8-2; IC 25-27-1-5  
Affected: IC 25-27-1-7

**Sec. 2. (a) The board shall charge and collect the following fees:**

<b>Application for licensure/certification</b>	<b>\$100</b>
<b>Application to repeat national examination</b>	<b>\$50</b>
<b>License/certification renewal</b>	<b>\$100 biennially</b>
<b>Temporary permit</b>	<b>\$50</b>
<b>Verification of licensure/certification</b>	<b>\$10</b>
<b>Duplicate wall license/certification</b>	<b>\$10</b>

**(b) Applicants required to take the national examination for licensure shall pay a fee directly to a professional examination service in the amount set by the examination service. (Medical Licensing Board of Indiana; 844 IAC 6-2-2)**

SECTION 2. 844 IAC 6-2-1 IS REPEALED.

**Notice of Public Hearing**

*Under IC 4-22-2-24, notice is hereby given that on December 6, 2001 at 10:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Rooms 4 and 5, Indianapolis, Indiana the Medical Licensing Board of Indiana will hold a public hearing on proposed new rules concerning fees related to licensure as a physical therapist and certification as a physical therapist's assistant. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W041 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Lisa R. Hayes  
Executive Director  
Health Professions Bureau

**TITLE 844 MEDICAL LICENSING BOARD OF  
INDIANA**

**Proposed Rule**  
LSA Document #01-246

DIGEST

Adds 844 IAC 10-2-2 concerning fees related to licensure as an occupational therapist and certification as an occupational therapy assistant. Repeals 844 IAC 10-2-1. Effective 30 days after filing with the secretary of state.

**844 IAC 10-2-1**  
**844 IAC 10-2-2**

SECTION 1. 844 IAC 10-2-2 IS ADDED TO READ AS FOLLOWS:

**844 IAC 10-2-2 Fees**

Authority: IC 25-1-8-2; IC 25-23.5-2-5; IC 25-23.5-2-6  
Affected: IC 25-23.5-2; IC 25-23.5-5

**Sec. 2. (a) The board shall charge and collect the following fees:**

<b>Application for certification</b>	<b>\$100</b>
<b>Certification renewal</b>	<b>\$100 biennially</b>
<b>Temporary permit</b>	<b>\$50</b>
<b>Verification of certification</b>	<b>\$10</b>
<b>Duplicate wall certification</b>	<b>\$10</b>

**(b) Applicants required to take the national examination for licensure shall pay a fee directly to a professional examination service in the amount set by the examination service. (Medical Licensing Board of Indiana; 844 IAC 10-2-2)**

SECTION 2. 844 IAC 10-2-1 IS REPEALED.

**Notice of Public Hearing**

*Under IC 4-22-2-24, notice is hereby given that on December 6, 2001 at 10:35 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Rooms 4 and 5, Indianapolis, Indiana the Medical Licensing Board of Indiana will hold a public hearing on proposed new rules concerning fees related to licensure as an occupational therapist and certification as an occupational therapy assistant. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W041 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Lisa R. Hayes  
Executive Director  
Health Professions Bureau

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## Proposed Rules

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### TITLE 844 MEDICAL LICENSING BOARD OF INDIANA

#### Proposed Rule LSA Document #01-247

#### DIGEST

Adds 844 IAC 12-2-2 concerning fees related to certification as a hypnotist. Repeals 844 IAC 12-2-1. Effective 30 days after filing with the secretary of state.

#### 844 IAC 12-2-1

#### 844 IAC 12-2-2

SECTION 1. 844 IAC 12-2-2 IS ADDED TO READ AS FOLLOWS:

#### 844 IAC 12-2-2 Fees

Authority: IC 25-20.5-1-9  
Affected: IC 25-20.5-1

Sec. 2. The board shall charge and collect the following fees:

Application for certification	\$100, plus the cost of the examination
Examination	\$75
Application to repeat examination	\$100, plus the cost of the examination
Certification renewal	\$100 biennially
Verification of licensure	\$10
Duplicate wall license	\$10

(Medical Licensing Board of Indiana; 844 IAC 12-2-2)

SECTION 2. 844 IAC 12-2-1 IS REPEALED.

#### Notice of Public Hearing

*Under IC 4-22-2-24, notice is hereby given that on December 6, 2001 at 10:40 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Rooms 4 and 5, Indianapolis, Indiana the Medical Licensing Board of Indiana will hold a public hearing on proposed new rules concerning fees related to certification as a hypnotist. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W041 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Lisa R. Hayes  
Executive Director  
Health Professions Bureau

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### TITLE 856 INDIANA BOARD OF PHARMACY

#### Proposed Rule LSA Document #01-298

#### DIGEST

Adds 856 IAC 1-28.1 concerning institutional pharmacies and pharmacy services. Repeals 856 IAC 1-28. Effective 30 days after filing with the secretary of state.

#### 856 IAC 1-28

#### 856 IAC 1-28.1

SECTION 1. 856 IAC 1-28.1 IS ADDED TO READ AS FOLLOWS:

#### Rule 28.1. Institutional Pharmacies and Pharmacy Services

#### 856 IAC 1-28.1-1 Definitions

Authority: IC 26-26-13-4  
Affected: IC 16-42-19-5; IC 25-6-3-7; IC 25-26-13

Sec. 1. In addition to the definitions in IC 25-26-13-2 and for purposes of this rule, the following definitions apply throughout this rule:

(1) "Cabinet" includes a mechanical storage device for dispensing drugs. The term means a locked or secured enclosure located outside the pharmacy licensed area:

(A) to which only specifically authorized personnel may obtain access by key or combination available only to those authorized persons by:

(i) security code;

(ii) password; or

(iii) other method of positively identifying an individual; and

(B) that is sufficiently secure to deny access to unauthorized persons.

(2) "Cognitive services" means those acts and operations related to a patient's drug therapy that are judgmental in nature, based on knowledge, and derived from empirical factual information.

(3) "Consultant pharmacist" means a pharmacist licensed pursuant to IC 25-26-13-11 and who engages in the practice of pharmacy in or for long term care facility or other residential patients, other than as a supplying pharmacist.

(4) "Consulting" means the provision of nonsupply related cognitive services that include, but are not necessarily limited to, the following:

(A) Drug regimen review as defined in IC 25-26-13-2.

(B) Provision of advice and counsel on drugs, the selection and use thereof to the facility, the patients therein, the health care providers of the facility regarding the appropriateness, use, storage, handling, admin-

istration, and disposal of drugs within the facility.

(C) Participation in the development of policies and procedures for drug therapy within the institution, including storage, handling, administration, and disposing of drugs and devices.

(D) Assuring the compliance with all applicable laws, rules, and regulations.

(E) Provision of educational and drug information sources for the education and training of the facility health care professionals.

(F) Accepting responsibility for the implementation and performance of review of quality-related or sentinel events as defined in this rule.

(5) "Emergency drugs" means those drugs that:

(A) may be required to meet the immediate therapeutic needs of patients; and

(B) are not available from any other authorized source in sufficient time to prevent risk of harm to patients by delay resulting from obtaining such drugs from other sources.

(6) "Institutional facility" means any health care facility whose primary purpose is to provide a physical environment for patients to obtain health care services, except those places where practitioners, as defined by IC 16-42-19-5, who are duly licensed, engage in private practice and pharmacies licensed under IC 25-26-13-17.

(7) "Institutional pharmacy" means that portion of an institutional facility where pharmacy is practiced and is:

(A) the location of the selection, compounding, production, sale, storage, and distribution of drugs, devices, and investigational or new drugs used in the diagnosis and treatment of injury, illness, and disease pursuant to drug orders and prescriptions by practitioners; and

(B) licensed with the board under IC 25-6-3-7.

(8) "Performance improvement program" means a continuous, systematic review of key medication use processes to identify, evaluate, and improve medication use and patient care.

(9) "Pharmacist in charge" (by whatever title, for example, "pharmacy manager", "pharmacy director", or "director of pharmacy") means the pharmacist who directs the activities of the institutional pharmacy and who is, as such, responsible for:

(A) all activities of the institutional pharmacy; and

(B) meeting the requirements of:

(i) IC 25-26-13;

(ii) the rules of the board; and

(iii) any federal requirements pertaining to institutional pharmacies.

The qualifying pharmacist may, depending on the circumstances, also be the pharmacist in charge, though the pharmacist in charge is not required to be the qualifying pharmacist.

(10) "Policy and procedure manual" means a written document containing the agreed-to institutional rules of

operation and methodology for the effective delivery of pharmacy services.

(11) "Qualifying pharmacist" means the pharmacist who accepts responsibility for the operation of a pharmacy as defined in IC 25-26-13-2 and whose name is listed on the pharmacy permit granted under IC 25-26-13-17.

(12) "Quality-related event" means the inappropriate provision of pharmaceutical services whether or not resulting in an adverse health incident, including the following:

(A) A variation from the practitioner's order, including, but not limited to, the following:

(i) Dispensing an incorrect drug.

(ii) Dispensing an incorrect drug strength.

(iii) Dispensing an incorrect dosage form.

(iv) Dispensing a drug to a wrong patient.

(v) Providing inadequate or incorrect packaging, labeling, or directions.

(vi) Failing to provide an ordered drug.

(B) A failure to identify and manage:

(i) overutilization or underutilization;

(ii) therapeutic duplication;

(iii) drug-disease contraindications;

(iv) drug-drug interactions;

(v) incorrect drug dosage or duration of therapy;

(vi) drug-allergy interactions; or

(vii) clinical abuse and/or misuse.

(13) "Reversible condition" means a condition that requires intervention to resolve in a reasonable time.

(14) "Sentinel event" means an unexpected occurrence involving serious adverse effect, such as disability, life threatening condition, prolonged hospitalization, or death in a patient resulting from medication use.

(15) "Supplying pharmacist" means that pharmacist licensed in the state where the pharmacist is practicing and who is practicing in a supplying pharmacy (as defined in this rule) and who accepts responsibility for all aspects the drugs and devices sold (as defined in IC 25-26-13-2) or dispensed to a facility.

(16) "Supplying pharmacy" means a pharmacy licensed in the state where the pharmacy is located, and which provides drugs and devices to patients in long term care or other facilities where patients reside.

(17) "Temporary condition" means a condition that resolves in a reasonable time without intervention.

*(Indiana Board of Pharmacy; 856 IAC 1-28.1-1)*

**856 IAC 1-28.1-2 Purpose**

Authority: IC 26-26-13-4

Affected: IC 25-26-13-17

**Sec. 2.** The purpose of this rule is to set forth the responsibilities of pharmacists and pharmacies serving institutional and home health care patients. *(Indiana Board of Pharmacy; 856 IAC 1-28.1-2)*

## Proposed Rules

### 856 IAC 1-28.1-3 Applicability

Authority: IC 26-26-13-4  
Affected: IC 25-26-13-17

Sec. 3. This rule is applicable to pharmacies located:

- (1) within institutional facilities as defined in section 1 of this rule and classified as Type II pharmacies in IC 25-26-13-17; and
- (2) outside institutional facilities that serve institutionalized patients who are classified as Type III and Type VI pharmacies as in IC 25-26-13-17.

(Indiana Board of Pharmacy; 856 IAC 1-28.1-3)

### 856 IAC 1-28.1-4 Pharmacist in charge; responsibilities

Authority: IC 26-26-13-4  
Affected: IC 25-26-13-17

Sec. 4. The pharmacist in charge or an appropriate designee shall:

- (1) be responsible for establishing and carrying out a performance improvement program as defined in section 1 of this rule; and
- (2) develop or be responsible for development of a policies and procedures manual that shall be of sufficient scope and detail that pharmacists practicing in the institutional pharmacy will be able to practice effectively and safely.

(Indiana Board of Pharmacy; 856 IAC 1-28.1-4)

### 856 IAC 1-28.1-5 Policies and procedures manual

Authority: IC 26-26-13-4  
Affected: IC 25-26-13-17

Sec. 5. (a) The pharmacist in charge shall develop or be responsible for the development of a policies and procedures manual that shall be of sufficient scope and detail that pharmacists practicing in the institutional pharmacy will be able to practice effectively and safely.

(b) The manual required in this section shall be available for inspection by a member of the board or its representative.

(c) The policies and procedures manual shall contain, at a minimum, the following:

- (1) Provisions for a continuous quality improvement committee that shall be comprised of staff members of the pharmacy, including, but not necessarily limited to, the following:
  - (A) Pharmacists.
  - (B) Pharmacist interns or externs.
  - (C) Pharmacy technicians.
  - (D) Clerical or support staff.
  - (E) Other persons deemed necessary by the qualifying pharmacist.
- (2) Provisions for the pharmacist in charge or designee to ensure that the committee conducts a review of quality related events at least every three (3) months.

(3) A process to record, measure, assess, and improve quality of patient care.

(4) The procedure for reviewing quality related or sentinel events.

(Indiana Board of Pharmacy; 856 IAC 1-28.1-5)

### 856 IAC 1-28.1-6 Personnel

Authority: IC 26-26-13-4  
Affected: IC 25-26-13-17

Sec. 6. The qualifying pharmacist and/or the pharmacist in charge shall develop and implement, or cause to be developed and implemented, policies and procedures that specify duties to be performed by pharmacy technicians and other ancillary personnel. (Indiana Board of Pharmacy; 856 IAC 1-28.1-6)

### 856 IAC 1-28.1-7 Pharmacist's duties

Authority: IC 26-26-13-4  
Affected: IC 16-42-19-3; IC 25-26-13-2; IC 25-26-13-31; IC 25-26-16

Sec. 7. (a) Pursuant to authority granted in IC 25-26-13-2 and IC 25-26-13-31, the duties of the pharmacists practicing in the institutional pharmacy include, but are not limited to, the requirements in this section.

(b) The pharmacist practicing in an institutional pharmacy shall, at a minimum, do the following:

- (1) Obtain and maintain patient drug histories and drug profiles.
- (2) Perform drug evaluations, drug utilization review, drug regimen review, and drug therapy management under protocol approved by the medical staff of the institution and authorized by IC 25-26-16.
- (3) Interpret the drug order written by a practitioner in or transmitted to an institutional facility and either received in or subsequently transmitted to the pharmacy.
- (4) Be responsible for checking all drug orders within a maximum of twenty-four (24) hours, including those written during periods when the pharmacy is closed and orders are filled from sources, including emergency kits, drug cabinets, or the pharmacy as authorized under section 8(c) of this rule.
- (5) Be responsible for drug product selection of the item that will be used to fill the drug order that may be established either by policy or formulary pursuant to the institution's pharmacy and therapeutics committee or related committee.
- (6) Be responsible for determining the legality, completeness, and appropriateness of the drug order and product pursuant to IC 16-42-19-3.
- (7) Participate in drug or drug-related research.
- (8) Provide counseling, advising, and education of patients, patients' care givers, and health care providers and professionals on issues regarding drugs or drug therapy.

(9) Compound, label, administer, and dispense drugs or devices.

(10) Assess, record, and report quality related events as defined in this rule.

(11) Be responsible for storage and distribution of drugs and devices.

(12) Provide documentation in the medical record of the recommendations made related to the patient's therapeutic response to medication.

(13) Any other duties that shall from time to time be necessary for the proper operation of the institutional pharmacy.

(c) The consultant pharmacist shall, in addition to the duties in subsection (b), provide cognitive services as defined in this rule, including, at a minimum, the following:

(1) Drug regimen reviews as defined in IC 25-26-13-2.

(2) Offer advice and counsel to other health care providers as deemed appropriate regarding the pharmaceutical care of the patient.

(3) Develop or assist in the development of policies and procedures for the legal, safe, and effective means of handling, storing, and disposing of drugs and devices.

(4) Be responsible for assuring the safe and appropriate receipt, labeling, storage, and disposal of all drugs placed outside the pharmacy licensed area in emergency drug kits or other storage devices as authorized by law or rule.

*(Indiana Board of Pharmacy; 856 IAC 1-28.1-7)*

**856 IAC 1-28.1-8 Absence of pharmacist**

Authority: IC 26-26-13-4

Affected: IC 25-26-13-17

Sec. 8. (a) During such times as an institutional pharmacy is closed and unattended by a pharmacist, the drugs may be obtained for patient use as outlined in this section.

(b) Cabinets, including mechanical storage devices for dispensing drugs, are locked or secured enclosures located outside the pharmacy licensed area, to which only specifically authorized personnel may obtain access by key, combination, or security code, password, or other method of positively identifying an individual, and are sufficiently secure to deny access to unauthorized persons. The qualifying pharmacist and/or pharmacist in charge shall, in conjunction with the appropriate committee of the institutional facility, develop inventory listings of the drugs to be included in such cabinets and shall ensure the following:

(1) Such listed drugs, properly labeled, are available therein.

(2) Only prepackaged drugs (meaning that no repackaging is required at the time of removal for an individual patient's use) are available therein, in amounts sufficient for immediate therapeutic requirements for a period not to exceed twenty-four (24) hours.

(3) When drugs are used, a record is made to include a

written physician's order or accountability record.

(4) All drugs therein are reviewed by a pharmacist upon return to duty, not to exceed twenty-four (24) hours.

(5) There are written policies, procedures, and forms established to implement the requirements of this subsection.

(c) Whenever any drug is not available from floor supplies or cabinets, as defined in this section, and such drug is required to treat the immediate needs of a patient, such drug may be obtained from the pharmacy in accordance with the requirements of this subsection. One (1) supervisory licensed nurse in any given shift may have access to the pharmacy and may remove drugs therefrom. The qualifying pharmacist shall require that the removal of any drug from the pharmacy by an authorized nurse be recorded on a suitable form, which includes the name of the drug, strength, amount, date, time, and signature of nurse, and that a copy of the order shall be left with the form.

(d) Requirements for hospital emergency drug boxes, drug carts, emergency kits, emergency drug kits, crash carts, drug kits, or other storage method for emergency drugs are as follows:

(1) Pharmacy policy and procedures shall assure the:

(A) availability;

(B) control; and

(C) security;

of emergency drug carts, drug kits, or drug boxes in the pharmacy and patient care areas.

(2) Procedures shall include the following:

(A) Determination of drugs and quantities of drugs to be included.

(B) Labeling for expiration date.

(C) Process for restocking the cart, kit, or box.

(D) Security measures to prevent unauthorized access.

*(Indiana Board of Pharmacy; 856 IAC 1-28.1-8)*

**856 IAC 1-28.1-9 Emergency drug kits from Type III and Type VI pharmacies**

Authority: IC 26-26-13-4

Affected: IC 25-26-13-17; IC 35-38

Sec. 9. (a) Emergency drug kits supplied by pharmacies with a Type III or Type VI permit shall be in compliance with this section.

(b) All drugs in the emergency kit shall be provided and owned by a single supplying pharmacy.

(c) All drugs in the emergency drug kit shall be selected and approved by a committee whose membership includes, at a minimum, the following:

(1) The facility's consultant pharmacist.

(2) A licensed nurse.

(3) A physician (medical doctor or doctor of osteopathy).

(4) The facility administrator.



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(d) The selection process must identify drugs and quantities thereof in the emergency drug kit.

(e) The lists of drugs and quantities included in the emergency drug kit shall be reviewed as required periodically, but no less often than yearly.

(f) Labeling as follows:

(1) The exterior labeling of the emergency drug kit as described in this subsection shall contain, at a minimum, the following:

(A) Drug name (trade name, generic name, or active ingredients).

(B) Drug strength or size, if any.

(C) Quantity included therein.

(D) Expiration date of the kit as defined in this section.

(2) All drugs contained in the emergency drug kit as described in this section shall be labeled, at a minimum, with the following:

(A) Drug name (trade name, generic name, or active ingredients).

(B) Drug strength or size, if applicable.

(C) Name of the manufacturer, packer, or distributor.

(D) Lot number.

(E) Expiration date.

(g) The expiration date of the emergency drug kit, as required in subsection (f)(1)(D) shall be the earliest date of expiration of any of the drugs included in the kit at any time.

(h) All emergency kits subject to this subsection:

(1) shall be stored in a secure area, suitable for the prevention of unauthorized access to or diversion of the drugs therein;

(2) if controlled substances, as defined in IC 35-38, are stored in such a manner as to facilitate periodic reconciliation by the facility nursing staff, that reconciliation shall be recorded in an appropriate manner as determined by the committee described under this section; and

(3) all controlled substances contained in emergency drug kits shall remain the property of the supplying pharmacy and as such shall be included in the pharmacy's biennial inventory as required by 21 CFR 1303.04 and 21 CFR 1301.11.

(i) The nurse responsible for removing drugs from an emergency drug kit shall record or cause to be recorded, in a manner designated under subsection (h)(2), the following minimum information:

(1) Name of the patient.

(2) Name of the drug.

(3) Strength of the drug.

(4) Quantity removed.

(5) Date of removal.

(6) Time of removal.

(j) Removal of a controlled substance in Schedule II pursuant to an oral authorization from a practitioner shall be documented and the nurse accepting such authorization is responsible for compliance with 856 IAC 2-6-7 regarding prescription requirements for controlled substances in Schedule II.

(k) Removal of a controlled substance in Schedule III, IV, or V, pursuant to an oral authorization from a practitioner shall be documented and the nurse accepting such authorization is responsible for compliance with 856 IAC 2-6-12.

(l) Whenever an emergency kit is opened, for any reason, the supplying pharmacy shall be notified in a timely manner and the pharmacy shall restock if necessary, and reseal the kit promptly so as to prevent risk of harm to patients of the facility. (*Indiana Board of Pharmacy; 856 IAC 1-28.1-9*)

### 856 IAC 1-28.1-10 Security

Authority: IC 26-26-13-4

Affected: IC 25-26-13-17

Sec. 10. The pharmacy shall be capable of being secured against entry by key, combination, code, password, or other method developed that can positively identify an individual so as to prevent access by unauthorized personnel. (*Indiana Board of Pharmacy; 856 IAC 1-28.1-10*)

### 856 IAC 1-28.1-11 Performance improvement events, sentinel events, corrective and avoidance measures, review, records, and documentation

Authority: IC 26-26-13-4

Affected: IC 25-26-13-17

Sec. 11. (a) The pharmacist in charge shall, as a part of the pharmacy's performance improvement program, assure or be responsible for assuring that data are collected to:

(1) monitor the stability of existing medication use processes;

(2) identify opportunities for improvement; and

(3) identify changes that will lead to and sustain improvement.

(b) Identification of quality related or sentinel event as defined in section 1 of this rule shall be cause for:

(1) an intensive analysis of causal factors involved in the event; and

(2) plans for corrective actions.

(c) Records of all processes, analysis, and corrective measures instituted involving such pharmacy quality related or sentinel event shall be maintained for a period of not less than two (2) years.

(d) The committee created under section 5(c)(1) of this

rule shall, at a minimum, consider the effects on quality of the pharmacy system due to the following:

- (1) Staffing levels of both professional and technical personnel.
- (2) Workflow.
- (3) Use of technology.

(e) Requirements for documentation of performance improvement monitoring of medication use processes, confidentiality of records, summarization, and examination by the board shall be as follows:

- (1) Each quality related or sentinel event that occurs, or is alleged to have occurred, as the result of activities involving pharmacy operations, shall be documented in a written or electronic storage record created solely for that purpose.
- (2) The quality related or sentinel event shall be:
  - (A) initially documented by the pharmacist to whom it is first described; and
  - (B) recorded on the same day of its having been so described to the pharmacist.
- (3) Documentation shall include a description of the event that is of sufficient detail to permit analysis of the event.
- (4) The pharmacist in charge shall summarize, or cause to be summarized, efforts to improve the medication use process on a semiannual basis.
- (5) No patient names or employee names shall be included in this summary report.
- (6) This report shall be maintained for a period of not less than two (2) years.
- (7) The records created and maintained as a component of a pharmacy performance improvement program are confidential to the extent law permits. However, to assure compliance, the board or its representative may review the policies and procedures manual and a summarization of events described in subsection (b).

*(Indiana Board of Pharmacy; 856 IAC 1-28.1-11)*

**856 IAC 1-28.1-12 Drug distribution, storage, and accountability**

Authority: IC 26-26-13-4  
Affected: IC 25-26-13-17

Sec. 12. (a) All drugs and devices in pharmacies located within institutions shall be obtained and used in accordance with written policies and procedures that have been prepared or approved by the qualifying pharmacist or pharmacist in charge, and the medical staff who explain the:

- (1) selection;
- (2) distribution;
- (3) storage; and
- (4) safe and effective use of:
  - (A) drugs;
  - (B) new drugs;
  - (C) investigational new drugs; and

(D) devices;  
in the facility.

(b) The pharmacist in charge of the pharmacy located within an institution shall be responsible for the following:

- (1) The safe and efficient:
  - (A) distribution;
  - (B) control;
  - (C) storage; and
  - (D) accountability;

for all drugs and devices.

(2) The compliance with all applicable Indiana and federal laws and rules.

(c) Labeling requirements are as follows:

(1) All drugs, other than unit-of-use packages, dispensed by an institutional pharmacy, intended for use within the facility, shall be distributed in appropriate containers and adequately labeled so as to identify, at a minimum, the following:

- (A) Patient identification.
- (B) Brand name or generic name, or both.
- (C) Strength if applicable.
- (D) Route of administration.
- (E) Quantity.
- (F) Pharmacist's initials.
- (G) Location of the patient within the institution.

(2) Unit-of-use packages shall contain information to adequately label them, at a minimum, as follows:

- (A) Drug name (brand or generic, or both).
- (B) Strength, if applicable.
- (C) Control number and/or expiration date.

(3) All drugs dispensed by an institutional pharmacy to patients about to be discharged, or temporarily discharged, from institutions with Type III or Type IV permits, shall be labeled with the following minimum information:

- (A) Name, address, and telephone number of the institutional pharmacy.
- (B) Date and identifying serial number.
- (C) Name of patient.
- (D) Name of drug and strength (if applicable).
- (E) Directions for use by the patient and route of administration.
- (F) Name of prescribing practitioner.
- (G) Precautionary information if any contained in the prescription.

(d) Requirements for the disposition of discontinued or recalled drugs are as follows:

- (1) The qualifying pharmacist or pharmacist in charge shall be responsible for the development and implementation of policies and procedures for the return to the pharmacy of drugs and containers that are:
  - (A) discontinued, outdated, or recalled; or

## Proposed Rules

(B) in containers with worn, illegible, or missing labels; for proper disposition.

(2) The qualifying pharmacist or pharmacist in charge or his or her designee shall make proper disposition of such drugs at the storage site.

(e) The qualifying pharmacist or pharmacist in charge shall ensure that drugs are dispensed from the institutional pharmacy only upon authorized practitioner's:

- (1) written orders;
- (2) direct copies;
- (3) facsimiles thereof; or
- (4) electronically transmitted by other means and printed or displayed appropriately.

(f) Accountability requirements are as follows:

(1) The qualifying pharmacist or pharmacist in charge of an institutional pharmacy shall ensure that policies and procedures documenting the trail of:

- (A) controlled substances; and
- (B) such other drugs as may be specified by the appropriate committee of the institutional facility, from ordering and receiving by the pharmacy through administration or wastage of drug at the patient level.

(2) The qualifying pharmacist or pharmacist in charge shall be responsible for review of this process on a continual basis by review of:

- (A) proofs-of-use documentation; or
  - (B) other electronic documentation methodology.
- (3) At a minimum, the documentation process shall be able to identify the following:
- (A) The name of the drug.
  - (B) The dose.
  - (C) The patient's name.
  - (D) The date and time of administration to the patient.
  - (E) The identification of the individual administering.
  - (F) The record of aliquot portion destroyed, if any, and identification of witness.

(g) All records and reports that are required for pharmacy functions shall be maintained according to policies and procedures developed within the institution with the approval of the pharmacist in charge, for a period of not less than two (2) years. (*Indiana Board of Pharmacy; 856 IAC 1-28.1-12*)

### 856 IAC 1-28.1-13 Drug self-administration

Authority: IC 26-26-13-4  
Affected: IC 25-26-13-17

Sec. 13. Self-administration of drugs by patients of an institutional facility shall be permitted only if such use is specifically authorized by the treating or ordering physician and:

- (1) the patient's knowledge of self-administration has been evaluated; or

(2) the patient has received training in the proper manner of self-administration:

- (A) by a pharmacist; or
- (B) according to hospital policy; and

there is no risk of harm to the patient. (*Indiana Board of Pharmacy; 856 IAC 1-28.1-13*)

### 856 IAC 1-28.1-14 Patient's own medication

Authority: IC 26-26-13-4  
Affected: IC 25-26-13-17

Sec. 14. (a) An institutional pharmacy is prohibited from accepting and dispensing drugs that are brought into the institution by the patient, even if intended for use by that same patient. However, use of the patient's own medication may be permitted if:

(1) the patient or the patient's representative may maintain the patient's own medication:

- (A) at the bedside; or
- (B) for drugs with special storage requirements, including, but not limited to, refrigeration in an appropriate storage area in the patient care area under control of nursing personnel for appropriate administration to that patient only; and

(2) the nurses in charge of that patient's care shall witness the administration and maintain records of such use.

(b) If the patient or the patient's representative brings in medication part or all of which is still present at such time a patient expires, those drugs shall be delivered to the institutional pharmacy for appropriate destruction. Such drugs may not be turned over to the patient's representatives. This rule shall be made clear to the parties involved prior to the permission to use such medication. Patients who are discharged shall take with them their own medications brought to the institution under the terms of this section.

(c) In the event the patient is discharged and leaves drugs brought in under this section, either deliberately or inadvertently, such drugs shall be documented and stored at the appropriate nursing location for a maximum of seven (7) calendar days. If not claimed by the patient or the patient's agent within those seven (7) calendar days, the drugs so stored shall be destroyed as described in subsection (b). (*Indiana Board of Pharmacy; 856 IAC 1-28.1-14*)

### 856 IAC 1-28.1-15 Inspections

Authority: IC 26-26-13-4  
Affected: IC 16-42-3-3; IC 25-26-13-17

Sec. 15. The qualifying pharmacist or pharmacist in charge shall be responsible for the timely inspection of all areas where drugs are stored, used, or administered. The inspection can be carried out by qualified designee and appropriate records kept. The inspection shall verify, at a minimum, the following:

(1) Disinfectants and drugs solely for nontherapeutic external use are stored separately and apart from drugs for internal use or injection.

(2) Drugs requiring special storage conditions are appropriately stored to assure the drugs are not adulterated as described in IC 16-42-3-3.

(3) Drugs subject to deterioration are removed from any accessible location prior to the expiration date (manufacturer's or other such as required under 856 IAC 1-21) and disposed of appropriately.

(4) Emergency drugs designated by the institution are in adequate supply and are properly stored in the institution.

(5) All necessary and required security and storage standards are met.

(6) All pharmacy-related policies and procedures of the institution are complied with.

(Indiana Board of Pharmacy; 856 IAC 1-28.1-15)

SECTION 2. 856 IAC 1-28 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on December 10, 2001 at 9:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Indiana Board of Pharmacy will hold a public hearing on proposed new rules regarding institutional pharmacies and pharmacy services. Copies of these rules are now on file at the Health Professions Bureau, 402 West Washington Street, Room W041, Indianapolis, Indiana and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Lisa R. Hayes
Executive Director
Health Professions Bureau

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

NOTE: Under P.L.204-2001, SECTION 69, the name of the Indiana Alcoholic Beverage Commission is changed to Alcohol and Tobacco Commission, effective July 1, 2001.

Proposed Rule
LSA Document #01-13

DIGEST

Adds 905 IAC 1-29.5 to establish floor plans for proprietors that hold alcohol and tobacco commission dealer permits. Effective 30 days after filing with the secretary of state.

905 IAC 1-29.5

SECTION 1. 905 IAC 1-29.5 IS ADDED TO READ AS FOLLOWS:

Rule 29.5. Floor Plans; Pharmacy Permits

905 IAC 1-29.5-1 Definitions

Authority: IC 7.1-2-3-7

Affected: IC 7.1-1-3-20; IC 7.1-3-10-7; IC 25-26-13-7

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

(b) "Active security device" means the following:

(1) A ringer or other device that causes an audible alarm to sound when a person enters a liquor display area.

(2) An anti-theft label that means a label on a liquor container that, when passing through a label scanner, causes an audible alarm to sound if the container has not been paid for and the label deactivated.

(3) A security camera that means a camera installed by the permittee that records on videotape the activities of persons within the liquor display area.

(4) A security cap system for liquor containers that prevents the unauthorized removal of the cap without breaking the container.

(5) Any other suitable device approved by the commission.

(c) "Combo-store" means any permit premise that could qualify simultaneously for a grocery, pharmacy, restaurant, or any other combination of permits.

(d) "Commission" refers to the alcohol and tobacco commission created by IC 7.1.

(e) "Contained area" means a permanent or semipermanent partition or area with a minimum of five (5) foot high sides and incorporating a security line. Gondolas, shelving, and merchandise on pallets may serve as barriers, provided they meet the height requirements.

(f) "Liquor dealer permit" has the meaning set forth in IC 7.1-3-10-7.

(g) "Liquor display area" means that part of the licensed premises where liquor is displayed for sale to the public.

(h) "Passive security device" means the following:

(1) Employee training provided or approved by the Indiana excise police for the permittee's employees to prevent unlawful sales of alcoholic beverages.

(2) A computer or sales system that provides age restriction prompts and requires special input for ringing the sale of alcoholic beverages.

(3) Any other suitable device approved by the commission.

(i) "Pharmacy permit" means a permit for lawful operation of a drugstore or pharmacy issued by the Indiana board of pharmacy pursuant to IC 25-26-13-7.

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## Proposed Rules

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(j) "Security line" means a gate, chain, rope, or other device that prohibits or reasonably deters entry into the liquor display area during the times when sales of liquor are unlawful. (*Alcohol and Tobacco Commission; 905 IAC 1-29.5-1*)

### 905 IAC 1-29.5-2 Display of liquor

Authority: IC 7.1-2-3-7  
Affected: IC 7.1-1-3-20

Sec. 2. (a) All initial floor plans must be approved by the commission before the permit is released.

(b) Any changes in floor plans must have prior approval by the commission.

(c) All floor plans must abide by the following qualifications:

- (1) They must identify area where alcoholic beverages will be displayed for sale.
- (2) They must include signage addressing age and hour of sale limitations.
- (3) They must describe the product management agreement between the retail permit holder and the wholesalers as required by 905 IAC 1-5.2-15.

(d) In reviewing floor plans, the commission may consider the following:

- (1) The amount of space dedicated to the sale of alcoholic beverages, with a preference for floor plans that have few, limited areas dedicated to the sale of alcoholic beverages.
- (2) The proximity of alcoholic beverages to the entrance and exits of the facility.
- (3) The proximity of alcoholic beverages to items that could be incompatible with the sale of alcoholic beverages, including breakfast food and products marketed primarily to juveniles.
- (4) The location of alcoholic beverages and their relationship to security measures taken by the permit premises, including one-way mirrors, cameras, security guards, and supervision.

(e) The floor plan does not have to include the display of alcoholic beverages cross marketed with other items provided:

- (1) the alcoholic beverages so displayed are not for sale; and
- (2) they are not displayed with products incompatible with the sale of alcohol, such as breakfast food and products marketed primarily to juveniles.

(f) In the event the pharmacy is part of a combo-store, all liquor shall be displayed in a contained area within fifty (50) feet of the parameter of the pharmacy counter. In no event may the contained area be located in that part of the combo-store that, if segregated, would not qualify for a liquor dealers permit. Examples of such areas include

grocery areas, restaurant areas, clothing areas, pet store areas, and hardware areas.

(g) Each display shall have one (1) active or two (2) passive security devices.

(h) The area containing alcoholic beverages shall be conspicuously marked and include signage about age requirements and hours to purchase alcohol.

(i) This section does not prohibit putting beer and wine in separate areas, provided they conform with applicable laws, rules, and regulations. (*Alcohol and Tobacco Commission; 905 IAC 1-29.5-2*)

### 905 IAC 1-29.5-3 Sale of alcohol

Authority: IC 7.1-2-3-7  
Affected: IC 7.1-1-3-20

Sec. 3. (a) If a premises is a combo-store, then alcoholic beverages may only be sold when a licensed pharmacist is on duty.

(b) Any and all alcohol sales shall be deemed permissible wherever pharmacy sales are made unless the premises is a combo-store. If the premises is a combo-store, liquor sales may only be made through a register that is either in or attached to the pharmacy area. (*Alcohol and Tobacco Commission; 905 IAC 1-29.5-3*)

### 905 IAC 1-29.5-4 Liquor containers

Authority: IC 7.1-2-3-7  
Affected: IC 7.1-1-3-20

Sec. 4. All liquor containers that hold less than three hundred seventy-five (375) milliliters shall be maintained behind the check out counter or in a display case. (*Alcohol and Tobacco Commission; 905 IAC 1-29.5-4*)

### 905 IAC 1-29.5-5 Applicability

Authority: IC 7.1-2-3-7  
Affected: IC 7.1-1-3-20

Sec. 5. (a) This rule supersedes any contrary nonrule policies of the commission addressing the floor plan requirements of premises that hold pharmacy permits and liquor dealer permits.

(b) Local boards are prohibited from seeking to impose more restrictive floor plan or security requirements on premises operating under liquor dealer permits than are contained in this rule.

(c) Permittees who fall under this rule must come into compliance with this rule within three hundred sixty-five (365) days of their next application for renewal. (*Alcohol and Tobacco Commission; 905 IAC 1-29.5-5*)

**Notice of Public Hearing**

*Under IC 4-22-2-24, notice is hereby given that on November 27, 2001 at 9:00 a.m., at the Indiana Government Center-South, 302 W. Washington Street, Room E112, Indianapolis, Indiana the Alcohol and Tobacco Commission will hold a public hearing on proposed new rules to establish floor plans for proprietors that hold alcohol and tobacco commission dealer permits. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E114 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Mary DePrez  
Chairman  
Alcohol and Tobacco Commission

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**TITLE 905 ALCOHOL AND TOBACCO COMMISSION**

*NOTE: Under P.L.204-2001, SECTION 69, the name of the Indiana Alcoholic Beverage Commission is changed to Alcohol and Tobacco Commission, effective July 1, 2001.*

**Proposed Rule**  
LSA Document #01-255

**DIGEST**

Adds 905 IAC 1-45 to establish rules that an alcohol and tobacco commission permittee cannot sell alcoholic beverages below the permittee's actual cost of that product. Effective 30 days after filing with the secretary of state.

**905 IAC 1-45**

SECTION 1. 905 IAC 1-45 IS ADDED TO READ AS FOLLOWS:

**Rule 45. Selling of Alcoholic Beverages Below Cost**

**905 IAC 1-45-1 Selling of alcoholic beverages below cost**

Authority: IC 7.1-2-3-7  
Affected: IC 7.1-3

**Sec. 1. (a) A permittee may not sell alcoholic beverages for off-premises consumption at a price lower than the permittee's cost of the beverages unless provided for elsewhere in this rule.**

**(b) The cost of the beverages shall be determined by the most recent invoice.**

**(c) A permittee may sell alcoholic beverages for off-premises consumption at a price lower than the permittee's cost of the beverages, subject to prior approval of the**

**alcohol and tobacco commission and subject to limitations, if the:**

- (1) wholesaler provides documentation that the product is no longer manufactured;**
- (2) wholesaler provides documentation that the product will no longer be sold in Indiana; or**
- (3) retailer provides documentation that the product has not sold at a price equal to the cost of the beverages.**

*(Alcohol and Tobacco Commission; 905 IAC 1-45-1)*

**Notice of Public Hearing**

*Under IC 4-22-2-24, notice is hereby given that on November 27, 2001 at 9:00 a.m., at the Indiana Government Center-South, 302 West Washington Street, Room E112, Indianapolis, Indiana the Alcohol and Tobacco Commission will hold a public hearing on a proposed new rule to establish rules that an alcohol and tobacco commission permittee cannot sell alcohol beverages below the permittee's actual cost of that product. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E114 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Mary DePrez  
Chairman  
Alcohol and Tobacco Commission

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**TITLE 905 ALCOHOL AND TOBACCO COMMISSION**

*NOTE: Under P.L.204-2001, SECTION 69, the name of the Indiana Alcoholic Beverage Commission is changed to Alcohol and Tobacco Commission, effective July 1, 2001.*

**Proposed Rule**  
LSA Document #01-256

**DIGEST**

Adds 905 IAC 1-46 to establish rules to prohibit the alcohol and tobacco commission from giving letters of extension to permittees that have pending violation citations against their permits under certain terms and conditions. Effective 30 days after filing with the secretary of state.

**905 IAC 1-46**

SECTION 1. 905 IAC 1-46 IS ADDED TO READ AS FOLLOWS:

**Rule 46. Issuance of Letters of Extension Prohibited**

**905 IAC 1-46-1 Issuance of letters of extension prohibited**

Authority: IC 7.1-2-3-7; IC 7.1-3-3-5; IC 7.1-5-5-7  
Affected: IC 7.1-3-3-5

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## Proposed Rules

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**Sec. 1. (a)** The alcohol and tobacco commission (commission) shall not grant letters of extension to permittees who have pending violation citations against their permit unless the prosecutor agrees to the extension.

**(b)** The commission may grant an extension over the prosecutor's objection by majority vote. (*Alcohol and Tobacco Commission; 905 IAC 1-46-1*)

### Notice of Public Hearing

*Under IC 4-22-2-24, notice is hereby given that on November 27, 2001 at 9:00 a.m., at the Indiana Government Center-South, 302 West Washington Street, Room E112, Indianapolis, Indiana the Alcohol and Tobacco Commission will hold a public hearing on a proposed new rule to prohibit the alcohol and tobacco commission from giving letters of extension to permittees that have pending violation citations against their permits under certain terms and conditions. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E114 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Mary DePrez  
Chairman  
Alcohol and Tobacco Commission

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### TITLE 905 ALCOHOL AND TOBACCO COMMISSION

*NOTE: Under P.L.204-2001, SECTION 69, the name of the Indiana Alcoholic Beverage Commission is changed to Alcohol and Tobacco Commission, effective July 1, 2001.*

**Proposed Rule**  
LSA Document #01-258  
DIGEST

Adds 905 IAC 1-48 to establish rules requiring permittees, in all instances involving off-premises sales not conducted in a package store, to obtain proper legal identification from persons seeking to purchase alcoholic beverages. Allows certain specific exceptions. Effective 30 days after filing with the secretary of state.

#### 905 IAC 1-48

SECTION 1. 905 IAC 1-48 IS ADDED TO READ AS FOLLOWS:

#### Rule 48. Obtaining Proof of Age Required; Exceptions

#### 905 IAC 1-48-1 Obtaining proof of age required; exceptions

**Authority:** IC 7.1-2-3-7  
**Affected:** IC 7.1-1-3-7; IC 7.1-5-7

**Sec. 1. (a)** All sales for off-premises consumption shall require proper legal identification from persons seeking to purchase alcoholic beverages to determine that the person is twenty-one (21) years of age or older.

**(b)** The requirements of subsection (a) shall not be deemed necessary if the permittee's clerk has actual knowledge that the person attempting to purchase alcoholic beverages is twenty-one (21) years of age or older or if the clerk has articulable facts to believe that the person is twenty-eight (28) years of age or older. (*Alcohol and Tobacco Commission; 905 IAC 1-48-1*)

### Notice of Public Hearing

*Under IC 4-22-2-24, notice is hereby given that on November 27, 2001 at 9:00 a.m., at the Indiana Government Center-South, 302 West Washington Street, Room E112, Indianapolis, Indiana the Alcohol and Tobacco Commission will hold a public hearing on proposed new rules to require permittees, in all instances involving off-premises sales not conducted in a package store, to obtain proper legal identification from persons seeking to purchase alcoholic beverages and to allow certain specific exceptions. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E114 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Mary DePrez  
Chairman  
Alcohol and Tobacco Commission

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### TITLE 905 ALCOHOL AND TOBACCO COMMISSION

*NOTE: Under P.L.204-2001, SECTION 69, the name of the Indiana Alcoholic Beverage Commission is changed to Alcohol and Tobacco Commission, effective July 1, 2001.*

**Proposed Rule**  
LSA Document #01-259

DIGEST

Adds 905 IAC 1-49 to establish rules for grocery stores holding Indiana alcohol and tobacco commission permits. Would require beer and wine to be confined to a dedicated aisle and any changes in floor plans would be required to be approved by the alcohol and tobacco commission. Conspicuous signage regarding alcohol and tobacco commission law on underage sales would be required. Permittees would be required to come into complete compliance of this rule within 365 days of the next application for an alcoholic beverage permit. Effective 30 days after filing with secretary of state.

905 IAC 1-49

SECTION 1. 905 IAC 1-49 IS ADDED TO READ AS FOLLOWS:

Rule 49. Floor Plans for Holders of Beer and Wine Dealer Permits for Grocery Stores

905 IAC 1-49-1 Floor plans for holders of beer dealer permits

Authority: IC 7.1-2-3-7
Affected: IC 7.1

Sec. 1. (a) All initial floor plans must be approved by the alcohol and tobacco commission (commission) before the permit is released.

(b) Any changes in floor plans must have prior approval by the commission.

(c) All floor plans must abide by the following qualifications:

- (1) They must identify area where alcoholic beverages will be displayed for sale.
(2) They must include signage addressing age and hour of sale limitations.
(3) They must describe the product management agreement between the retail permit holder and the wholesalers as required by 905 IAC 1-5.2-15.
(4) If the permit premises qualifies as a combo-store, all beer and wine must be displayed for sale within the perimeter of the store that qualifies as a grocery store.

(d) In reviewing floor plans, the commission may consider the following:

- (1) The amount of space dedicated to the sale of alcoholic beverages, with a preference for floor plans that have few, limited areas dedicated to the sale of alcoholic beverages.
(2) The proximity of alcoholic beverages to the entrance and exits of the facility.
(3) The proximity of alcoholic beverages to items that could be incompatible with the sale of alcoholic beverages, including breakfast food and products marketed primarily to juveniles.
(4) The location of alcoholic beverages and their relationship to security measures taken by the permit premises, including one-way mirrors, cameras, security guards, and supervision.

(e) The floor plan does not have to include the display of alcoholic beverages cross marketed with other items provided:

- (1) the alcoholic beverages so displayed are not for sale; and
(2) they are not displayed with products incompatible

with the sale of alcohol, such as breakfast food and products marketed primarily to juveniles.

(Alcohol and Tobacco Commission; 905 IAC 1-49-1)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on November 27, 2001 at 9:00 a.m., at the Indiana Government Center-South, 302 West Washington Street, Room E112, Indianapolis, Indiana the Alcohol and Tobacco Commission will hold a public hearing on a proposed new rule for grocery stores holding Indiana alcohol and tobacco commission permits, and would require beer and wine to be confined to a dedicated aisle and any changes in floor plans would be required to be approved by the alcohol and tobacco commission. Conspicuous signage regarding alcohol and tobacco commission law on underage sales would be required. Permittees would be required to come into complete compliance of this rule within 365 days of the next application for an alcoholic beverage permit. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E114 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Mary DePrez
Chairman
Alcohol and Tobacco Commission

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

NOTE: Under P.L.204-2001, SECTION 69, the name of the Indiana Alcoholic Beverage Commission is changed to Alcohol and Tobacco Commission, effective July 1, 2001.

Proposed Rule
LSA Document #01-260

DIGEST

Adds 905 IAC 1-50 to establish a rule giving the alcohol and tobacco commission authority, under IC 7.1-5, to cite a permittee who is delinquent in the remittance of sales tax revenue to the Indiana department of revenue in a timely manner. Effective 30 days after filing with the secretary of state.

905 IAC 1-50

SECTION 1. 905 IAC 1-50 IS ADDED TO READ AS FOLLOWS:

Rule 50. Issuance of Citations for Sales Tax Delinquencies

905 IAC 1-50-1 Issuance of citations for sales tax delinquencies

Authority: IC 7.1-2-3-7
Affected: IC 7.1-3-21-15



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## Proposed Rules

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**Sec. 1. The alcohol and tobacco commission shall have the authority to issue a citation for violation to a permittee who is delinquent in the remittance of sales tax revenue to the Indiana department of revenue.** (*Alcohol and Tobacco Commission; 905 IAC 1-50-1*)

### Notice of Public Hearing

*Under IC 4-22-2-24, notice is hereby given that on November 27, 2001 at 9:00 a.m., at the Indiana Government Center-South, 302 West Washington Street, Room E112, Indianapolis, Indiana the Alcohol and Tobacco Commission will hold a public hearing on a proposed new rule giving the alcohol and tobacco commission authority, under IC 7.1-5, to cite a permittee who is delinquent in the remittance of sales tax revenue to the Indiana department of revenue in a timely manner. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E114 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Mary DePrez  
Chairman  
Alcohol and Tobacco Commission

**Sec. 1. The alcohol and tobacco commission shall have the authority to issue a citation for violation to a permittee who is delinquent in the remittance of property tax revenue to the county treasurer.** (*Alcohol and Tobacco Commission; 905 IAC 1-51-1*)

### Notice of Public Hearing

*Under IC 4-22-2-24, notice is hereby given that on November 27, 2001 at 9:00 a.m., at the Indiana Government Center-South, 302 West Washington Street, Room E112, Indianapolis, Indiana the Alcohol and Tobacco Commission will hold a public hearing on a proposed new rule giving the alcohol and tobacco commission authority, under IC 7.1-5, to cite a permittee who is delinquent in the remittance of property tax revenue to the treasurer of the county in which a permit is located in a timely manner. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E114 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Mary DePrez  
Chairman  
Alcohol and Tobacco Commission

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### TITLE 905 ALCOHOL AND TOBACCO COMMISSION

*NOTE: Under P.L.204-2001, SECTION 69, the name of the Indiana Alcoholic Beverage Commission is changed to Alcohol and Tobacco Commission, effective July 1, 2001.*

#### Proposed Rule LSA Document #01-261

#### DIGEST

Adds 905 IAC 1-51 to establish a rule giving the alcohol and tobacco commission authority, under IC 7.1-5, to cite a permittee who is delinquent in the remittance of property tax revenue to the treasurer of the county in which a permit is located in a timely manner. Effective 30 days after filing with the secretary of state.

#### 905 IAC 1-51

SECTION 1. 905 IAC 1-51 IS ADDED TO READ AS FOLLOWS:

#### Rule 51. Issuance of Citations for Property Tax Delinquencies

#### 905 IAC 1-51-1 Issuance of citations for property tax delinquencies

Authority: IC 7.1-2-3-7  
Affected: IC 7.1-3-21-15

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### TITLE 905 ALCOHOL AND TOBACCO COMMISSION

*NOTE: Under P.L.204-2001, SECTION 69, the name of the Indiana Alcoholic Beverage Commission is changed to Alcohol and Tobacco Commission, effective July 1, 2001.*

#### Proposed Rule LSA Document #01-262

#### DIGEST

Adds 905 IAC 1-52 implements new provisions of IC 7.1-3-1-28, which went into effect July 1, 2001, to identify requirements for type, size, and form of and location of posting notice signs, availability and cost of said signs, also the period of time and location of posting said signs and proof of posting that must be provided to the commission. Effective 30 days after filing with the secretary of state.

#### 905 IAC 1-52

SECTION 1. 905 IAC 1-52 IS ADDED TO READ AS FOLLOWS:

#### Rule 52. Posting Signs Authorized by IC 7.1-3-1-20

#### 905 IAC 1-52-1 Posting signs authorized by IC 7.1-3-1-20

Authority: IC 7.1-2-3-7  
Affected: IC 7.1

**Sec. 1. (a) Said sign shall be posted in a manner sufficient in a window or other area of applicant's location, so that it is visible from the largest public thoroughfare, or the nearest public thoroughfare in the vicinity of the applicant's location. If there is no building or structure on which to post sign, the sign may be either attached to a stake or stakes or other similar method to properly post notification.**

**(b) The sign must be posted for not less than twenty-one (21) days before the applicant or permittee's scheduled local board date and until the local board votes on the application.**

**(c) Signs used in compliance with this rule shall be either prepared by the alcohol and tobacco commission (commission), or be preapproved by the commission. The commission shall charge a fee for signs prepared by the commission in an amount that does not exceed cost of the sign rounded to the nearest dollar. (*Alcohol and Tobacco Commission; 905 IAC 1-52-1*)**

***Notice of Public Hearing***

*Under IC 4-22-2-24, notice is hereby given that on November 27, 2001 at 9:00 a.m., at the Indiana Government Center-South, 302 West Washington Street, Room E112, Indianapolis, Indiana the Alcohol and Tobacco Commission will hold a public hearing on a proposed new rule to implement new provisions of IC 7.1-3-1-28, which went into effect July 1, 2001, to identify requirements for type, size, and form of and location of posting notice signs, availability and cost of said signs, also the period of time and location of posting said signs and proof of posting that must be provided to the commission. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E114 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Mary DePrez  
Chairman  
Alcohol and Tobacco Commission

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