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## Proposed Rules

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### TITLE 50 STATE BOARD OF TAX COMMISSIONERS

#### Proposed Rule LSA Document #01-366

#### DIGEST

Amends the 50 IAC 2.3-1-2 to update the date for the matters incorporated by reference as a result of changes to be made to the shelter allowance for Brown County from \$16,000 to \$20,200. Effective 30 days after filing with the secretary of state.

#### 50 IAC 2.3-1-2

SECTION 1. 50 IAC 2.3-1-2, AS ADDED AT 24 IR 3016, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

#### 50 IAC 2.3-1-2 Incorporation by reference

Authority: IC 4-22-2-21; IC 6-1.1-4-26; IC 6-1.1-31; IC 6-1.1-35-1  
Affected: IC 6-1.1

Sec. 2. (a) As used in this article, "2002 Real Property Assessment Manual" refers to the 2002 Real Property Assessment Manual, published by the state board of tax commissioners and dated ~~May 10, 2001~~ **January 1, 2002**.

(b) As used in this article, "Real Property Assessment Guidelines for 2002-Version 'A'" refers to the Real Property Assessment Guidelines for 2002-Version 'A', published by the state board of tax commissioners and dated ~~May 10, 2001~~ **January 1, 2002**. The Real Property Assessment Guidelines for 2002-Version 'A' are Exhibit 1 to the 2002 Real Property Assessment Manual.

(c) The 2002 Real Property Assessment Manual and Real Property Assessment Guidelines for 2002-Version 'A' is incorporated by reference under the authority of IC 4-22-2-21(a)(3). (*State Board of Tax Commissioners; 50 IAC 2.3-1-2; filed May 23, 2001, 4:01 p.m.: 24 IR 3016*)

#### Notice of Public Hearing

*Under IC 4-22-2-24, notice is hereby given that on January 30, 2002 at 2:00 p.m., at the Brown County Annex, Old School Way Road, Nashville, Indiana the State Board of Tax Commissioners/Department of Local Government Finance will hold a public hearing on proposed amendments to change the Brown County shelter allowance specified in the 2002 Real Property Assessment Manual, and the Real Property Assessment Guidelines for 2002-Version 'A', both incorporated by reference under 50 IAC 2.3. 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/Department of Local Government Finance also encourages any interested party who has concerns, suggestions, or proposed revisions to contact Lisa Acobert, State Board of Tax Commissioners/Department of Local Government Finance, at (317) 233-1495. 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

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### TITLE 210 DEPARTMENT OF CORRECTION

#### Proposed Rule LSA Document #01-358

#### DIGEST

Amends 210 IAC 1-6 concerning the collection, maintenance, and release of offender and juvenile records. Adds 210 IAC 1-10 to establish standards for the offender tort claim process. Amends 210 IAC 5 concerning release authority for juveniles. Effective 30 days after filing with the secretary of state.

210 IAC 1-6-1	210 IAC 1-6-7
210 IAC 1-6-2	210 IAC 1-10
210 IAC 1-6-3	210 IAC 5-1-1
210 IAC 1-6-4	210 IAC 5-1-2
210 IAC 1-6-5	210 IAC 5-1-3
210 IAC 1-6-6	210 IAC 5-1-4

SECTION 1. 210 IAC 1-6-1 IS AMENDED TO READ AS FOLLOWS:

#### Rule 6. Collection, Maintenance, and Release of Offender and Juvenile Records

#### 210 IAC 1-6-1 Definitions

Authority: IC 11-8-5-2  
Affected: IC 4-1-6; IC 11-8-5-1

Sec. 1. **The following** definitions ~~Data Subject~~ shall mean an individual about whom personal information is indexed or may be located under his name, personal number, or other identifiable particulars in a personal information system. For record keeping purposes of the Department of Correction the data subject shall be referred to as an "offender". **apply throughout this article:**

- (1) "Department" ~~shall mean~~ means the department of correction.
- (2) "Juvenile" means a person who is adjudged delinquent by a juvenile court and committed to and under the legal control of the department.

(3) "Offender" shall mean a person means an adult committed to and under the legal control of the department This shall include probationers whose records are handled through the interstate compact administrator in the department. (See Data Subject) for committing a criminal offense.

(4) "Official record" shall mean means the record prepared and maintained by the department for each offender and juvenile received into the actual physical care and custody of the department. and which provides the source of all The record shall include, but is not limited to, written, printed, or mimeographic electronic materials, documents, or data pertaining to services, program, programs, and all other official actions performed on behalf of that offender or juvenile. These records are identified by the same offender or juvenile name as received on the commitment order, and are assigned a department number as an identifier, and compiled and maintained as part of an offender/juvenile packet.

*(Department of Correction; Offender Records, Art I; filed Jul 30, 1979, 2:25 p.m.: 2 IR 1199)*

SECTION 2. 210 IAC 1-6-2 IS AMENDED TO READ AS FOLLOWS:

**210 IAC 1-6-2 Classification of information**

Authority: IC 11-8-5-2  
Affected: IC 11-8-5-2

Sec. 2. ~~Classification.~~ The department shall collect, maintain, and use only that offender or juvenile personal information that is relevant and necessary to accomplish the statutory purpose purposes of the agency. All offender or juvenile information collected and retained by the department shall be identified according to classified in the following classifications manner:

(A) (1) Unrestricted information shall include only information pertaining to the an offender which that is considered by law or court order as to be public information. Certain information normally considered restricted or confidential may be considered unrestricted or public information if there is a compelling public interest consistent with the conditions set forth in IC 4-1-6-1: in disclosure. Unrestricted information is accessible by any person, with the exception of offenders to whom the information does not pertain, upon specific written request.

(2) Restricted information shall include, but is not limited to, the following:

- (A) Education, medical, sex offender, substance abuse, disciplinary, criminal, or employment records.
- (B) Finger and voice prints.
- (C) Photographs.
- (D) Institutional summaries.
- (E) Psychiatric and psychological reports.
- (F) Social history reports.
- (G) Progress reports.
- (H) Educational and vocational reports.

(B) (3) Confidential information shall include, personal or private information concerning the offender including, but is not limited to, his education, medical history, criminal or employment records, finger and voice prints, photographs of his presence, institutional summaries, social history reports, progress reports, educational, vocational and the following:

- (A) Offender diagnostic reports. Confidential information shall, also, include medical, psychiatric and psychological reports;
- (B) Criminal intelligence information. and information of clinical reports emanating from an approved drug or substance abuse program consistent with prevailing law or promulgated regulations.
- (C) Information that, if disclosed, might result in physical harm to that person or other persons.
- (D) Information obtained upon promise of confidentiality.
- (E) Internal investigation information.

All juvenile records shall be considered confidential. Any other information required by law or promulgated rule to be maintained as confidential.

(4) All offender information obtained from other agencies, organizations, or sources shall be held to the same degree of confidentiality as that designated by the generating source.

*(Department of Correction; Offender Records, Art II; filed Jul 30, 1979, 2:25 p.m.: 2 IR 1199)*

SECTION 3. 210 IAC 1-6-4 IS AMENDED TO READ AS FOLLOWS:

**210 IAC 1-6-4 Inspection rights of offenders and juveniles**

Authority: IC 11-8-5-2  
Affected: IC 4-1-6-3; IC 4-1-6-8

Sec. 4. Right of Inspection by an Offender: (a) An offender or a person designated in writing by an offender as his or her agent may inspect those portions of the offender's own official record classified as confidential with the following exceptions:

(1) Medical, psychological, psychiatric data, or clinical data produced as a consequence of the offender's involvement in a substance abuse program; may not be released to the offender or his agent. These records may be released to a physician, psychologist or psychiatrist designated in writing by the offender.

(2) Criminal intelligence information including reports or statements of witnesses concerning institutional conduct or conduct while on parole wherein appear names of or identifying information concerning witnesses may be withheld consistent with provisions in law. Information so classified shall be subject to periodic review by the official responsible for the maintenance of these records to determine if grounds still exist for their retention.

unrestricted and restricted.

(b) An offender or a person designated in writing by an offender as his or her agent may inspect his or her official record consistent with the following:

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(1) The requestor shall provide proper identification upon request to the person authorizing the release.

(2) If the requestor is other than the offender, the request shall be accompanied by **and** a notarized statement by **signed release from** the offender identifying the person acting as his or her agent **and specifying the documents to be released.**

(3) ~~An offender~~ **(2) A person** committed to or under the legal control of the department or on probation to a court may not act as an offender's or juvenile's agent. If doubt exists as to the identity of the offender's or juvenile's agent or the validity of the release, the offender or juvenile shall be contacted for verification when possible.

(4) **(3)** If the offender's ~~notarized letter of signed~~ release is not on file with the institution or facility or is not presented upon making the request, the requestor shall be advised that he or she may obtain such consent from the offender or file a formal request for access **records** with the department. The requestor shall be advised in the event the request is denied to direct the appeal to the executive director as appropriate, **deputy commissioner** of the adult or Youth Authority **operations**, who shall notify the requestor of his or her decision within thirty (30) days. If the executive director **deputy commissioner** disapproves the request, an appeal may be taken within thirty (30) days to the commissioner of ~~Corrections;~~ **the department** who shall review the request and notify the requestor of his or her decision within thirty (30) days.

(c) The above restrictions do not preclude access by authorized department personnel who have an official interest in an offender's records as a consequence of statutory functions or responsibilities of the department. **Juveniles may not have access to their own records or the records of other juveniles or offenders. Juvenile records may be released to a parent or legal guardian or a legal representative of the juvenile, parent, or legal guardian, upon specific written request unless the release of such record or records is contrary to the health, welfare, or safety of the juvenile. The cost of copying records under this section shall be assessed to the requestor and shall be consistent with approved schedules. In the event a request for access to records is denied, the requestor shall be advised to direct his or her appeal to the deputy commissioner of juvenile services, who shall notify the requestor of his or her decision within thirty (30) days. If the deputy commissioner disapproves the request, an appeal may be taken within thirty (30) days to the commissioner of the department, who shall review the request and notify the requestor of his or her decision within thirty (30) days.** (*Department of Correction; Offender Records, Art IV; filed Jul 30, 1979, 2:25 p.m.: 2 IR 1200*)

SECTION 4. 210 IAC 1-6-5 IS AMENDED TO READ AS FOLLOWS:

### 210 IAC 1-6-5 Challenge of information by offender; investigation; change of record

Authority: IC 11-8-5-2

Affected: IC 4-1-6-5

Sec. 5. Challenge of Information by the Offender. (A) The An offender must give a notice to the department that he wishes to **may** challenge, correct, or explain information contained within his or her record **in accordance with IC 4-1-6-5.**

(B) The challenge must pertain to specific documents and/or issues within that record:

(C) An investigation shall be made under the authorization of the facility or division head to determine the status or content of such reports as alleged by the challenger. The investigator shall determine if the reports challenged are properly a part of the record and in fact do contain the elements that are challenged and ascertain the source of the challenged information:

(D) If the challenged data was generated or received by other sources than the department, the offender should then be advised to direct his request to change or delete such information to the contributing agency, and the offender in turn should be advised of the last known address of the contributing agency or person:

(E) If after such an investigation, such information is found to be incomplete, inaccurate, not pertinent, not timely or not necessary to be retained for statutory responsibilities or related services, it shall be promptly corrected or deleted from the offender's record:

(F) When such a change in the record does occur each division or facility holding or retaining a duplicate record of such information shall be advised to correct those copies or duplicates accordingly:

(G) If a dispute concerning information in an offender record is not resolved by the investigation the offender shall be so notified and must be advised that he may file a statement of not more than two hundred (200) words setting forth his position:

(H) If there is an addition, deletion or statement of offender's position, the department official responsible for maintaining that record shall then advise the offender of any previous recipient and supply the previous recipient a copy of the addition, deletion or offender's statement of position, in accordance with provisions of IC 4-1-6-5:

The department official notifying any previous recipient shall require an acknowledgement that the additions, deletions or offender's statement of position has been received: (*Department of Correction; Offender Records, Art V; filed Jul 30, 1979, 2:25 p.m.: 2 IR 1200*)

SECTION 5. 210 IAC 1-6-6 IS AMENDED TO READ AS FOLLOWS:

**210 IAC 1-6-6 Access to information**

Authority: IC 11-8-5-2

Affected: IC 4-1-6-8; IC 4-1-6-8.6

Sec. 6. ~~Access to or Release of Confidential Information to Persons Other than the Offender or His Agent:~~ (a) Courts and personnel authorized by a court shall have access to the department's offender records consistent with the following:

(1) All ~~specific~~ court orders pertaining to ~~individual documents or the entire offender record records~~ shall cause the record, in whole or part, as appropriate, **such records** to be copied or released by the ~~record records~~ supervisor immediately pursuant to ~~those orders: the terms of the court order, including the following:~~

(A) The record repository shall reflect in a manner prescribed by the department the whereabouts of records so removed and when they were removed and the name of the employee authorizing the transfer of the record from the department to the court.

(B) No offender record or documents contained therein shall be altered or omitted prior to or during the transmittal of the official record to the court.

~~(2) Probation officers preparing pre-sentence reports shall have access to an offender's record but may not remove the record from the immediate record storage area. Copies of the record may be made available consistent with price schedules approved by the Department of Administration. Probation officers may have access to "confidential" sections of the offender's record excluding medical, psychological, or psychiatric data; or clinical data produced as a consequence of the offender's involvement in a substance abuse program; and criminal intelligence information in the absence of a specific court order.~~

~~(3)~~ (2) If access to an offender's record was granted under compulsory legal process other than that initiated by the offender, himself, reasonable effort shall be made to notify the offender prior to release of the information.

(b) ~~Attorneys~~ **An attorney** representing ~~offenders an offender~~ may have access to ~~an offender's file a client's records~~ consistent with the following procedures:

(1) If the attorney is requesting a review and copies of the official record as the offender's agent, then the attorney is to be charged for the cost of reproductions consistent with approved schedules.

(2) The attorney may have access to ~~all confidential material~~ **unrestricted and restricted information** in the offender's record ~~except medical, psychological or psychiatric data; or clinical data produced as a consequence of the offender's involvement in a substance abuse program. These records may be released to a physician, psychologist or psychiatrist designated in writing by to the same extent as the offender.~~

(3) Access by an attorney to ~~the confidential section of records in the packet official record~~ shall occur if be accompanied by a court order to that effect: **specifying the documents to be released.**

(4) An attorney representing an offender may designate in writing a physician, psychologist, or psychiatrist to whom confidential medical, psychological, or psychiatric information may be released.

(5) In the absence of a specific court order to the contrary a charge shall be made for reproductions of records requested by an attorney consistent with approved schedules. In the event the request is made by the Public Defender's Office at the State level such charges may be "I.D." (Inter-Departmental) billed consistent with established procedures for such billing.

(c) Release to a person or agency providing a lawful service **on behalf of the department, or** related to or on behalf of ~~the~~ **an offender or juvenile** shall be limited to those documents related to the service performed and shall include confidential **and restricted** information consistent with ~~these rules~~ **this rule** or ~~unless as otherwise prohibited~~ **permitted** by law, **including the following:**

(1) Upon release of such information or the providing of duplicate copies, the material shall be clearly marked as to how the information is classified.

(2) A record shall be made by the ~~record records~~ supervisor of all such inspections noting the **following:**

(A) The requestor's name, agency, or function represented.

(B) The purpose of the request.

(C) The date access was granted. ~~and~~

(D) The name of the person granting access.

This record shall be then made a part of the offender's record.

(3) Such access shall be limited to law enforcement agencies performing a criminal investigation or agencies providing a lawful service to the ~~agency department~~ or offender **or juvenile** wherein the direct benefit to the offender **or juvenile** is clearly indicated **and in response to a written request.**

(d) ~~Release to persons other than the offender, his agent or attorney of information~~ **Unless otherwise previously specified in this rule, release of offender records** shall be restricted to information classified as "Public Information" **unrestricted and all juvenile records shall be held confidential** unless there is a compelling public interest in releasing specific portions of the material classified **restricted or** confidential. Such a request shall be immediately forwarded to the division ~~head~~ or facility ~~head~~ responsible for ~~the~~ keeping of these records for the final decision to release information so classified. A written notice of such a release shall be incorporated into the offender's **or juvenile's** record in the same manner prescribed in the prior section.

(e) **All authorized department personnel or contract**

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personnel who have an official interest in an offender's or juvenile's records as a consequence of statutory functions or department responsibilities, delegated or otherwise, shall have appropriate access to offender and/or juvenile records. (*Department of Correction; Offender Records, Art VI; filed Jul 30, 1979, 2:25 p.m.: 2 IR 1201*)

SECTION 6. 210 IAC 1-6-7 IS AMENDED TO READ AS FOLLOWS:

### 210 IAC 1-6-7 Research purposes; request for access to information

Authority: IC 11-8-5-2  
Affected: IC 4-1-6-8.6

Sec. 7. ~~Disclosures of Offender Information for Research Purposes.~~ All requests for access to offender records to provide for research shall be made known to the appropriate Executive Director of the Department of Correction **director of planning services** in written form. Such requests shall include the name of the agency or organization performing the research, the names of the staff persons directly responsible for **the following**:

- (1) Conducting such research.
- (2) The purpose of such research.
- (3) How the research is to be performed. ~~and~~
- (4) What measures will be taken to assure the proper protection of classified information.

Approval of such requests will then be granted or denied consistent with provisions of IC 4-1-6-8.6 **and department procedures.** (*Department of Correction; Offender Records, Art VII; filed Jul 30, 1979, 2:25 p.m.: 2 IR 1202*)

SECTION 7. 210 IAC 1-10 IS ADDED TO READ AS FOLLOWS:

### Rule 10. Offender Tort Claim Process

#### 210 IAC 1-10-1 Personal property tort claims

Authority: IC 34-13-3-7  
Affected: IC 34-13-3

Sec. 1. (a) This rule applies only to those tort claims filed by offenders either currently committed to the department and confined in a department facility or who were committed to and confined in the department and who have alleged a loss of personal property due to actions or omissions by the department.

(b) Only those claims where an offender is attempting to recover compensation, either monetary compensation or replacement of property, for the loss of personal property are subject to this rule. This loss must be alleged to have occurred during the offender's confinement as a result of an act or omission of the department or any of its agents, officers, employees, or contractors. For the purpose of this rule, "personal property" means any property that offenders are allowed to possess, excluding state-issued property

and contraband, in accordance with the department's administrative procedures for Policy 02-01-101, "offender personal property". (*Department of Correction; 210 IAC 1-10-1*)

#### 210 IAC 1-10-2 Time limit for filing a claim

Authority: IC 34-13-3-7  
Affected: IC 34-13-3

Sec. 2. An offender must file a claim pursuant to this rule no later than one hundred eighty (180) days after the date of the alleged loss. Claims filed after this time frame has elapsed shall not be considered and shall be returned to the offender. (*Department of Correction; 210 IAC 1-10-2*)

#### 210 IAC 1-10-3 Claim filing

Authority: IC 34-13-3-7  
Affected: IC 34-13-3

Sec. 3. (a) In those cases where an offender alleges that the department or its agents have lost, damaged, or destroyed personal property belonging to the offender, the offender may file a claim for compensation. The offender shall complete the NOTICE OF LOSS OF PROPERTY-TORT CLAIM form. Each facility shall ensure that copies of this form are made available in the offender law library, offender housing units, or other suitable location. The offender also may obtain this form from his or her counselor.

(b) The offender will be required to complete this form by providing as much information as possible when describing the item lost and the manner in which it was lost. The offender is to attach any supporting documents or information to this form. When the form is completed, the offender is to submit the form to the facility head's office. The offender shall also send a copy of the claim, including all supporting documents, to the department's Tort Claim Administrator, Division of Legal Services, Indiana Government Center-South, 302 West Washington Street, E334, Indianapolis, Indiana 46204. (*Department of Correction; 210 IAC 1-10-3*)

#### 210 IAC 1-10-4 Claim investigation

Authority: IC 34-13-3-7  
Affected: IC 34-13-3

Sec. 4. (a) The facility head shall designate a staff person to act as the facility's tort claims investigator. The tort claims investigator shall have access to all areas of the facility in order to investigate claims and make recommendations for settlement if applicable.

(b) The duties of the facility tort claims investigator shall include the following:

- (1) Receiving the NOTICE OF LOSS OF PROPERTY-TORT CLAIM form from the facility head.
- (2) Reviewing this form and any accompanying documentation.

(3) Investigating the claim made by the offender, including the following:

- (A) Interviewing staff and the offender as necessary.
- (B) Reviewing all pertinent documents, including personal property inventories, or commissary requests.
- (C) Completing any other actions necessary to be able to make a recommendation on the claim.

(4) Making a recommendation concerning the settlement of the claim and complete the tort claims investigator's section of the RECOMMENDATION ON TORT CLAIM form.

(5) Submitting the RECOMMENDATION ON TORT CLAIM form to the department's tort claims administrator.

(6) Meeting with the offender to discuss proposed settlement of claim as applicable.

(7) Meeting with offender after receipt of settlement from attorney general's office and advise as to settlement of claim and complete all necessary paperwork.

(8) Maintaining files of all property loss tort claims filed by offenders at the facility.

*(Department of Correction; 210 IAC 1-10-4)*

**210 IAC 1-10-5 Claim administration**

Authority: IC 34-13-3-7

Affected: IC 34-13-3

Sec. 5. (a) The commissioner of the department shall appoint a staff person within the division of legal services to act as the tort claims administrator for all claims regarding loss of property by offenders. This staff person shall report to the director of the division of legal services.

(b) The duties of the tort claims administrator shall include the following:

- (1) Receiving copies of the NOTICE OF LOSS OF PROPERTY-TORT CLAIM form submitted by offenders.
- (2) Assigning a sequential case number to each notice received.
- (3) Advising the facility tort claims investigator and the offender as to the case number assigned to the claim.
- (4) Receiving copies of the RECOMMENDATION ON TORT CLAIM form from the facility tort claims investigator.
- (5) Reviewing all documents and forms received from the offender and the facility tort claims investigator.
- (6) Requesting additional information from the facility or the offender, as necessary.
- (7) Making a recommendation to the office of the attorney general concerning settlement of the claims, including the following:
  - (A) Completing the AMENDMENT TO TORT CLAIM form in cases where the claim appears appropriate but the amount requested is not correct.
  - (B) Forwarding the AMENDMENT TO TORT CLAIM form to the facility tort claims investigator as necessary.

(C) Receiving the completed AMENDMENT TO TORT CLAIM form from the facility tort claims investigator.

(D) Completing the tort claims administrator section of the RECOMMENDATION ON TORT CLAIM form.

(8) Submitting all documentation to the office of the attorney general for final review and action.

(9) Maintaining a file on all property loss tort claims filed in the department.

(10) Serving as the department liaison with the office of the attorney general for property loss tort claims.

*(Department of Correction; 210 IAC 1-10-5)*

**210 IAC 1-10-6 Office of the attorney general**

Authority: IC 34-13-3-7

Affected: IC 34-13-3

Sec. 6. The office of the attorney general shall receive the recommendation and documentation submitted by the department's tort claims administrator. In acting upon the claim, staff assigned by the attorney general shall consider the recommendation of the department to determine whether to deny the claim or make a recommendation to the governor for approval to make payment. All payments of claims shall be made in accordance with applicable statutes governing the payment of tort claims. *(Department of Correction; 210 IAC 1-10-6)*

**210 IAC 1-10-7 Claim settlement**

Authority: IC 34-13-3-7

Affected: IC 34-13-3

Sec. 7. (a) The attorney general shall submit all checks for payment of property loss claims to the tort claims administrator. The tort claims administrator shall record the check amount and make a copy of the check. The tort claims administrator then shall send the check to the tort claims investigator of the facility housing the offender.

(b) The tort claims investigator shall meet with the offender and advise the offender that the claim has been settled and the amount of the settlement. The investigator shall have the offender sign all necessary documents indicating acceptance and receipt of the settlement. Following the acceptance of the settlement by the offender, the tort claims investigator shall give the check to the designated staff in the facility's business office to be placed in the offender's inmate trust fund account.

(c) In those cases where the offender has been released from the department prior to the settlement of the claim, the tort claims administrator may mail the check to the offender at the address provided with the NOTICE OF LOSS OF PROPERTY-TORT CLAIM form, to the offender's parole agent for delivery or to the offender's last known address. The administrator shall make a record that the payment was received, including a copy of the check,

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indicate that the check was mailed, the address to which the check was mailed, and the date. The administrator shall request that the claimant return the signed receipt form. When the receipt is received, the administrator shall forward it to the office of the attorney general. (*Department of Correction; 210 IAC 1-10-7*)

SECTION 8. 210 IAC 5-1-1 IS AMENDED TO READ AS FOLLOWS:

### ARTICLE 5. RELEASE AUTHORITY FOR JUVENILES

#### Rule 1. Release Procedure

##### 210 IAC 5-1-1 Definitions; administrative procedures

Authority: IC 11-13-6-2

Affected: IC 11-8-2-5; IC 11-13-6

Sec. 1. (a) The following definitions and administrative procedures shall be applicable in the operation of the ~~parole~~ releasing authority for juveniles:

(1) "Administrative review committee" shall be comprised of four (4) members. The chairman shall be the holding facility superintendent. The other three (3) members shall be administrative designees representing the facility treatment program, education program, and custody department.

"Commissioner" means the chief executive of the department.

(2) "Chairperson" means the chairperson of the juvenile parole administrative review committee or the community supervision revocation committee.

(3) "Commissioner" means the chief executive of the department.

(4) "Commitment" means an order of a juvenile court placing a juvenile offender in the care, custody, and wardship of the department of correction.

(5) "Community supervision" means the conditional release of a juvenile before the time of a mandatory and unconditional discharge from a commitment.

(6) "Community supervision revocation committee" means the juvenile parole committee made up of the commissioner's designee as chairperson and two (2) members appointed by the facility superintendent. The committee is responsible for conducting community supervision revocation hearings.

(7) "Community supervision revocation hearing" means a formal hearing afforded by the department to determine if a violation of the conditions of community supervision has occurred.

(8) "Community supervision violation" means noncompliance to a condition of community supervision by the juvenile.

(9) "Community supervision violator" means a juvenile who has violated a condition of community supervision.

(10) "Department" means the department of correction.

(11) "Director, juvenile transition program" means the person responsible for the day-to-day casework monitoring for all juveniles in the community and approval of all special conditions of the community supervision release agreement, designated by the commissioner to release all juveniles from contract facilities.

(12) "Discharge" means an unconditional release of an offender a juvenile from a commitment.

(13) "Field staff" means department employees who provide supervision to juveniles in the community.

(14) "Hearing officer" means the administrative officer who conducts a preliminary hearing.

~~"Offender"~~ (15) "Juvenile" means a delinquent offender, juvenile, which is a person who is adjudged delinquent by a juvenile court and committed to the department of correction. This definition shall be deemed to include status offenders juveniles.

"Parole" means the conditional release of an offender to community supervision before the time of a mandatory and unconditional discharge from a commitment.

"Parole revocation hearing" means a formal hearing afforded an offender by the department to determine if a violation of the conditions of parole has occurred.

"Parole violation" means non-compliance to a condition of parole by an offender.

"Parole violator" means an offender who has violated a condition of parole.

(16) "Placement" means the place of residence of the juvenile upon release.

(17) "Preliminary hearing" means a hearing to determine whether probable cause exists to believe that a violation of a parole community supervision condition has occurred.

"Regular parole applicant" means an offender who has completed all institutional requirements as approved by the commissioner.

(18) "Review" means a hearing granted by the parole committee to an offender administrative review committee for a juvenile who has not met institutional criteria for release recommendation.

"Special parole applicant" means an offender who has completed all institutional requirements as approved by the commissioner, but who was committed to the department for an offense against a person.

(b)(+) The requirements for the administrative review committee shall be as follows:

(1) The administrative review committee shall be comprised of three (3) four (4) members. The chairperson shall be from the parole services section facility superintendent or designee and the other two (2) three (3) members shall be from the institution where the committee is meeting: education department, treatment department, and custody department as designated by the commissioner.

(2) The commissioner administrative review committee shall appoint the chairperson; and the superintendent of the

institution shall appoint the institutional members: **make all decisions relating to release to community supervision.**

(3) The committee shall make all decisions relating to:

- (A) parole release;
- (B) parole revocation;
- (C) discharge from parole;
- (D) discharge from commitment.

(4) (3) All decisions of the parole **administrative review** committee shall be by majority vote: **unanimous.**

(5) (4) The **administrative review** committee shall meet in accordance with a schedule approved by the chairperson.

*(Department of Correction; 210 IAC 5-1-1; filed Apr 17, 1985, 9:45 a.m.: 8 IR 1125)*

SECTION 9. 210 IAC 5-1-2 IS AMENDED TO READ AS FOLLOWS:

**210 IAC 5-1-2 Release recommendation by the facility; committee criteria for granting release**

Authority: IC 11-13-6-2

Affected: IC 11-8-2-5; IC 11-8-5; IC 11-13-6

Sec. 2. (a) **Institutional Facility** criteria shall be as follows:

(1) **General requirements:** Criteria for parole selection **community supervision** shall be based on the following:

- (A) The committing offense. **institutional**
- (B) **Facility** adjustment. **and**
- (C) Achievement of treatment goals established according to the offender's **juvenile's** individual **risk and** needs.

The treatment staff shall assist the offender in setting goals and shall review the offender's **juvenile's** progress at regular intervals. Upon completion of **institution/facility facility** requirements as approved by the **institution/facility facility** head, the offender **juvenile** shall be recommended for **parole community supervision** consideration to the department of correction parole committee for juveniles: **facility administrative review committee.**

(2) **Early release recommendations:** The institution/facility head, as guardian of the offender, may, upon the recommendation of the treatment staff, or at his own discretion, recommend an offender for release prior to the offender completing the general requirements.

(3) **Special parole applicants (offenses against person):** The same criteria for release shall be utilized for all offenders. However, offenders who have committed an offense against a person shall be interviewed by the juvenile parole committee, which will make a decision regarding the offender's release.

(4) (2) **Requirements for discharge from commitment shall be as follows:**

A recommendation for discharge from commitment shall not be made to the parole committee unless the offender has attained the age of eighteen (18) at the time of recommendation. However, an offender may be recommended for discharge from commitment prior to attaining the age of eighteen (18); if special circumstances exist.

(A) **Determinate sentence juveniles shall be discharged by the administrative review committee in accordance with their sentence.**

(B) **Juveniles who are at least eighteen (18) years of age may be considered for community supervision or discharge as determined by the administrative review committee.**

(b) **Parole committee criteria:** (1) **Institutional adjustment:** The parole applicant's overall adjustment in the institution including, but not limited to, academic progress, completion of treatment goals, work/study performance, and adherence to rules and regulations governing offenders:

(2) **Past offense record:** The parole committee shall review the applicant's past offense record as to the offender's potential for successful parole:

(3) **Nature of offense:** Circumstances surrounding the offense for which two (2) juveniles are currently committed:

(3) **The commissioner, pursuant to authority vested in him or her under IC 11-8-2-5(b)(2), may designate the authority to release or discharge juveniles from commitment. When a release from commitment is by discharge, the commissioner, or his or her designee, shall certify the discharge to the clerk of the committing court.**

(4) **The commissioner shall designate a person or persons to:**  
 (A) **release youth from a contract facility via community supervision or discharge; or**  
 (B) **discharge all youth from community supervision.**

*(Department of Correction; 210 IAC 5-1-2; filed Apr 17, 1985, 9:45 a.m.: 8 IR 1125)*

SECTION 10. 210 IAC 5-1-3 IS AMENDED TO READ AS FOLLOWS:

**210 IAC 5-1-3 Community supervision or discharge; consideration, reviews, denials, conditions statement**

Authority: IC 11-13-6-2

Affected: IC 11-8-2-5; IC 11-8-5; IC 11-13-6

Sec. 3. (a) **Procedure for considering parole or discharge of regular parole applicants:** (1) The head of each juvenile institution or facility shall prepare a list of all offenders eligible for release consideration and shall transmit such list to the chairperson:

- (A) The list shall be prepared weekly.
- (B) The list shall contain a recommendation concerning parole or discharge.

(2) The chairperson shall review such list and consider each offender's attainment of release criteria. The chairperson shall then make a determination as to each offender's parole, discharge, or need to appear before the parole committee. The chairperson shall return to the institutional head the approved



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list with a signed parole release agreement; or a signed discharge certificate, on those offenders authorized for release.

(3) Those offenders whose release has not been approved by the chairperson shall be interviewed by the juvenile parole committee. The committee shall then make a decision regarding the offender's release.

The administrative review committee shall review the treatment team's recommendations regarding the juvenile's progress in treatment and interview the juvenile to determine release to community supervision or discharge, whichever is appropriate. Mandatory review for a juvenile who has not received a facility recommendation for community supervision shall be reviewed by the administrative review committee at least every twelve (12) months.

(b) Procedure for considering parole or discharge for special parole Applicants: (1) Offenders who have completed institutional criteria for release but who were committed for an offense against a person, shall be interviewed by the juvenile parole committee. This includes, but is not limited to, offenses; the nature of which includes arson; robbery; rape; child-molesting; kidnapping; homicide; battery; and attempt or conspiracy to commit such an act.

(2) Based upon the interview and the parole committee criteria; the committee shall then make a decision regarding the offender's release.

(c) Mandatory review: (1) Offenders who have not received an institutional recommendation for parole or discharge shall have their cases reviewed and be interviewed by the juvenile parole committee at least every twelve (12) months.

(2) Based upon the mandatory interview and institution and parole committee criteria; the committee shall make a decision regarding the offender's release.

(d) Prior to the committee making a determination to grant or deny parole; the offender shall be provided by the housing institution or facility with the following: (1) at least seven (7) days (excluding Saturday, Sunday, or holidays) advance written notice that he is being considered for release.

(2) Access in accordance with IC 11-8-5 to records and reports to be considered by the committee in making the release determination.

(3) An opportunity to appear before the committee; speak in his own behalf and present documentary evidence.

(e) In all cases where parole is denied; the chairperson shall give the offender written notice of the denial and the reason for denial: (1) No offender may be denied parole solely on the basis that appropriate quarters are not available in the community to which he will return.

(2) No offender will be denied parole without an interview. The interview shall be conducted by the juvenile parole committee.

(f) The commissioner, by authority vested in him under IC 11-8-2-5(b)(2); may delegate the authority to discharge offenders from commitment to a member of a parole committee. When a release from commitment is by discharge; the commissioner; or his designee; shall certify the discharge to the clerk of the committing court.

(g) When an offender is released on parole he shall be given a written statement of the conditions imposed by the department. Signed copies of this statement shall be forwarded to any person charged with his supervision and retained by the department: (1) The conditions shall be signed by the chairperson of the committee.

(2) The housing institution shall explain the conditions of parole to the offender; the offender shall acknowledge receipt of the conditions by his signature; and the offender's signature shall be witnessed.

(3) The parole conditions for offenders released from juvenile institutions shall be as follows:

(A) I will report within twenty-four (24) hours after my arrival at my destination either by mail; telephone; or personal visit; as directed to my supervising parole agent.

(B) I will faithfully comply with any orders and conditions imposed by the department of correction.

(C) I will obey all laws (state; federal; and local ordinances).

(D) I agree not to associate with persons with a previous criminal record; or adjudicated delinquents; including both adults and juveniles currently on parole or probation; unless otherwise authorized by my supervising parole agent.

(E) I agree to be gainfully employed when work is available; if not in a full-time school program.

(F) I understand that I must consult with my supervising parole agent for permission to:

(i) open a bank checking account;

(ii) borrow money or go into debt;

(iii) purchase an automobile in my name;

(iv) obtain a driver's license;

(v) possess and/or use any firearms;

(vi) change my residence or school program

(vii) marry or file for divorce;

(viii) travel outside counties adjacent to my county or residence or outside the state of Indiana.

(G) I understand that placement failure or the need for medical attention or psychiatric or psychological evaluation is cause for return temporarily to the institution.

(H) I agree to participate in any special treatment program established by the department of correction for juvenile parolees upon the recommendation and approval of the chairperson of the juvenile parole committee.

(4) The committee may impose special stipulations to parole. These conditions shall be made a part of the official record on each offender involved. The offender shall be given a copy of these conditions. The committee may also impose special stipulations to parole at any time during the parole period upon recommendation of the parole agent. The offender shall be given notice and a copy of these conditions:

(b) A juvenile under consideration for community supervision or discharge shall be afforded the following rights:

- (1) At least seven (7) days' (excluding Saturday, Sunday, or holidays) advance written notice that he or she is being considered for community supervision or discharge.
- (2) Access in accordance with IC 11-8-5 to records and reports to be considered by the committee making the release determination.
- (3) An opportunity to appear before the committee, speak in his or her own behalf, and present documentary evidence.

(c) In all cases where community supervision is denied, the chairperson shall give the juvenile written notice of the denial and reasons for denial, including the following:

- (1) No juvenile may be denied community supervision solely on the basis that appropriate placement is not available in the community to which he or she will return.
- (2) The juvenile has the right to appeal the administrative review committee decision.

(d) When a juvenile is released to community supervision he or she shall be given a written statement of the community supervision conditions imposed by the department. Signed copies of this statement shall be forwarded to any person charged with his or her supervision and retained by the department, including the following:

- (1) The conditions shall be signed by the chairperson of the administrative review committee or the director of the juvenile transition program.
- (2) The administrative review committee shall explain the conditions of community supervision to the juvenile, the juvenile shall acknowledge receipt of the conditions by his or her signature, and the juvenile's signature shall be witnessed.
- (3) The community supervision conditions for juveniles released from juvenile facilities shall be as follows:
  - (A) I will report to my supervising field staff by telephone within twenty-four (24) hours of arrival at my approved residence, unless I have received other written instructions.
  - (B) I understand it is my responsibility to maintain contact with my field staff by making myself available through home visits, office visits, school visits, work visits, telephone contacts, and/or written reports as so directed. I understand that my field staff has the

authority to search and/or inspect my person or personal property without a search warrant at any time.

- (C) I will obey all federal, state, and local laws.
- (D) I understand that I must immediately notify my field staff any time I am arrested, ticketed, or contacted by any law enforcement agent.
- (E) I agree not to use or possess alcohol or any controlled substance. I agree not to remain at any place where alcohol or controlled substances are present or being illegally consumed.
- (F) I understand that I may not, at any time, possess a firearm, loaded or unloaded, knife, weapon, or any other device, equipment, chemical substance, or other material that could be used to cause harm or serious bodily injury to another person.
- (G) I agree not to associate with persons adjudicated or convicted of a criminal offense, including any person currently on parole or probation, unless authorized by my field staff.
- (H) I understand that I must obtain written permission from my field staff to purchase a motorized vehicle (automobile, truck, motorcycle, or moped) to obtain an identification card, beginner's driving permit, or driver's license from the state of Indiana, bureau of motor vehicles.
- (I) I will be at my approved residence during curfew hours and during the hours designated by my parent or guardian and field staff unless I have obtained permission in advance to be at another location.
- (J) I understand that I must obtain written permission from my field staff before leaving Indiana for any reason, for example, day visit, holiday visit, family illness, funeral, or vacation. Verbal permission from field staff shall be obtained for travel within Indiana.
- (K) I agree to participate in:
  - (i) an approved educational or vocational school program; or
  - (ii) if I am not enrolled in an approved educational or vocational school program, I understand that I must be gainfully employed, when work is available, participate in an approved community service program.
- (L) I understand that I must notify my field staff if I am unable to fulfill my obligations for scheduled employment, community service project assignment, or educational or vocational school program.
- (M) I understand that "Placement Failure", the need for emergency medical, psychiatric or psychological evaluation, or any life-threatening situation may be cause for a temporary return to a facility.
- (N) I will comply with my orders and special conditions imposed by the department. Additional terms and conditions of community supervision may be added at any time during the community supervision period, upon recommendation of the field staff and approval of the director of the juvenile transition program.

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(4) The administrative review committee may impose special conditions to community supervision. The juvenile shall be given notice and a copy of these conditions. A copy of these conditions shall be placed in the official record of the applicable juvenile.

(5) The commissioner's designee shall be authorized to impose special conditions on juveniles upon the request of the field staff supervising that juvenile. The juvenile shall be given notice and a copy of these conditions. A copy of these conditions shall be placed in the official record of the applicable juvenile.

(6) The administrative review committee shall inform the juvenile that they have the right to appeal the decision of the administrative review committee to the commissioner's designee.

(7) The juvenile has the right to appeal the decision of the administrative review committee of the commissioner's designee. This appeal must be done in writing within seven (7) calendar days.

*(Department of Correction; 210 IAC 5-1-3; filed Apr 17, 1985, 9:45 a.m.: 8 IR 1126)*

SECTION 11. 210 IAC 5-1-4 IS AMENDED TO READ AS FOLLOWS:

### 210 IAC 5-1-4 Community supervision revocation

Authority: IC 11-13-6-2

Affected: IC 11-8-2-5; IC 11-13-6; IC 33-1-7-2

Sec. 4. (a) ~~Procedures~~ Procedure for conducting preliminary hearings are as follows:

(1) ~~A parole agent~~ Field staff shall submit a written report of alleged parole community supervision violation to the assistant supervisor of parole, juvenile, commissioner's designee when reasonable suspicion exists to believe the parolee there is reasonable belief to believe the juvenile has violated the conditions of parole community supervision.

(2) The assistant supervisor of parole, juveniles, commissioner's designee, shall review the report of alleged violation violations and determine whether or not a warrant should be issued. If a warrant should be is issued, a hearing officer shall be assigned to conduct the preliminary hearing.

~~(A)~~ The commissioner, by authority vested in him or her under IC 11-8-2-5(b), may delegate this his or her authority to issue warrants. to the assistant supervisor of parole, juveniles:

~~(B)~~ The hearing officer conducting the preliminary hearing shall be a person other than the one who reported, or investigated, the alleged violation:

(3) The hearing officer conducting the preliminary hearing shall be impartial and have no involvement in the reporting or investigation of the alleged violation.

~~(3)~~ (4) The hearing officer shall, upon receipt of notification to schedule a preliminary hearing, provide the offender juvenile and his or her parents, guardians, or custodians written notice of the following:

(A) The date, time, and place of hearing.

(B) The parole community supervision conditions alleged to have been violated.

(C) The procedures and rights applicable to that hearing.

(D) If probable cause is found to exist, his or her right to a revocation hearing and the procedures and rights applicable to that hearing.

(E) The possible sanctions if a violation is found.

~~(4)~~ (5) In connection with the preliminary hearing, the offender juvenile is entitled to the following:

(A) Appear and speak in on his or her own behalf.

(B) Call witnesses and present documentary evidence.

(C) Confront and cross examine witnesses, unless the hearing officer finds that to do so would subject the witness to a substantial risk of harm, and have a written statement of the findings of fact and the evidence relied upon.

~~(5)~~ (6) The offender's juvenile's parents, guardians, or custodians are entitled to be present at the hearing.

~~(6)~~ (7) If the hearing officer determines that there is not probable cause to believe that does not exist to believe the offender juvenile violated a condition of his parole community supervision, the charge shall be dismissed.

~~(7)~~ (8) If the hearing officer determines from the evidence presented that there is probable cause to believe that the offender juvenile violated a condition of parole: community supervision, but in his or her judgment, the hearing officer does not feel that it is sufficient reason for return to the institution, facility, the hearing officer may continue the offender juvenile on parole: However, if there is a special condition of the continuance, the condition must be discussed with, and approved by the chairperson of the parole committee prior to its having effect: community supervision. Any special condition imposed by the hearing officer as a result of continued placement on community supervision shall be discussed with, and approved by, the commissioner's designee, prior to its imposition.

~~(8)~~ (9) If the hearing officer determines from the evidence presented that there is probable cause to believe that the offender juvenile violated a condition of his parole or her community supervision and the offender should appear before the parole committee for a revocation hearing; the offender juvenile should appear for a revocation hearing, the juvenile shall be arrested on the department's warrant and returned to a juvenile institution facility pending a parole community supervision revocation hearing.

~~(9)~~ (10) In a case where the alleged violation of parole community supervision is based on a criminal conviction or a delinquency adjudication, the preliminary hearing need not be held.

~~(10)~~ (11) Unless good cause for the delay is established in the record of the preliminary hearing, the parole community supervision violation charge shall be dismissed if the preliminary hearing is not held within ten (10) days after seventy-two (72) hours from the date of arrest on the department's warrant.

(b) Procedures for conducting ~~parole~~ **community supervision** revocation hearings **are as follows:**

**(1) The community supervision revocation hearing shall be presided over by the commissioner's designee and two (2) members designated by the facility superintendent. The commissioner's designee shall serve as chairperson. The committee shall meet in accordance with a schedule as deemed by the chairperson.**

~~(1) An offender~~ **(2) A juvenile** confined at a juvenile institution facility due to an alleged **community supervision** violation of ~~parole~~ conditions shall be afforded a ~~parole~~ **community supervision** revocation hearing by the ~~juvenile parole~~ **community supervision violation** committee within sixty (60) days of his or her arrest on the department's warrant.

**(3) An alleged parole community supervision violator who is not confined prior to the parole community supervision revocation hearing shall be afforded such a hearing within one hundred eighty (180) days after the order was issued for his or her appearance or the date of his or her arrest on the parole community supervision violation warrant, whichever is earlier: later.**

**(4) Unless good cause for delay is established in the record of the revocation hearing, the revocation charge shall be dismissed if the revocation hearing is not held within the time limits established in subdivisions (2) and (3).**

~~(2) (5) Within 48~~ **seventy-two (72)** hours of an offender's a ~~juvenile's~~ return to a juvenile institution facility (excluding Saturday, Sunday, or holidays) as an alleged ~~parole~~ **community supervision** violator, the ~~institution~~ facility shall notify the ~~offender juvenile~~ that he or she has the right to be represented by counsel at a revocation hearing and, if indigent, to have counsel appointed for him or her, **including the following:**

(A) The ~~offender juvenile~~ shall sign a statement indicating his or her understanding of ~~the~~ right to counsel and whether he or she desires to have counsel represent him or her at the revocation hearing.

(B) If the ~~offender juvenile~~ desires to be represented by counsel, but cannot afford such representation, the housing ~~institution~~ facility shall notify the public defender's office that the ~~parolee~~ **alleged community supervision violator** desires counsel at the revocation hearing.

~~(3) (6) The housing institution facility shall provide the offender juvenile and his or her parents, guardian, or custodian written notice of the revocation hearing at least seven (7) days in advance of the hearing. The written notice shall include the following:~~

- (A) The date, time, and place of the hearing.
- (B) The ~~parole~~ **community supervision** conditions alleged to have been violated.
- (C) The procedures and rights applicable to such hearing.
- (D) The possible sanctions if a violation is found.

~~(4) (7) The offender juvenile shall be afforded those safe-~~

guards enumerated in ~~(a)(4) of this section~~ **subsection (a)(5)** and may offer evidence in mitigation of the alleged violation.

~~(5) (8) The offender's juvenile's~~ parents, guardians, or custodians are entitled to be present at the revocation hearing, and shall be so advised by the housing ~~institution~~ facility.

~~(6) (9) If it is determined from the evidence presented that the offender juvenile did not commit a violation of the conditions of parole;~~ **community supervision**, the charge ~~or charges~~ shall be dismissed.

~~(7) (10) If the committee finds that the offender juvenile did violate a condition or conditions of parole;~~ **community supervision**, it may continue the ~~offender juvenile~~ on ~~parole~~ **community supervision**, with or without modifying the conditions, or revoke the ~~parole~~ **community supervision** and order the ~~offender juvenile~~ confined, **including the following:**

(A) If the ~~offender juvenile~~ is continued on ~~parole;~~ **community supervision**, with modified conditions, he or she shall be given written notification of the modification ~~or modifications~~.

(B) If ~~parole~~ **community supervision** is revoked, the committee shall inform the ~~offender juvenile~~ that he or she will be reconsidered for ~~parole~~ **community supervision** on a specific date or that he or she will be reconsidered when he or she again completes the ~~institutional~~ facility criteria for release.

~~(8) (11) The chairperson shall provide the parolee community supervision violator with a written statement of the reasons for the committee's action if parole community supervision is revoked. The juvenile has the right to appeal the decision of the community supervision revocation committee.~~

~~(9) Unless good cause for the delay is established in the record of the revocation hearing, the revocation charge shall be dismissed if the revocation hearing is not held within the time limits established in (b)(1) of this section:~~

~~(10) (12) The parole community supervision revocation committee shall consider the following at a revocation hearing:~~

(A) ~~Community adjustment:~~ The alleged violator's overall community adjustment shall be considered, including, but not limited to, ~~the following:~~

- (i) School or work.
- (ii) Completion of ~~parole~~ **community supervision** goals. ~~and~~
- (iii) Previous violations committed while on ~~parole:~~ **community supervision.**

(B) ~~Past offense record:~~ The alleged ~~parole~~ **community supervision** violator's past juvenile history shall be considered, along with the nature of his ~~or her~~ committing offense.

(C) ~~Nature of current violation:~~ The exact nature of the violation committed by the alleged ~~parole~~ **community supervision** violator and the events and circumstances surrounding the violation shall be considered.

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## Proposed Rules

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(11) The procedures contained in (b) of this section shall be deemed to apply to parole revocation hearings when the alleged parole violator was not confined due to the alleged parole violation prior to the revocation hearing.

(13) The community supervision revocation committee shall inform the juvenile that he or she has the right to appeal the decision of the community supervision revocation committee to the commissioner's designee. This appeal must be done in writing within seven (7) calendar days.

(Department of Correction; 210 IAC 5-1-4; filed Apr 17, 1985, 9:45 a.m.: 8 IR 1127)

SECTION 12. 210 IAC 1-6-3 IS REPEALED.

### Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on February 5, 2002 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Department of Correction will hold a public hearing on proposed amendments concerning the collection, maintenance, and release of offender and juvenile records, the offender tort claims process, and release authority for juveniles. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E334 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Diane Mains  
Staff Counsel  
Department of Correction

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## TITLE 312 NATURAL RESOURCES COMMISSION

**Proposed Rule**  
LSA Document #01-282

### DIGEST

Adds 312 IAC 5, concerning rules that govern the operation of watercraft on public waters in Indiana, to establish restrictions on Prairie Creek Reservoir in Delaware County. A speed limit of 20 miles per hour would be established for all watercraft. Motorboats would be prohibited from towing water skis and similar objects north of a line extending westerly from the bridge over Huffman Creek on County Road 560 East (also known as Gates Road). Effective 30 days after filing with the secretary of state.

### 312 IAC 5-9-4

SECTION 1. 312 IAC 5-9, AS ADDED AT 24 IR 2380, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

### 312 IAC 5-9-4 Watercraft operation restrictions on Prairie Creek Reservoir in Delaware County

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8  
Affected: IC 14

Sec. 4. (a) This section establishes special watercraft restrictions on Prairie Creek Reservoir in Delaware County.

(b) A person must not operate a watercraft in excess of twenty (20) miles per hour.

(c) A person operating a motorboat must not tow a water ski, a water sled, an aquaplane, or a similar object north of a line extending westerly from the bridge over Huffman Creek on County Road 560 East (also known as Gates Road). (Natural Resources Commission; 312 IAC 5-9-4)

### Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on February 11, 2002 at 9:00 a.m., at the City Hall Auditorium, 300 North High Street, Muncie, Indiana the Natural Resources Commission will hold a public hearing on proposed new rules to establish restrictions on Prairie Creek Reservoir in Delaware County. A speed limit of 20 miles per hour would be established for all watercraft. Motorboats would be prohibited from towing water skis and similar objects north of a line extending westerly from the bridge over Huffman Creek on County Road 560 East (also known as Gates Road). Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Michael Kiley  
Chairman  
Natural Resources Commission

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## TITLE 312 NATURAL RESOURCES COMMISSION

**Proposed Rule**  
LSA Document #01-283

### DIGEST

Amends 312 IAC 5-9-2 that provides restrictions for the operation of watercraft on Geist Reservoir to reduce the area of the idle speed zone at Devil's Elbow in Marion County. Effective 30 days after filing with the secretary of state.

### 312 IAC 5-9-2

SECTION 1. 312 IAC 5-9-2, AS ADDED AT 24 IR 2380, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

**312 IAC 5-9-2 Geist Reservoir**

Authority: IC 14-15-7-3

Affected: IC 14-15

Sec. 2. (a) This section establishes restrictions on the operation of watercraft in Geist Reservoir in Hamilton County, Marion County, and Hancock County.

(b) A person must not operate a watercraft at greater than idle speed in any of the following locations:

(1) East of a line seven hundred (700) feet west and parallel to the Olio Road causeway.

(2) South of the Fall Creek Road bridge and causeway to a line one hundred (100) feet south and parallel to the western prolongation of the center line of 96th Street.

(3) In an area known as Devil's Elbow and more particularly described as east, south, and upstream from a line extended shoreline to shoreline six hundred (600) feet northwest of and parallel to a line defined by the following points:

(A) Commencing at the northeast corner of section 21, township 17 north, range 5 east, thence three thousand one hundred (3,100) feet west along the north line of the section to point 1:

(B) Again commencing at the northeast corner of section 21, township 17 north, range 5 east, thence three thousand three hundred (3,300) feet west along the north line of the section, thence two hundred (200) feet south to point 2: beginning at a point described as latitude 39° 54' 42.0021756" north and longitude 85° 58' 12.826398" west; extending east northeasterly to a point described as latitude 39° 54' 43.20567" north and 85° 58' 5.5123356" west; and, extending north northeasterly to a point described as latitude 39° 54' 47.1218976" north and 85° 58' 2.3784852" west.

(4) In an area known as the Indianapolis Yacht Club Harbor and located east and southeast of a line within the southeast quarter of section 10 and part of the southwest quarter of section 11 in township 17 north, range 5 east, being more particularly described as beginning at a point which lies one hundred eighty (180) feet southeast from the east corner of the southeast abutment of the most westerly bridge over the reservoir, which point lies nineteen (19) feet northeast of the centerline of the pavement (assumed bearing of north fifty-four (54) degrees, ten (10) minutes west) of Fall Creek Road, thence across a bay of the reservoir north fifty-three (53) degrees, seventeen (17) minutes east one thousand one hundred eighty-six (1,186) feet, to the shoreline of the reservoir.

(5) In an area known as the Indianapolis Sailing Club Harbor, within the southeast quarter of section 10, township 17 north, range 5 east, and being more particularly described as commencing at the southeast corner of section 10, thence west along the south line of the section a distance of three thousand five hundred (3,500) feet, thence north at right angles to the south section line a distance of three hundred eighty (380) feet to the point of beginning of the description

in this subdivision (assumed bearing of north twenty-three (23) degrees, thirty-seven (37) minutes west), thence a distance of seven hundred forty-six and four-tenths (746.4) feet to the north end of a retaining wall along the shoreline of the reservoir, thence following the meanders of the shoreline of the reservoir northeasterly, southerly, and southwesterly to the point of beginning.

(6) In an area known as Mast Head Bay, within the southeast quarter and part of the northeast quarter of section 9, township 17 north, range 5 east, and more particularly described as upstream and north of Fall Creek Road and east of Geist Road.

(7) In an area known as Cocktail Cove.

(8) North of 96th Street and west of Olio Road in Fall Creek Township, Hamilton County. The zone is the area east of an arc formed commencing at the point where the idle zone described in subdivision (4) intersects the east shoreline, then extending northward and connecting with the chain of islands and including the embayments east of the chain of islands, to a point four thousand (4,000) feet from the point of beginning.

(c) A person must not operate a watercraft within a rectangular area within the reservoir three hundred (300) feet and parallel to the concrete crest of the dam spillway and extending one hundred (100) feet along the dam from the east and west abutments of the dam spillway. The overall dimensions of the zone created by this subsection are three hundred (300) feet by seven hundred (700) feet.

(d) No person shall anchor a watercraft or tie a watercraft to another watercraft (except to tow a watercraft from one (1) point to another) in a traveled portion of the reservoir so as to do either of the following:

(1) Interfere with the safe passage of another watercraft.

(2) Create a safety hazard to any person.

*(Natural Resources Commission; 312 IAC 5-9-2; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2380, eff Jan 1, 2002)*

**Notice of Public Hearing**

*Under IC 4-22-2-24, notice is hereby given that on February 11, 2002 at 5:30 p.m., at the Geist Clubhouse, 12549 Old Stone Drive, Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on proposed amendments that provide restrictions on the operation of watercraft on Geist Reservoir to reduce the area of the idle speed zone at Devil's Elbow in Marion County. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Michael Kiley  
Chairman  
Natural Resources Commission

# Proposed Rules

## TITLE 312 NATURAL RESOURCES COMMISSION

### Proposed Rule

LSA Document #01-359

### DIGEST

Amends 312 IAC 2-4-3 that governs petitions to establish site-specific rules for the licensing of fishing tournaments and other organized watercraft activities to delete a provision with respect to special terms and conditions. Amends 312 IAC 9 that governs fish and wildlife to delete a rule section (312 IAC 9-2-7) that describes a prohibition on unlawful taking or possession of endangered species in favor of a statutory section (IC 14-22-34-12) that describes the same prohibition. Modifies numerous cross-references. Effective 30 days after filing with the secretary of state.

<b>312 IAC 2-4-3</b>	<b>312 IAC 9-5-4</b>
<b>312 IAC 9-2-7</b>	<b>312 IAC 9-6-1</b>
<b>312 IAC 9-3-19</b>	<b>312 IAC 9-6-9</b>
<b>312 IAC 9-4-14</b>	<b>312 IAC 9-9-4</b>

SECTION 1. 312 IAC 2-4-3, AS ADDED AT 24 IR 3930, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

#### **312 IAC 2-4-3 Petition to regulate the conduct of fishing tournaments or other organized activities on designated public waters**

**Authority:** IC 14-10-2-4; IC 14-15-7-3

**Affected:** IC 14-33-1-1

Sec. 3. (a) The following persons may petition the commission to designate, by rule, a particular public water for regulation:

- (1) The county executive for the county where the public water is located. A petition under this subdivision applies only to the portion of the public water located in that county. The county executives for adjoining counties may enter a joint petition.
- (2) If a portion of a public water is located within a municipality, the executive for the municipality. A petition under this subsection applies only to the portion of the public water located in the municipality.
- (3) A deputy director of the department.

(b) A petition filed under subsection (a) must include the following:

- (1) The name and location of the public water to be regulated.
- (2) The name, address, and telephone number of the petitioner.
- (3) The periods when the public water would be regulated. These periods may be expressed in terms of months or beginning and ending days. Restrictions on activities regulated under this rule may be seasonally adjusted.
- (4) Whether regulation would apply to fishing tournaments, other organized activities, or both fishing tournaments and

other organized activities. If the regulation would apply to other organized activities, a description of the type of these activities that would be regulated.

~~(5) Any special terms or conditions the petitioner wishes to have included to promote effective and lawful regulation of fishing tournaments or other organized activities on the particular public water:~~

*(Natural Resources Commission; 312 IAC 2-4-3; filed Aug 3, 2001, 10:54 a.m.: 24 IR 3930, eff Jan 1, 2002)*

SECTION 2. 312 IAC 9-3-19 IS AMENDED TO READ AS FOLLOWS:

#### **312 IAC 9-3-19 Endangered and threatened species of mammals**

**Authority:** IC 14-22-2-6; IC 14-22-34-17

**Affected:** IC 14-22-34-2

Sec. 19. The following species of mammals are threatened or endangered and are subject to the protections provided under ~~312 IAC 9-2-7~~; **IC 14-22-34-12**:

- (1) Bobcat (*Felis rufus*).
- (2) Indiana bat (*Myotis sodalis*).
- (3) Gray bat (*Myotis grisescens*).
- (4) Southeastern bat (*Myotis austroriparius*).
- (5) Evening bat (*Nycticeius humeralis*).
- (6) Badger (*Taxidea taxus*).
- (7) Eastern wood rat (*Neotoma floridana*).
- (8) Swamp rabbit (*Sylvilagus aquaticus*).
- (9) Franklin's ground squirrel (*Spermophilus franklinii*).
- (10) River otter (*Lutra canadensis*).

*(Natural Resources Commission; 312 IAC 9-3-19; filed May 12, 1997, 10:00 a.m.: 20 IR 2708)*

SECTION 3. 312 IAC 9-4-14, PROPOSED TO BE AMENDED AT 24 IR 3677, SECTION 8, IS AMENDED TO READ AS FOLLOWS:

#### **312 IAC 9-4-14 Endangered and threatened species of birds**

**Authority:** IC 14-22-2-6; IC 14-22-34-17

**Affected:** IC 14-22-34-12

Sec. 14. The following species of birds are threatened or endangered and are subject to the protections provided under ~~312 IAC 9-2-7~~; **IC 14-22-34-12**:

- (1) American bittern (*Botaurus lentiginosus*).
- (2) Least bittern (*Ixobrychus exilis*).
- (3) Black-crowned night-heron (*Nycticorax nycticorax*).
- (4) Yellow-crowned night-heron (*Nyctanassa violacea*).
- (5) Trumpeter swan (*Sygnus buccinator*).
- (6) Osprey (*Pandion haliaetus*).
- (7) Bald eagle (*Haliaeetus leucocephalus*).
- (8) Northern harrier (*Circus cyaneus*).
- (9) Peregrine falcon (*Falco peregrinus*).
- (10) Black rail (*Laterallus jamaicensis*).

- (11) King rail (*Rallus elegans*).
- (12) Virginia rail (*Rallus limicola*).
- (13) Sandhill crane (*Grus canadensis*).
- (14) Piping plover (*Charadrius melodus*).
- (15) Upland sandpiper (*Bartramia longicauda*).
- (16) Least tern (*Sterna antillarum*).
- (17) Black tern (*Chlidonias niger*).
- (18) Barn owl (*Tyto alba*).
- (19) Short-eared owl (*Asio flammeus*).
- (20) Bewick's wren (*Thryomanes bewickii*).
- (21) Sedge wren (*Cisothorus platensis*).
- (22) Marsh wren (*Cisothorus palustris*).
- (23) Loggerhead shrike (*Lanius ludovicianus*).
- (24) Golden-winged warbler (*Vermivora chrysoptera*).
- (25) Kirtland's warbler (*Dendroica kirtlandii*).
- (26) Bachman's sparrow (*Aimophila aestivalis*).
- (27) Henslow's sparrow (*Ammodramus henslowii*).
- (28) Yellow-headed blackbird (*Xanthocephalus xanthocephalus*).

*(Natural Resources Commission; 312 IAC 9-4-14; filed May 12, 1997, 10:00 a.m.: 20 IR 2712; filed May 28, 1998, 5:14 p.m.: 21 IR 3717)*

SECTION 4. 312 IAC 9-5-4 IS AMENDED TO READ AS FOLLOWS:

**312 IAC 9-5-4 Endangered and threatened species of reptiles and amphibians**

**Authority:** IC 14-22-2-6; IC 14-22-34-17  
**Affected:** IC 14-22-34-12

Sec. 4. The following species of reptiles and amphibians are threatened or endangered and are subject to the protections provided under ~~312 IAC 9-2-7~~ **IC 14-22-34-12**:

- (1) Hellbender (*Cryptobranchus alleganesis*).
- (2) Northern red salamander (*Pseudotriton ruber*).
- (3) Four-toed salamander (*Hemidactylium scutatum*).
- (4) Green salamander (*Aneides aenus*).
- (5) Copperbelly water snake (*Nerodia erythrogaster*).
- (6) Butler's garter snake (*Thamnophis butleri*).
- (7) Kirtland's snake (*Clonophis kirtlandi*).
- (8) Scarlet snake (*Cemophora coccinea*).
- (9) Smooth green snake (*Ophedrys vernalis*).
- (10) Crowned snake (*Tantilla coronata*).
- (11) Cottonmouth (*Agkistrodon piscivorus*).
- (12) Massasauga (*Sistrurus catenatus*).
- (13) Timber rattlesnake (*Crotalus horridus*).
- (14) Eastern mud turtle (*Kinosternon subrubrum*).
- (15) Spotted turtle (*Clemmys guttata*).
- (16) Heiroglyphic turtle (*Pseudemys concinna*).
- (17) Alligator snapping turtle (*Macrochelys temmincki*).
- (18) Blanding's turtle (*Emydoidea blandingi*).
- (19) Crawfish frog (*Rana areolata*).
- (20) Ornate box turtle (*Terrapene ornata*).

*(Natural Resources Commission; 312 IAC 9-5-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2713)*

SECTION 5. 312 IAC 9-6-1 IS AMENDED TO READ AS FOLLOWS:

**312 IAC 9-6-1 Definitions pertaining to fish and fishing activities**

**Authority:** IC 14-22-2-6  
**Affected:** IC 14-22-34-12

Sec. 1. In addition to the definitions contained in 312 IAC 9-1, the following definitions apply throughout 312 IAC 9-7, 312 IAC 9-8, and 312 IAC 9-10:

- (1) "Alewife" means the species *Alosa pseudoharengus*.
- (2) "American eel" means the species *Anguilla rostrata*.
- (3) "Aquarium pet trade" means the business of importing, producing, or selling live fish for display in aquariums, tanks, or other continuing exhibits.
- (4) "Atlantic salmon" means the species *Salmo salar*.
- (5) "Bar mesh" means the length of one (1) side of the square mesh measure or as measured between two (2) knots on the same line.
- (6) "Black bass" means the species *Micropterus salmoides*, *Micropterus dolomieu*, and *Micropterus punctulatus*.
- (7) "Black crappie" means the species *Pomoxis nigromaculatus*.
- (8) "Blue catfish" means the species *Ictalurus furcatus*.
- (9) "Bluegill" means the species *Lepomis macrochirus*.
- (10) "Bluntnose minnow" means the species *Pimephales notatus*.
- (11) "Bowfin" means the species *Amia calva*.
- (12) "Brook trout" means the species *Salvelinus fontinalis*.
- (13) "Brown trout" means the species *Salmo trutta*.
- (14) "Buffalo" means the genus *Ictiobus*.
- (15) "Bullhead" means the species *Ictalurus melas*, *Ictalurus nebulosus*, and *Ictalurus natalis*.
- (16) "Burbot" means the species *Lota lota*.
- (17) "Carp" means the species *Cyprinus carpio*.
- (18) "Cast net" means a net not more than ten (10) feet in diameter and having stretch mesh not larger than three-fourths (¾) inch.
- (19) "Cavefish" means a fish of the family *Amblyopsidae*.
- (20) "Chain pickerel" means the species *Esox niger*.
- (21) "Channel catfish" means the species *Ictalurus punctatus*.
- (22) "Chinook salmon" means the species *Oncorhynchus tshawytscha*.
- (23) "Chub" means the species *Coregonus hoyi* and the species *Coregonus kiyi*.
- (24) "Cisco" means the species *Coregonus artedii*.
- (25) "Closed aquaculture system" means a rearing facility designed to prevent the escape of cultured organisms to the wild.
- (26) "Coho salmon" means the species *Oncorhynchus kisutch*.
- (27) "Crappie" means white crappie and black crappie.
- (28) "Dip net" means a dip net not exceeding three (3) feet square, without sides or walls, and having stretch mesh not larger than one-half (½) inch.



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- (29) "Diploid" means a cell or organism that has two (2) complete sets of chromosomes.
- (30) "Exotic catfish" means a walking catfish or other member of the family Clariidae.
- (31) "Exotic fish" means an exotic catfish, rudd, ruffe, tubenose goby, or round goby.
- (32) "Fathead minnow" means the species *Pimephales promelas*.
- (33) "Flathead catfish" means the species *Pylodictis olivaris*.
- (34) "Freshwater drum" means the species *Aplodinotus grunniens*.
- (35) "Gaff" or "gaff hook" means an implement of metal or another hard or tough material with or without barbs, making a single hook having a shank with or without a handle, which may be hand held to seize, hold, or sustain fish.
- (36) "Gar" means the genus *Lepisosteus*.
- (37) "Genetically altered fish" means a fish which is the product of genetic manipulation, including polyploidy, gynogenesis, gene transfer, and hormonal sex control.
- (38) "Gizzard shad" means the species *Dorosoma cepedianum*.
- (39) "Golden shiner" means the species *Notemigonus crysoleucas*.
- (40) "Goldfish" means the species *Carassius auratus*.
- (41) "Grab hook" means a device or implement used as a tong to clutch, close down upon, or grasp fish.
- (42) "Grass carp" means the genus *Ctenopharyngodon*.
- (43) "Green sunfish" means the species *Lepomis cyanellus*.
- (44) "Hybrid striped bass" means the hybrid of striped bass and white bass.
- (45) "Hybrid sunfish" means a hybrid of the genus *Lepomis*.
- (46) "Lake herring" means the species *Coregonus artedii*.
- (47) "Lake sturgeon" means the species *Acipenser fulvescens*.
- (48) "Lake trout" means the species *Salvelinus namaycush*.
- (49) "Lake whitefish" means the species *Coregonus clupeaformis*.
- (50) "Largemouth bass" means the species *Micropterus salmoides*.
- (51) "Minnow seine" means a seine or net not more than twelve (12) feet long and four (4) feet deep, and having stretch mesh not larger than one-half (½) inch.
- (52) "Minnow trap" means a fish trapping device not exceeding twenty-four (24) inches long. The opening of the throat shall not exceed one (1) inch in diameter.
- (53) "Mosquitofish" means the species *Gambusia affinis*.
- (54) "Muskellunge" means the species *Esox masquinongy*.
- (55) "Northern pike" means the species *Esox lucius*.
- (56) "Quagga mussel" means the species *Dreissena bugensis*.
- (57) "Paddlefish" means the species *Polyodon spathula*.
- (58) "Rainbow trout" means the species *Oncorhynchus mykiss*.
- (59) "Redear sunfish" means the species *Lepomis microlophus*.
- (60) "Rock bass" means the species *Ambloplites rupestris*.
- (61) "Rough fish" means any species of fish not defined as a sport fish or protected under 312 IAC 9-2-7. **IC 14-22-34-12.**
- (62) "Round goby" mean the species *Neogobius melanostomus*.
- (63) "Rudd" means the species *Scardinius erythrophthalmus*.
- (64) "Ruffe" means the species *Gymnocephalus cernuus*.
- (65) "Sauger" means the species *Stizostedion canadense*.
- (66) "Saugeye" means the hybrid of walleye and sauger.
- (67) "Shad" means the genera *Alosa* and *Dorosoma*.
- (68) "Single hook" means a fishing hook consisting of one (1) shank and one (1) point.
- (69) "Smallmouth bass" means the species *Micropterus dolomieu*.
- (70) "Smelt" means the genus *Osmerus*.
- (71) "Sockeye salmon" means the species *Oncorhynchus nerka*.
- (72) "Sport fish" means largemouth bass, smallmouth bass, spotted bass, rock bass, white crappie, black crappie, walleye, sauger, saugeye, striped bass, white bass, hybrid striped bass, yellow bass, muskellunge, tiger muskellunge, northern pike, chain pickerel, and trout or salmon.
- (73) "Spotted bass" means the species *Micropterus punctulatus*.
- (74) "Steelhead" means the species *Oncorhynchus mykiss*.
- (75) "Stretch mesh" means the extended distance or length between the extreme angles of a single mesh of net.
- (76) "Striped bass" means the species *Morone saxatilis*.
- (77) "Sucker" means the genera *Carpoides*, *Moxostoma*, *Hypentelium*, *Catostomus*, and *Erimyzon*.
- (78) "Tiger muskellunge" means the hybrid of muskellunge and northern pike.
- (79) "Tilapia" means all species of the genus *Tilapia*.
- (80) "Triploid" means a cell or organism having three (3) haploid sets of chromosomes.
- (81) "Trout or salmon" means lake trout, coho salmon, chinook salmon, sockeye salmon, brown trout, steelhead (or rainbow trout), brook trout, and Atlantic salmon.
- (82) "Tubenose goby" means the species *Proterorhinus marmoratus*.
- (83) "Walleye" means the species *Stizostedion vitreum*.
- (84) "Warmouth" means the species *Lepomis gulosus*.
- (85) "White bass" means the species *Morone chrysops*.
- (86) "White catfish" means the species *Ictalurus catus*.
- (87) "White crappie" means the species *Pomoxis annularis*.
- (88) "Yellow bass" means the species *Morone mississippiensis*.
- (89) "Yellow perch" means the species *Perca flavescens*.
- (90) "Zebra mussel" means the species *Dreissena polymorpha*.

*(Natural Resources Commission; 312 IAC 9-6-1; filed May 12, 1997, 10:00 a.m.: 20 IR 2713; filed May 28, 1998, 5:14 p.m.: 21 IR 3717; errata filed Aug 25, 1998, 3:02 p.m.: 22 IR 125)*

SECTION 6. 312 IAC 9-6-9 IS AMENDED TO READ AS FOLLOWS:

**312 IAC 9-6-9 Endangered and threatened species of fish**  
Authority: IC 14-22-2-6; IC 14-22-34-17  
Affected: IC 14-22-34-12

Sec. 9. The following species of fish are threatened or endangered and are subject to the protections provided under ~~312 IAC 9-2-7~~: **IC 14-22-34-12:**

- (1) Lake sturgeon (*Acipenser fulvescens*).
- (2) Cavefishes (*Amblyopsidae* species).
- (3) Redside dace (*Clinostomus elongatus*).
- (4) Bluebreast darter (*Etheostoma camurum*).
- (5) Spotted darter (*Etheostoma maculatum*).
- (6) Spottail darter (*Etheostoma squamiceps*).
- (7) Tippecanoe darter (*Etheostoma tippecanoe*).
- (8) Variegated darter (*Etheostoma variatum*).
- (9) Gilt darter (*Percina evides*).
- (10) Harlequin darter (*Etheostoma histrio*).
- (11) Greater redhorse (*Moxostoma valenciennesi*).

(*Natural Resources Commission; 312 IAC 9-6-9; filed May 12, 1997, 10:00 a.m.: 20 IR 2716*)

SECTION 7. 312 IAC 9-9-4 IS AMENDED TO READ AS FOLLOWS:

**312 IAC 9-9-4 Endangered and threatened species of invertebrates**

**Authority:** IC 14-22-2-6; IC 14-22-34-17  
**Affected:** IC 14-22-34-12

Sec. 4. The following species of invertebrates are threatened or endangered and are subject to the protections provided under ~~312 IAC 9-2-7~~: **IC 14-22-34-12:**

- (1) Rabbitsfoot (*Quadrula cylindrica*).
- (2) Sheepnose (*Plethobasus cyphus*).
- (3) Clubshell (*Pleurobema clava*).
- (4) Pyramid pigtoe (*Pleurobema pyramidatum*).
- (5) Fanshell (*Cyprogenia stegaria*).
- (6) Snuffbox (*Epioblasma triquetra*).
- (7) Orangefoot pimpleback (*Plethobasus cooperianus*).
- (8) Pink mucket (*Lampsilis abrupta*).
- (9) Fat pocketbook (*Potamilus capax*).
- (10) Rough pigtoe (*Pleurobema plenum*).
- (11) Tubercled blossom (*Epioblasma torulosa torulosa*).
- (12) White catspaw (*Epioblasma obliquata perobliqua*).
- (13) Northern riffleshell (*Epioblasma torulosa rangiana*).
- (14) Long solid (*Fusconaia subrutunda*).
- (15) White wartyback (*Plethobasus cicatricosus*).

(*Natural Resources Commission; 312 IAC 9-9-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2727*)

SECTION 8. 312 IAC 9-2-7 IS REPEALED.

**Notice of Public Hearing**

*Under IC 4-22-2-24, notice is hereby given that on January 28, 2002 at 11:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on proposed amendments to 312 IAC 2-4-3 that*

*governs petitions to establish site-specific rules for the licensing of fishing tournaments and other organized watercraft activities to delete a provision with respect to special terms and conditions, 312 IAC 9 that governs fish and wildlife to delete a rule section (312 IAC 9-2-7) that describes a prohibition on unlawful taking or possession of endangered species in favor of a statutory section (IC 14-22-34-12) that describes the same prohibition. Modifies numerous cross-references. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Michael Kiley  
Chairman  
Natural Resources Commission

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**TITLE 312 NATURAL RESOURCES COMMISSION**

**Proposed Rule**  
LSA Document #01-360

DIGEST

Amends 312 IAC 18-3-12 that governs standards for the control of larger pine shoot beetles by adding Brown, Fayette, Hendricks, and Owen Counties to the quarantine area. Effective 30 days after filing with the secretary of state.

**312 IAC 18-3-12**

SECTION 1. 312 IAC 18-3-12, AS AMENDED AT 24 IR 2404, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

**312 IAC 18-3-12 Control of larger pine shoot beetles**

**Authority:** IC 14-10-2-4; IC 14-24-3  
**Affected:** IC 14-24

Sec. 12. (a) The larger pine shoot beetle (*Tomicus piniperda*) is a pest or pathogen. This section governs standards for the control of the larger pine shoot beetle in Indiana.

(b) ~~As a result of an inspection, Except as provided in subsection (c), the division has determined that the entirety of the following counties constitute Indiana is an infested area where the larger pine shoot beetle is present.~~

(c) **Exempted from subsection (b), are the following counties:**

- (1) ~~Adams~~: **Bartholomew.**
- (2) ~~Allen~~: **Clark.**
- (3) ~~Benton~~: **Clay.**
- (4) ~~Blackford~~: **Crawford.**
- (5) ~~Boone~~: **Daviess.**
- (6) ~~Carroll~~: **Dearborn.**

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- (7) ~~Cass: Decatur.~~
- (8) ~~Clinton: Dubois.~~
- (9) ~~DeKalb: Floyd.~~
- (10) ~~Delaware: Franklin.~~
- (11) ~~Elkhart: Gibson.~~
- (12) ~~Fountain: Greene.~~
- (13) ~~Fulton: Harrison.~~
- (14) ~~Grant: Jackson.~~
- (15) ~~Hamilton: Jefferson.~~
- (16) ~~Hancock: Jennings.~~
- (17) ~~Henry: Knox.~~
- (18) ~~Howard: Lawrence.~~
- (19) ~~Huntington: Martin.~~
- (20) ~~Jasper: Monroe.~~
- (21) ~~Jay: Morgan.~~
- (22) ~~Johnson: Ohio.~~
- (23) ~~Kosciusko: Orange.~~
- (24) ~~LaGrange: Perry.~~
- (25) ~~Lake: Pike.~~
- (26) ~~LaPorte: Posey.~~
- (27) ~~Madison: Putnam.~~
- (28) ~~Marion: Ripley.~~
- (29) ~~Marshall: Scott.~~
- (30) ~~Miami: Spencer.~~
- (31) ~~Montgomery: Sullivan.~~
- (32) ~~Newton: Switzerland.~~
- (33) ~~Noble: Union.~~
- (34) ~~Parke: Vanderburgh.~~
- (35) ~~Porter: Vigo.~~
- (36) ~~Pulaski: Warrick.~~
- (37) ~~Randolph: Washington.~~
- (38) ~~Rush:~~
- (39) ~~St. Joseph:~~
- (40) ~~Shelby:~~
- (41) ~~Starke:~~
- (42) ~~Steuben:~~
- (43) ~~Tippecanoe:~~
- (44) ~~Tipton:~~
- (45) ~~Vermillion:~~
- (46) ~~Wabash:~~
- (47) ~~Warren:~~
- (48) ~~Wayne:~~
- (49) ~~Wells:~~
- (50) ~~White:~~
- (51) ~~Whitley:~~

(e) (d) The following items are regulated articles:

- (1) The larger pine shoot beetle in any life stage.
- (2) Entire plants or parts of the genus pine (*Pinus* spp.). Exempted from this subdivision are plants that conform to each of the following:
  - (A) Are less than thirty-six (36) inches high.
  - (B) Are one (1) inch in basal diameter or less.
- (3) Logs and lumber of pine with bark attached. Exempted

from this subdivision are logs of pine and pine lumber with bark attached if:

- (A) the source tree was felled during the period of July through October; and
- (B) the logs and lumber are shipped from the quarantined area during the period of July through October.
- (4) Any other article, product, or means of conveyance if determined by the division director to present the risk of spread of the larger pine shoot beetle.

(f) (e) The following actions are ordered within the infested area:

- (1) The movement by a person of a regulated article to a destination outside the infested area is prohibited, except under the following conditions:
  - (A) A thorough examination of all nursery stock takes place on a piece by piece basis.
  - (B) A statistically based examination of Christmas trees is made according to the following schedules:

TABLE 1. PAINTED (COLOR-ENHANCED)  
PINE CHRISTMAS TREES<sup>1</sup>

No. of Trees in Shipment	No. of Trees to Sample	No. of Trees in Shipment	No. of Trees to Sample
1-72	All	700-800	120
73-100	73	801-900	121
101-200	96	901-1,000	122
201-300	106	1,001-2,000	126
301-400	111	2,001-3,000	127
401-500	115	3,001-5,000	128
501-600	117	5,001-10,000	129
601-700	119	10,001 or more	130

<sup>1</sup>If a pine shoot beetle is detected in any one (1) of the trees being sampled, the entire shipment must be rejected. If no pine shoot beetle is detected in any of the trees sampled, the shipment will be allowed to move with a limited permit. The limited permit must state, "All trees that remain unsold as of December 25 must be destroyed by burning or chipping, or must be fumigated prior to January 1."

TABLE 2. NATURAL (UNPAINTED)  
CHRISTMAS TREES<sup>1</sup>

No. of Trees in Shipment	No. of Trees to Sample	No. of Trees in Shipment	No. of Trees to Sample
1-57	All	501-600	80
58-100	58	601-700	81
101-200	69	701-1,000	82
201-300	75	1,001-3,000	84
301-400	77	3,001-10,000	85
401-500	79	10,001 or more	86

<sup>1</sup>If a pine shoot beetle is detected in any one (1) of the trees being sampled, the entire shipment must be rejected. If no pine shoot beetle is detected in any of the trees sampled, the shipment will be allowed to move with a limited permit. The limited permit must state, "All trees that remain unsold as of December 25 must be destroyed by burning or chipping, or must be fumigated prior to January 1."

(C) Following the examination, a determination is made that no life stages of the larger pine shoot beetle are present. The determination must be accompanied by either of the following:

- (i) A certificate of inspection approved by the division.
- (ii) A certificate or similar authorization issued by the U.S. Department of Agriculture under a parallel federal quarantine.

(D) The certificate for the absence of the larger pine shoot beetle must be attached to and remain on the regulated articles until the articles reach their destinations. This requirement is, however, satisfied if the certificate is attached to the shipping document and the regulated article is adequately described on the shipping document of the certificate.

(2) A regulated article originating outside the infested area may move through the infested area without a certificate of inspection if the point of origin of the regulated article is indicated on the waybill or shipping documents and transportation conforms with this subdivision. Passage through the infested area must be made without stopping, except for refueling or traffic conditions, and shall be conducted within either of the following conditions:

(A) The ambient temperature is below fifty (50) degrees Fahrenheit.

(B) The regulated article is carried in an enclosed vehicle with an adequate covering to prevent access by the larger pine shoot beetle. Examples of an adequate covering include canvas, plastic, or loosely woven cloth.

(3) A regulated article originating outside the infested area which is moved into the infested area and exposed to potential infestation by the larger pine shoot beetle is considered to have originated from the infested area. Any regulated article under this subdivision is controlled by subdivision (1).

(4) The movement of a regulated article from an infested area through any noninfested area to another infested area is prohibited without a certificate for the absence of the larger pine shoot beetle except where both of the following conditions are met:

(A) Passage through a noninfested area is made without stopping, except for refueling or traffic conditions, if the ambient temperature is below fifty (50) degrees Fahrenheit or if in an enclosed vehicle with an adequate covering to prevent access by the larger pine shoot beetle.

(B) The waybill or shipping documents accompanying any shipment of regulated articles within or through Indiana indicate the county and state of origin of the regulated articles.

(5) Any regulated article imported or moved within Indiana in violation of this section shall be immediately removed from any noninfested area or destroyed. The expense of compliance with this subdivision is the joint and several responsibility of any person possessing or owning the regulated article. Compliance with this subsection shall be performed under the direction of the division director.

(6) In addition to the penalty set forth in subdivision (5), a person who violates this section is subject to any administrative, civil, or criminal sanction set forth in IC 14-24 and this article.

(7) This section does not preclude the division director from issuing any permit under section 3 of this rule.

*(Natural Resources Commission; 312 IAC 18-3-12; filed Nov 22, 1996, 3:00 p.m.: 20 IR 950; filed Dec 3, 1997, 3:30 p.m.: 21 IR 1273; filed Feb 9, 1999, 4:16 p.m.: 22 IR 1945; filed Apr 4, 2001, 3:02 p.m.: 24 IR 2404)*

### **Notice of Public Hearing**

*Under IC 4-22-2-24, notice is hereby given that on January 28, 2002 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on proposed amendments to 312 IAC 18-3-12 that governs standards for the control of larger pine shoot beetles by adding Brown, Fayette, Hendricks, and Owen Counties to the quarantine area. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Michael Kiley  
Chairman  
Natural Resources Commission

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## **TITLE 327 WATER POLLUTION CONTROL BOARD**

**Proposed Rule**  
LSA Document #01-429

### **DIGEST**

Adds 327 IAC 7.1 concerning management of wastewater from sewage disposal systems. Adds language that will allow the agency to meet the federal requirements of 40 CFR 503 and 40 CFR 257 Subpart A, regarding land application of various types of wastewater and related record keeping activities. Repeals 327 IAC 7-1, 327 IAC 7-2-1, 327 IAC 7-2-2, 327 IAC 7-2-3, 327 IAC 7-2-4, 327 IAC 7-2-5, 327 IAC 7-2-7, 327 IAC 7-3, 327 IAC 7-4-1, 327 IAC 7-4-2, 327 IAC 7-4-3, 327 IAC 7-4-4, 327 IAC 7-4-5, 327 IAC 7-4-6, 327 IAC 7-4-7, 327 IAC 7-

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## Proposed Rules

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4-8, 327 IAC 7-4-10, 327 IAC 7-4-11, 327 IAC 7-5, 327 IAC 7-6, 327 IAC 7-7, and 327 IAC 7-8. Effective 30 days after filing with the secretary of state.

### HISTORY

First Notice of Comment Period: September 1, 1997, Indiana Register (20 IR 3511).

Continuation of First Notice: December 1, 1998, Indiana Register (22 IR 829).

Second Notice of Comment Period and Notice of First Hearing: June 1, 2001, Indiana Register (24 IR 2898).

Date of First Hearing: September 12, 2001; but postponed.

Notice of First Hearing: November 1, 2001, Indiana Register (25 IR 403).

Date of First Hearing: November 14, 2001.

### PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4, until the board has conducted a third comment period that is at least twenty-one (21) days long. Because this proposed rule is not substantively different from the draft rule published on June 1, 2001 at 24 IR 2898, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

### SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from June 1, 2001, through July 2, 2001, on IDEM's draft rule language. IDEM received comments from the following parties:

Bethlehem Steel Corporation (BSC)

Indiana Steel Environmental Group (ISEG)

United Waste Water Management (UWM)

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* The purpose of the draft rule, as understood, is to incorporate the Federal requirements at 40 CFR 257 and 503, which regulate contract haulers of septic waste. The language at 327 IAC 7.1-1-1 should be revised to reflect the language currently in 327 IAC 7.1-1. The reason for this request is to make it perfectly clear that Rule 7.1 deals only with wastewater that is hauled from septic systems and grease traps. The term wastewater is frequently used very broadly. While the definition of the term is limited to human sewage by Indiana Code 13-11-2-256, there is concern that the draft rule could lead to confusion within the regulated community. A clear statement, within the purpose of the rule, will help to minimize this potential. (BSC) (ISEG)

*Response:* The language of 327 IAC 7.1-1-1 comes directly from IC 13-18-12-4(a). However, IDEM has made changes to 327 IAC 7.1-1-1 to clarify that "wastewater" is from "sewage disposal systems."

*Comment:* Subsection (b)(2) of proposed 327 IAC 7.1-1-3 should be modified to read as follows: "On-site activities at facilities that are regulated under 327 IAC 5, implementing the National Pollutant Discharge Elimination System (NPDES), or 327 IAC 3-4." (BSC) (ISEG)

*Response:* IDEM has made changes to the language at 327 IAC 7.1-1-3 to make clear that facilities regulated under 327 IAC 5 and facilities required to obtain construction permits under 327 IAC 3 are excluded from this rule.

*Comment:* Many of the site restrictions proposed in Section 6 of Rule 4 Wastewater Management Permits unnecessarily encumber the siting of a state-of-the-art type of storage or treatment facility. For example, the 600 foot buffer to property lines would increase a one acre site to approximately 38.8 acres. This is unreasonable, unrealistic, unnecessary, and would eliminate siting of these facilities in Indiana.

Local zoning and building codes should handle the needed buffer distances. IDEM should write the rule to assure that the environment is protected. In the proposed rule, little addresses protection of the environment, but rather keeps it at a distance so that it is "out of sight-out of mind." Adequate odor control and spill prevention/containment measures would do more for protecting the environment and the quality of life in Indiana.

If you still feel it is necessary to put dimensioned site restrictions into the rule, then I propose the following wording:

Sec. 6. Storage facilities or treatment facilities must not be constructed or maintained:

(1) within fifty (50) feet of any public roads; (2) within one hundred (100) feet of any: (A) places of business, (B) property lines; (3) within six hundred (600) feet of any: (A) residence, (B) public gathering places, (C) lakes, (D) ponds, (E) streams, (F) intermittent waterways, (G) surface water impoundments, (H) wetlands, (I) rock outcrops, (J) sink holes, (K) undrained depressions, or (L) potable water supplies; (4) within one thousand (1,000) feet of any: (A) public water supply well or public water supply surface intake structure, (B) historical sites, or (C) designated critical habitats of threatened or endangered species; (5) in a flood plain; (6) in a manner that allows the wastewater to enter waters of the state.

I hope that you will give serious consideration to changing this section of the Rule. While IDEM needs to protect the environment and public health in Indiana, this can be done with a regulatory framework that will allow private industry to function in the marketplace. (UWM)

*Response:* IDEM disagrees. The separation distances found at 327 IAC 7-6-6 were extended to site restrictions in this rule at 327 IAC 7.1-4-6 because of the pathogens associated with septage and the larger volumes that may be associated with modern storage and treatment facilities. In regards to state-of-the-art facilities, the agency encourages innovation that is demonstrated to provide equivalent protection for human health and the environment, as stated in "Innovative technology; alternate design and construction", 327 IAC 7.1-4-9.

### SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On November 14, 2001, the Water Pollution Control Board conducted the first public hearing/board meeting concerning the development of new rule 327 IAC 7.1. Comments were made by the following party:

Bill Hayden (BH)

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* I do not oppose the adoption of this rule, but I think that land application of septage that's only treated with lime is environmentally risky, and inevitably will contaminate the waters of the state.

This is highly concentrated stuff; almost as bad as hog waste. It probably doesn't have quite as much phosphorus, but it seems to me that it should be treated as any other sewage waste. It should be treated through a sewage treatment plant rather than just spread on the open ground.

I also am concerned, if I read the rule right, even though someone who's doing this has to give a lot of information about environmental features such as sinkholes and so on, I'm not sure that the Commissioner, under the rule, has the authority to refuse to grant a permit

because of environmental liability. I hope I'm not reading this correctly, but if I've read it right, I'm very concerned about that. (BH)

*Response:* IDEM disagrees. Regarding the treatment of septage, 327 IAC 7.1 as proposed is more stringent than the current requirements in 327 IAC 7 and some parts of the applicable federal regulations. The proposed treatment requirements include adding lime to all types of wastewater loads that will be land applied with the exception of grease only loads. Vector attraction and pathogen reduction requirements have been updated, setback restrictions have been increased, and application rates have been reduced. Record keeping requirements also have been increased.

In regards to IDEM's Commissioner's authority, IDEM believes the proposed rule language gives the commissioner adequate authority to refuse to grant permits under specified conditions.

**FISCAL ANALYSIS PREPARED BY THE LEGISLATIVE SERVICES AGENCY**

IDEM has estimated that the economic impact of this rule will be less than five hundred thousand dollars (\$500,000) on the regulated entities. The proposed rule was not submitted to the Legislative Services Agency for analysis under IC 4-22-2-28.

327 IAC 7-1	327 IAC 7-4-5
327 IAC 7-2-1	327 IAC 7-4-6
327 IAC 7-2-2	327 IAC 7-4-7
327 IAC 7-2-3	327 IAC 7-4-8
327 IAC 7-2-4	327 IAC 7-4-10
327 IAC 7-2-5	327 IAC 7-4-11
327 IAC 7-2-7	327 IAC 7-5
327 IAC 7-3	327 IAC 7-6
327 IAC 7-4-1	327 IAC 7-7
327 IAC 7-4-2	327 IAC 7-8
327 IAC 7-4-3	327 IAC 7.1
327 IAC 7-4-4	

SECTION 1. 327 IAC 7.1 IS ADDED TO READ AS FOLLOWS:

**ARTICLE 7.1. WASTEWATER MANAGEMENT**

**Rule 1. General Provisions**

**327 IAC 7.1-1-1 Purpose**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

**Sec. 1. This article establishes procedures, requirements and standards for the management of wastewater from sewage disposal systems regarding the following:**

- (1) Cleaning.
- (2) Transport.
- (3) Storage.
- (4) Treatment.
- (5) Disposal.

*(Water Pollution Control Board; 327 IAC 7.1-1-1)*

**327 IAC 7.1-1-2 Right of entry**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12-6

**Sec. 2. The commissioner or a designee may make inspections in accordance with IC 13-18-12-6(c).** *(Water Pollution Control Board; 327 IAC 7.1-1-2)*

**327 IAC 7.1-1-3 Applicability; incorporation by reference**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12-7

**Sec. 3. (a) This article applies to all persons who provide or engage in wastewater management.**

**(b) This article does not apply to the following:**

- (1) Land application activities that are regulated under 327 IAC 6.1.**
- (2) Any facility that has a valid permit under 327 IAC 5, implementing the National Pollution Discharge Elimination System (NPDES).**
- (3) Any facility that was permitted by or is required to have a valid construction permit under 327 IAC 3.**
- (4) Waste management activities that are regulated under rules of the solid waste management board at 329 IAC 3.1, 329 IAC 10, 329 IAC 11, 329 IAC 12, and 329 IAC 13.**
- (5) Management of animal manure.**
- (6) Activities excepted from permitting or licensure under IC 13-18-12-7.**

**(c) The following are incorporated by reference:**

- (1) Appendix I of 40 CFR 257, revised as of July 1, 2001.**
- (2) Method 9095 (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846 [Third Edition, November 1986, as amended by Updates 1 (July 1992), 2 (September 1994), 2A (August 1993), and 2B (January 1995)].**
- (3) Appendix II A of 40 CFR 257, revised as of July 1, 2001.**
- (4) 40 CFR 257.3-5(a) and 40 CFR 257.3-5(c), revised as of July 1, 2001.**

**(d) The Code of Federal Regulations and Publication SW-846 are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The telephone number for the Superintendent of Documents is (202) 512-1800.** *(Water Pollution Control Board; 327 IAC 7.1-1-3)*

**327 IAC 7.1-1-4 Enforcement**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-14-2-6; IC 13-14-10; IC 13-18-12-6.5; IC 13-30-3

**Sec. 4. This article is enforced under the following:**

- (1) IC 13-14-2-6.**
- (2) IC 13-14-10.**
- (3) IC 13-18-12-6.5.**
- (4) IC 13-30-3.**

*(Water Pollution Control Board; 327 IAC 7.1-1-4)*

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### 327 IAC 7.1-1-5 Penalties

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12; IC 13-30-4; IC 13-30-5; IC 13-30-6; IC 13-30-8

Sec. 5. Penalties for violation of this article are provided for at:

- (1) IC 13-30-4.
- (2) IC 13-30-5.
- (3) IC 13-30-6.
- (4) IC 13-30-8.

(*Water Pollution Control Board; 327 IAC 7.1-1-5*)

### Rule 2. Definitions

#### 327 IAC 7.1-2-1 Applicability

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-11-2; IC 13-18-12

Sec. 1. The definitions in IC 13-11-2 apply to this article. In addition to the definitions in IC 13-11-2, the definitions in this rule apply throughout this article. (*Water Pollution Control Board; 327 IAC 7.1-2-1*)

#### 327 IAC 7.1-2-2 "Agricultural land" defined

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12

Sec. 2. "Agricultural land" means land on which a food crop, a feed crop, or a fiber crop is grown. The term includes land used as pasture. (*Water Pollution Control Board; 327 IAC 7.1-2-2*)

#### 327 IAC 7.1-2-3 "Animal feed" defined

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12

Sec. 3. "Animal feed" means any crop grown for consumption by animals, such as forage and grain. (*Water Pollution Control Board; 327 IAC 7.1-2-3*)

#### 327 IAC 7.1-2-4 "Applicant" defined

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12

Sec. 4. "Applicant" means a person who applies for any or all of the following:

- (1) A wastewater management permit.
- (2) A wastewater vehicle license.
- (3) An approval for land application of wastewater.

(*Water Pollution Control Board; 327 IAC 7.1-2-4*)

#### 327 IAC 7.1-2-5 "Base flood or one hundred (100) year flood" defined

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12

Sec. 5. "Base flood or one hundred (100) year flood" means an area or plain where flooding has a one percent (1%) or greater chance of recurring in any given year, or a

flood of a magnitude equaled or exceeded, on the average, once in one hundred (100) years. (*Water Pollution Control Board; 327 IAC 7.1-2-5*)

#### 327 IAC 7.1-2-6 "Chemical toilet" defined

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12

Sec. 6. "Chemical toilet" means a toilet manufactured to receive nonwater-carried human waste directly into a deodorizing and liquefying chemical in a leakproof tank. (*Water Pollution Control Board; 327 IAC 7.1-2-6*)

#### 327 IAC 7.1-2-7 "Contaminate" defined

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12

Sec. 7. "Contaminate" means introducing a substance that would cause one (1) of the following:

- (1) The concentration of that substance in any drinking water source to exceed the maximum contaminant level specified in Appendix I of 40 CFR 257.
- (2) An increase in the concentration of that substance in any drinking water source where the existing concentration of that substance exceeds the maximum contaminant level specified in Appendix I of 40 CFR 257.

(*Water Pollution Control Board; 327 IAC 7.1-2-7*)

#### 327 IAC 7.1-2-8 "Destruction or adverse modification" defined

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12

Sec. 8. "Destruction or adverse modification" means a direct or indirect alteration of critical habitat that appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat. (*Water Pollution Control Board; 327 IAC 7.1-2-8*)

#### 327 IAC 7.1-2-9 "Disease vector" defined

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12

Sec. 9. "Disease vector" means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting micro-organisms and disease to humans and other animals. (*Water Pollution Control Board; 327 IAC 7.1-2-9*)

#### 327 IAC 7.1-2-10 "Domestic septage" defined

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12

Sec. 10. "Domestic septage" means the following:

- (1) Human excreta, water, scum, sludge, and sewage from sewage disposal systems, or retained contents of wastewater holding tanks.
- (2) Wastes carried in liquid from ordinary living processes.

**(3) Incidental or accidental seepage from sewage disposal systems.**

The term does not include contents from chemical toilets, or Type III marine sanitation devices as defined in 33 CFR 159.3, revised July 1, 2001. (*Water Pollution Control Board; 327 IAC 7.1-2-10*)

**327 IAC 7.1-2-11 “Drainage inlet” defined**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 11. “Drainage inlet” means any surficial opening to an underground tile drainage system that drains to waters of the state. For purposes of this article, the term includes water and sediment control basins. (*Water Pollution Control Board; 327 IAC 7.1-2-11*)

**327 IAC 7.1-2-12 “Endangered species” defined**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 12. “Endangered species” means any species listed as such pursuant to Section 4 of the Endangered Species Act. (*Water Pollution Control Board; 327 IAC 7.1-2-12*)

**327 IAC 7.1-2-13 “Food crops” defined**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 13. “Food crops” means tobacco, crops grown for human consumption, and animal feed for animals whose products are consumed by humans. (*Water Pollution Control Board; 327 IAC 7.1-2-13*)

**327 IAC 7.1-2-14 “Grease” defined**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 14. “Grease” means grease, fats, and retained wastes from grease traps or interceptors. (*Water Pollution Control Board; 327 IAC 7.1-2-14*)

**327 IAC 7.1-2-15 “Historic site” defined**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 14-8-2-125

Sec. 15. “Historic site”, as defined in IC 14-8-2-125, means a site that is important to the general, archaeological, agricultural, economic, social, political, architectural, industrial, or cultural history of Indiana. The term includes adjacent property that is necessary for the preservation or restoration of the site. (*Water Pollution Control Board; 327 IAC 7.1-2-15*)

**327 IAC 7.1-2-16 “Incorporated into the soil” defined**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 16. “Incorporated into the soil” means the mixing of

domestic septage, grease, or mixed load with the surface soil, using standard agricultural practices such as tillage. (*Water Pollution Control Board; 327 IAC 7.1-2-16*)

**327 IAC 7.1-2-17 “Injection” defined**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 17. “Injection” means the placement of domestic septage, grease, or mixed load beneath the surface of the soil in the crop root zone, using equipment specifically designed for this purpose. (*Water Pollution Control Board; 327 IAC 7.1-2-17*)

**327 IAC 7.1-2-18 “Land with a low potential for public exposure” defined**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 18. (a) “Land with a low potential for public exposure” means land that:

- (1) has restricted access;
- (2) is inaccessible to the public; or
- (3) is not used by the public during normal work or recreational activities.

(b) Examples include, but are not limited to, the following:

- (1) Agricultural land.
- (2) Forests.
- (3) Solid waste land disposal facilities as defined in the rules of the solid waste management board at 329 IAC 10-2-176.
- (4) Strip mines not located in a populated area or accessible to the public.
- (5) Industrial sites not located in a populated area or accessible to the public.
- (6) Construction sites not located in a populated area or accessible to the public.
- (7) Other sites that the commissioner may consider to have a low potential for public exposure based on any of the following:
  - (A) Existing public roads.
  - (B) Population density.
  - (C) Recreational opportunity.
  - (D) Infrastructure development.
  - (E) Level of management of property.

(*Water Pollution Control Board; 327 IAC 7.1-2-18*)

**327 IAC 7.1-2-19 “Liquid waste” defined**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 19. “Liquid waste” means any waste material that contains free liquids as determined by Method 9095 (Paint Filter Liquids Test), as described in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods”, EPA Publication SW-846 [Third Edition, November 1986, as



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amended by Updates 1 (July 1992), 2 (September 1994), 2A (August 1993), and 2B (January 1995)]. (*Water Pollution Control Board; 327 IAC 7.1-2-19*)

### 327 IAC 7.1-2-20 "Mixed load" defined

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 20. "Mixed load" means a mixture of any quantity of domestic septage with any quantity of grease. (*Water Pollution Control Board; 327 IAC 7.1-2-20*)

### 327 IAC 7.1-2-21 "Operator" defined

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 21. "Operator" means the person responsible for the operation of any of the following:

- (1) Wastewater management business.
- (2) Wastewater management vehicle.
- (3) Wastewater treatment facility.
- (4) Wastewater storage facility.
- (5) Wastewater land application site.

(*Water Pollution Control Board; 327 IAC 7.1-2-21*)

### 327 IAC 7.1-2-22 "Owner" defined

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 22. "Owner" means the person who owns any of the following:

- (1) Wastewater management business.
- (2) Vehicle used for wastewater management activities.
- (3) Wastewater treatment facility.
- (4) Wastewater storage facility.
- (5) Wastewater land application site.

(*Water Pollution Control Board; 327 IAC 7.1-2-22*)

### 327 IAC 7.1-2-23 "Pasture" defined

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 23. "Pasture" means land on which animals feed directly on feed crops, such as legumes, grasses, grain stubble, or fodder. (*Water Pollution Control Board; 327 IAC 7.1-2-23*)

### 327 IAC 7.1-2-24 "Person" defined

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-11-2-158; IC 13-18-12

Sec. 24. "Person" has the meaning set forth in IC 13-11-2-158(a). (*Water Pollution Control Board; 327 IAC 7.1-2-24*)

### 327 IAC 7.1-2-25 "Pesticide" defined

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 25. "Pesticide" means any substance that:

- (1) is commercially produced, marketed, or sold to control insects, rodents, nematodes, fungus, or weeds; and

(2) is regulated by the state chemist's office or the U.S. Environmental Protection Agency.

(*Water Pollution Control Board; 327 IAC 7.1-2-25*)

### 327 IAC 7.1-2-26 "Petroleum based" defined

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 26. "Petroleum based" means crude oil and substances derived from crude oil through processes such as separation, conversion, and finishing, that are liquid at ambient condition of temperature and pressure comprised of a complex blend of hydrocarbons, including, but not limited to, the following:

- (1) Motor fuel.
- (2) Jet fuel.
- (3) Mineral oil.
- (4) Lubricants.
- (5) Petroleum solvents.
- (6) Used oil.

(*Water Pollution Control Board; 327 IAC 7.1-2-26*)

### 327 IAC 7.1-2-27 "pH" defined

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 27. "pH" means the logarithm of the reciprocal of hydrogen ion concentration. (*Water Pollution Control Board; 327 IAC 7.1-2-27*)

### 327 IAC 7.1-2-28 "Potable" defined

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 28. "Potable" means fit to drink. (*Water Pollution Control Board; 327 IAC 7.1-2-28*)

### 327 IAC 7.1-2-29 "Public water supply surface intake structure" defined

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 29. "Public water supply surface intake structure" means any structure used for the purpose of providing water through a public water supply system. (*Water Pollution Control Board; 327 IAC 7.1-2-29*)

### 327 IAC 7.1-2-30 "Public water supply well" defined

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 30. "Public water supply well" means any well that provides water to the public through a water distribution system that:

- (1) serves at least twenty-five (25) persons per day for:
  - (A) drinking;
  - (B) domestic use; or
  - (C) other purposes; or
- (2) has at least fifteen (15) service connections.

(*Water Pollution Control Board; 327 IAC 7.1-2-30*)

**327 IAC 7.1-2-31 “Sensitive area” defined**

Authority: IC 13-14-8; IC 13-18-12-4  
 Affected: IC 13-18-12; IC 14-31; IC 14-38-1-5

Sec. 31. “Sensitive area” means a site where land application of domestic septage, a mixed load, or grease poses a specific water quality threat to one (1) or more of the following:

- (1) Aquifers used as a source of drinking water.
- (2) Public water supply wells.
- (3) Wellhead protection areas.
- (4) Drinking water supply reservoirs.
- (5) Areas requiring special protection, such as:
  - (A) wetlands;
  - (B) karst terrains;
  - (C) the critical habitat of an endangered species; or
  - (D) natural areas, including:
    - (i) parks;
    - (ii) nature preserves as regulated under IC 14-31;
    - (iii) historic sites as defined in section 15 of this rule; and
    - (iv) public lands as defined in IC 14-38-1-5.

*(Water Pollution Control Board; 327 IAC 7.1-2-31)*

**327 IAC 7.1-2-32 “Set aside” or “idle” defined**

Authority: IC 13-14-8; IC 13-18-12-4  
 Affected: IC 13-18-12

Sec. 32. “Set aside” or “idle” means agricultural land upon which no crop is grown during the crop season. *(Water Pollution Control Board; 327 IAC 7.1-2-32)*

**327 IAC 7.1-2-33 “Sewage disposal system” defined**

Authority: IC 13-14-8; IC 13-18-12-4  
 Affected: IC 13-11-2-201; IC 13-18-12

Sec. 33. “Sewage disposal system”, as defined in IC 13-11-2-201, means septic tanks, wastewater holding tanks, seepage pits, cesspools, privies, composting toilets, interceptors or grease traps, portable sanitary units, and other equipment, facilities, or devices used to:

- (1) store;
- (2) treat;
- (3) make inoffensive; or
- (4) dispose of;

human excrement or liquid carrying wastes of a domestic nature. *(Water Pollution Control Board; 327 IAC 7.1-2-33)*

**327 IAC 7.1-2-34 “Surface application” defined**

Authority: IC 13-14-8; IC 13-18-12-4  
 Affected: IC 13-18-12

Sec. 34. “Surface application” means the placement of wastewater by spraying or spreading onto the land surface. *(Water Pollution Control Board; 327 IAC 7.1-2-34)*

**327 IAC 7.1-2-35 “Taking” defined**

Authority: IC 13-14-8; IC 13-18-12-4  
 Affected: IC 13-18-12

Sec. 35. “Taking” means harassing, harming, pursuing, hunting, wounding, killing, capturing, or collecting or attempting to engage in such conduct. *(Water Pollution Control Board; 327 IAC 7.1-2-35)*

**327 IAC 7.1-2-36 “Unauthorized” defined**

Authority: IC 13-14-8; IC 13-18-12-4  
 Affected: IC 13-18-12

Sec. 36. “Unauthorized” means that which is prohibited by permit, license, or approval conditions or Indiana or federal statutes or regulations. *(Water Pollution Control Board; 327 IAC 7.1-2-36)*

**327 IAC 7.1-2-37 “Wastewater” defined**

Authority: IC 13-14-8; IC 13-18-12-4  
 Affected: IC 13-11-2-256; IC 13-18-12

Sec. 37. “Wastewater”, as defined in IC 13-11-2-256, means the following:

- (1) Human excreta, water, scum, sludge, and sewage from the sewage disposal systems, retained contents of wastewater holding tanks, or portable sanitary units.
- (2) Grease, fats, and retained wastes from grease traps or interceptors.
- (3) Wastes carried in liquid from ordinary living processes.
- (4) Incidental or accidental seepage from sewage disposal systems.

Grease, domestic septage, and a mixed load are all forms of wastewater. *(Water Pollution Control Board; 327 IAC 7.1-2-37)*

**327 IAC 7.1-2-38 “Wastewater management” defined**

Authority: IC 13-14-8; IC 13-18-12-4  
 Affected: IC 13-11-2-257; IC 13-18-12

Sec. 38. “Wastewater management”, as defined in IC 13-11-2-257, means the following:

- (1) The cleaning of sewage disposal systems.
- (2) The transportation, storage, treatment, or disposal of wastewater.

*(Water Pollution Control Board; 327 IAC 7.1-2-38)*

**Rule 3. Permits, Licenses, and Approvals**

**327 IAC 7.1-3-1 General requirements**

Authority: IC 13-14-8; IC 13-18-12-4  
 Affected: IC 13-18-12

Sec. 1. Any person providing or engaging in wastewater management shall comply with the following:

- (1) Possess a valid wastewater management permit, in addition to any of the following that are applicable as required by this article:
  - (A) A valid license for any vehicle used for wastewater management activities.
  - (B) A valid approval for land application of wastewater.

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(2) Comply with all applicable requirements of IC 13-18-12 and this article.

*(Water Pollution Control Board; 327 IAC 7.1-3-1)*

### 327 IAC 7.1-3-2 Revocation and modification

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12-6.5

Sec. 2. The commissioner or a designee may revoke or modify a permit, license, or approval issued by the commissioner in accordance with IC 13-18-12-6.5. *(Water Pollution Control Board; 327 IAC 7.1-3-2)*

### 327 IAC 7.1-3-3 Appeals

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 4-21.5-3; IC 13-18-12

Sec. 3. A person aggrieved by the denial, revocation, or modification of a permit, license, or approval may appeal the denial, revocation, or modification to the office of environmental adjudication for an administrative review under IC 4-21.5-3. *(Water Pollution Control Board; 327 IAC 7.1-3-3)*

### 327 IAC 7.1-3-4 Records; access to information

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-14-2-2; IC 13-18-12

Sec. 4. (a) Each permitted wastewater management business and any person who services a sewage disposal system shall keep accurate records of activities governed by this article.

(b) The records must include the following:

- (1) The receipt, contract, or invoice of all wastewater management activities.
- (2) The date, location, and method of disposal of wastewater associated with the receipts as required by 327 IAC 7.1-6-1(b).
- (3) Land application records as required by 327 IAC 7.1-8-7.

(c) Such records must be:

- (1) located at the permitted wastewater management business address;
- (2) made available to representatives of the commissioner during normal business hours for inspection as set forth in IC 13-14-2-2;
- (3) updated weekly, except as required at 327 IAC 7.1-8-7(a)(4); and
- (4) maintained for at least five (5) years.

*(Water Pollution Control Board; 327 IAC 7.1-3-4)*

## Rule 4. Wastewater Management Permits

### 327 IAC 7.1-4-1 Wastewater management permit applications

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12

Sec. 1. (a) An application for a wastewater management permit, including a renewal application, must be submitted to the commissioner on a form provided by the commissioner. An application, including a renewal application, is considered complete only after all information required has been submitted, including all supplemental information that is required by the commissioner.

(b) An application for renewal of an existing wastewater management permit shall be postmarked prior to the expiration date of the permit or the permit will be invalid upon expiration.

(c) If the applicant intends to store wastewater, or treat wastewater by altering the nature of domestic septage, a mixed load, or grease, then the permit application must be accompanied by all of the following:

(1) If the property where the wastewater storage or treatment facility will be located is not owned by the applicant:

- (A) the name, mailing address, and telephone number of the property owner; and
- (B) a statement, signed by the property owner, granting permission to conduct the activities specified in the application and stating that the activities specified in the application are not prohibited by any covenant of record.

(2) A county map clearly indicating the location of the property on which the facility is proposed.

(3) An accurate drawing clearly delineating the proposed facility site and the area within one-half (½) mile of the site in all directions. The drawing must use a scale of one (1) inch per one hundred (100) feet and show North. The drawing shall clearly and accurately indicate the location of all features of interest, including the following:

- (A) Potable water supplies.
- (B) Lakes, ponds, streams, intermittent waterways, surface water impoundments, wetlands, or other bodies of water.
- (C) Drainage inlets and tile systems.
- (D) Rock outcrops, sinkholes, or undrained depressions.
- (E) The location of all property lines, easements, and public roads.
- (F) Designated critical habitats of threatened or endangered species.
- (G) Historical sites.

(4) Plans and specifications certified by a professional engineer licensed to practice in Indiana. The plans must include the following:

- (A) The design of the facility.
- (B) The capacity of the facility.

(5) A brief narrative description of the proposed operating plan and maintenance procedures to be used at the facility.

(6) The name, address, and phone number of the person, or persons, designated in charge of the facility.

(7) A letter from at least one publicly owned treatment works permitted under 327 IAC 5-2 or other state permitted wastewater treatment plant stating the applicant is authorized to dispose of wastewater at their facility. If the narrative presented in subdivision (5) states the facility will be solidifying all wastewater, the applicant must also submit a letter from a state permitted municipal solid waste landfill.

(8) A signed statement from either the applicant or the property owner and the applicant, if the applicant is not the property owner, accepting responsibility for closure and abandonment in compliance with section 11 of this rule.

*(Water Pollution Control Board; 327 IAC 7.1-4-1)*

**327 IAC 7.1-4-2 Action on application**

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-15-7; IC 13-18-12; IC 13-30-6; IC 36-9-30-35

Sec. 2. (a) The commissioner shall issue or renew a permit only after the following:

(1) Receipt of a completed application in accordance with section 1 of this rule.

(2) An inspection by a representative of the commissioner to determine compliance with the requirements of this article.

(3) The commissioner has evaluated the applicant's compliance history in providing wastewater management services under this article and 327 IAC 7, which was repealed in 2001.

(b) A permit may be renewed with new or modified conditions based on the information provided in subsection (a).

(c) The commissioner may deny a permit application, including a renewal application, or place additional conditions on a permit, including a renewal, for any of the following:

(1) The applicant has been convicted of a crime under IC 13-30-6 or IC 36-9-30-35.

(2) The commissioner, under IC 13-15-7, has revoked the applicant's previous permit to operate under:

(A) this article; or

(B) 327 IAC 7, which was repealed in 2001.

(3) The applicant has a history of two (2) or more violations of IC 13 or rules promulgated by authority of IC 13.

(4) The applicant has been issued a notice of violation by the commissioner that is unresolved.

(d) The application for a permit or the issuance of a permit does not:

(1) convey any property rights of any sort or any exclusive privileges to the applicant or permittee;

(2) authorize:

(A) any injury to any person or private property;

(B) invasion of other property rights; or

(C) any infringement of federal, state, or local laws or regulations; or

(3) preempt any duty to comply with other federal, state, or local requirements.

(e) After the transition process described in section 5 of this rule, all permits shall be issued for a period not to exceed three (3) years. *(Water Pollution Control Board; 327 IAC 7.1-4-2)*

**327 IAC 7.1-4-3 Updating information**

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12

Sec. 3. If the information provided in the application for the wastewater management permit changes, the applicant or permittee shall provide the new information to the commissioner no more than fifteen (15) days after the information provided in the application changes. The commissioner will then decide what, if any, action shall be taken, including modification of the permit, based on this information. *(Water Pollution Control Board; 327 IAC 7.1-4-3)*

**327 IAC 7.1-4-4 Permit conditions**

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12

Sec. 4. (a) The commissioner may include conditions in a permit that ensure compliance with this article. All wastewater management permits issued are subject to the following conditions and such additional conditions as stated in the permit:

(1) The business name stated on the wastewater management permit and no other name shall be used in advertising for and engaging in wastewater management services.

(2) Permits issued under this article or 327 IAC 7, which was repealed in 2001, are not transferable.

(3) The permittee shall provide wastewater management services in a manner that does not create a threat to human health or the environment, including the following:

(A) Pumping, dumping, or allowing the leakage or drainage of wastewater onto any unauthorized premises, ground surfaces, public roads, or into the waters of the state is prohibited.

(B) Any spillage of wastewater onto unauthorized premises, ground surfaces, public roads or waters of the state must be handled, removed, and disposed in accordance with this article and under 327 IAC 2-6.1.

(C) Water obtained from any source for flushing or cleaning licensed wastewater vehicles, equipment used in wastewater management, or a sewage disposal system, must be obtained in a manner that prevents the possibility of contaminating the water source. Backflow prevention devices must be installed when water is obtained from a potable water source.

(D) Water used for flushing or cleaning purposes must

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be disposed of in the same manner as required by this article for wastewater disposal.

(4) Wastewater management activities must comply with all applicable requirements of IC 13-18-12 and this article.

(b) If the applicant intends to store or treat wastewater, the wastewater management permit shall be issued subject to the conditions contained in subsection (a), the following conditions, and such additional conditions as may be stated in the permit:

(1) Except for wastewater storage or treatment facilities approved prior to the effective date of this article, all storage or treatment facilities must comply with site restrictions and be designed and constructed in compliance with this article.

(2) All facilities must be operated in compliance with this article.

*(Water Pollution Control Board; 327 IAC 7.1-4-4)*

### 327 IAC 7.1-4-5 Transition

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12

Sec. 5. (a) Any permittee possessing a valid wastewater management permit shall, prior to expiration of that permit, submit an application for renewal of the permit in accordance with this subsection. A renewal permit will be issued subject to section 2 of this rule and according to the following schedule:

(1) Any permittee located outside of Indiana or any permittee located in the counties of:

- (A) Adams;
- (B) Allen;
- (C) Bartholomew;
- (D) Benton;
- (E) Blackford;
- (F) Boone;
- (G) Brown;
- (H) Carroll;
- (I) Cass;
- (J) Clark;
- (K) Clay;
- (L) Clinton;
- (M) Crawford;
- (N) Daviess;
- (O) Dearborn;
- (P) Decatur;
- (Q) Dekalb;
- (R) Delaware;
- (S) Dubois;
- (T) Elkhart;
- (U) Fayette;
- (V) Floyd;
- (W) Fountain;
- (X) Franklin;

- (Y) Fulton;
- (Z) Gibson;
- (AA) Grant; and
- (BB) Greene;

in Indiana will be issued a permit valid for one (1) year.

(2) Any permittee located in the counties of:

- (A) Hamilton;
- (B) Hancock;
- (C) Harrison;
- (D) Hendricks;
- (E) Henry;
- (F) Howard;
- (G) Huntington;
- (H) Jackson;
- (I) Jasper;
- (J) Jay;
- (K) Jefferson;
- (L) Jennings;
- (M) Johnson;
- (N) Knox;
- (O) Kosciusko;
- (P) LaGrange;
- (Q) Lake;
- (R) LaPorte;
- (S) Lawrence;
- (T) Madison;
- (U) Marion; and
- (V) Marshall;

in Indiana will be issued a permit valid for two (2) years.

(3) Any permittee located in the counties of:

- (A) Martin;
- (B) Miami;
- (C) Monroe;
- (D) Montgomery;
- (E) Morgan;
- (F) Newton;
- (G) Noble;
- (H) Ohio;
- (I) Orange;
- (J) Owen;
- (K) Parke;
- (L) Perry;
- (M) Pike;
- (N) Porter;
- (O) Posey;
- (P) Pulaski;
- (Q) Putnam;
- (R) Randolph;
- (S) Ripley;
- (T) Rush;
- (U) St. Joseph;
- (V) Scott;
- (W) Shelby;
- (X) Spencer;
- (Y) Starke;

- (Z) Steuben;
- (AA) Sullivan;
- (BB) Switzerland;
- (CC) Tippecanoe;
- (DD) Tipton;
- (EE) Union;
- (FF) Vanderburgh;
- (GG) Vermillion;
- (HH) Vigo;
- (II) Wabash;
- (JJ) Warren;
- (KK) Warrick;
- (LL) Washington;
- (MM) Wayne;
- (NN) Wells;
- (OO) White; and
- (PP) Whitley;

in Indiana will be issued a permit valid for three (3) years.

(b) All wastewater treatment facilities or wastewater storage facilities approved prior to the effective date of this article that do not have an expiration date specified in the approval shall submit, within one hundred eighty (180) days of the effective date of this article, a wastewater management permit application as specified in section 1 of this rule. Failure to timely submit a wastewater management permit application will cause the approval to store or treat wastewater to expire one hundred eighty-one (181) days after the effective date of this article.

(c) All wastewater treatment facilities or wastewater storage facilities approved prior to the effective date of this article shall submit, prior to the expiration date specified in the approval, a wastewater management permit application as specified in section 1 of this rule. Failure to timely submit a wastewater management permit application will invalidate the approval to store or treat wastewater on the expiration date.

(d) A permit or renewal permit will be issued subject to section 2 of this rule and according to the schedule set in subsection (a). (*Water Pollution Control Board; 327 IAC 7.1-4-5*)

**327 IAC 7.1-4-6 Site restrictions**

Authority: IC 13-14-8; IC 13-18-12-4  
 Affected: IC 13-18-12

**Sec. 6. Storage facilities or treatment facilities must not be constructed:**

- (1) within one hundred (100) feet of any easement;
- (2) within three hundred (300) feet of any public road;
- (3) within six hundred (600) feet of any:
  - (A) residence;
  - (B) place of business;
  - (C) public gathering place;

- (D) property line;
- (E) lake;
- (F) pond;
- (G) stream;
- (H) intermittent waterway;
- (I) surface water impoundment;
- (J) wetland;
- (K) rock outcrop;
- (L) sink hole;
- (M) undrained depression; or
- (N) potable water supply;
- (4) within one thousand (1,000) feet of any:
  - (A) public water supply well or public water supply surface intake structure;
  - (B) historical site; or
  - (C) designated critical habitat of threatened or endangered species;
- (5) in a flood plain; or
- (6) in a manner that would allow the wastewater to enter waters of the state.

(*Water Pollution Control Board; 327 IAC 7.1-4-6*)

**327 IAC 7.1-4-7 Design requirements for treatment facilities or storage facilities**

Authority: IC 13-14-8; IC 13-18-12-4  
 Affected: IC 13-18-12

**Sec. 7. (a) All wastewater treatment facilities or wastewater storage tanks must be designed in compliance with this article.**

(b) All facilities must be designed so as to prevent entry of storm water run-off from surrounding areas.

(c) Earthen facilities for the storage or treatment of wastewater shall not be approved.

(d) Underground steel tanks for the storage or treatment of wastewater shall not be approved.

(e) Storage tanks of synthetic material, fiberglass, and aboveground steel tanks must comply with the following:

- (1) The tank material and wall thickness shall be adequately engineered to contain the contents.
- (2) All tanks must be watertight.
- (3) Steel tanks shall be coated to prevent corrosion. Tanks constructed of materials other than steel shall have prior approval of the commissioner and shall be coated if necessary to prevent corrosion or afford further protection from leakage.
- (4) Tanks used to store substances other than wastewater must be cleaned to remove all traces of the other substance prior to the addition of wastewater to the tank.
- (5) Tanks shall be anchored, supported, and bedded to provide structural safety and prevent movement. Aboveground tanks shall be supported by a concrete base.

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(6) The bottom of the storage tank shall be at least two (2) feet above:

- (A) the water table;
- (B) bedrock; or
- (C) both clauses (A) and (B).

(7) Aboveground tanks must have protected shutoff valves for all inlet and outlet pipes.

(8) Vents on tanks shall not allow disease vectors to enter the tanks.

(9) Tanks shall be of such construction or design as to allow inspection and sampling of contents.

(10) An all-weather access road shall be provided to the storage tank sites.

*(Water Pollution Control Board; 327 IAC 7.1-4-7)*

### 327 IAC 7.1-4-8 Construction requirements for treatment or storage facilities

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12

Sec. 8. (a) All wastewater treatment facilities or storage facilities must be constructed to prevent leaks and seepage and prevent spills that could enter waters of the state.

(b) The commissioner may incorporate conditions into the wastewater management permit that require testing to verify that the facility's wastewater management system is consistent with the design standards and meets the performance standards established in this article. *(Water Pollution Control Board; 327 IAC 7.1-4-8)*

### 327 IAC 7.1-4-9 Operational requirements for treatment or storage facilities

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12

Sec. 9. (a) All wastewater treatment facilities or storage facilities permitted under this article must be maintained and operated to prevent any threats to human health or the environment as follows:

(1) An all-weather off-loading area with containment for spill cleanup must be provided where the vehicle contents are received by the facility.

(2) Unauthorized access to the facility must be prevented by locks, and the facility must be adequately fenced and posted.

(3) Facilities must be maintained so there is no discharge or seepage of wastewater other than controlled removal for final disposal of the wastewater.

(4) Facilities must be maintained so as to prevent safety hazards or disease vector conditions.

(b) Any uncovered storage structure must allow for and maintain a minimum of two (2) feet of freeboard at all times.

(c) Stockpiles of solids resulting from wastewater treatment at the treatment facility must be:

(1) approved by the commissioner;

(2) stored on an impervious surface;

(3) stored for not longer than thirty (30) days at any given time;

(4) maintained to have adequate run-on and run-off control methods; and

(5) covered by a tarp, plastic sheet, or roof if stored for longer than seventy-two (72) hours.

*(Water Pollution Control Board; 327 IAC 7.1-4-9)*

### 327 IAC 7.1-4-10 Innovative technology; alternate design and construction

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12

Sec. 10. (a) The use of a design or construction approach other than the requirements specified in this article or an innovative technology may be proposed by the owner/operator in accordance with the following:

(1) The proposal for the alternative design, construction, or innovative technology must be accompanied by documentation that assures that the performance standards of this article are met.

(2) The proposal must comply with all existing environmental rules and laws.

(3) The proposal must be submitted with a wastewater management permit application.

(b) In making a determination on the alternative design, construction, or innovative technology the commissioner shall consider the following criteria:

(1) Design specifications that assure adequate structural integrity.

(2) Protective measures that reduce the potential for spills.

(3) Operational practices that provide additional protection.

(4) Threats of adverse impacts to water quality or other specified sensitive areas.

(5) Other criteria related to protection of the environment or human health.

(c) The commissioner shall provide written documentation describing the basis for the approval or denial of the proposed alternate design, construction, or innovative technology. *(Water Pollution Control Board; 327 IAC 7.1-4-10)*

### 327 IAC 7.1-4-11 Closure and abandonment of treatment facilities or storage facilities

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12

Sec. 11. In the event a treatment or storage facility ceases to be operated or used for more than twenty-four (24) consecutive months, it is the responsibility of the person or persons who signed the statement submitted in accordance

with section 1(c)(8) of this rule to abandon the facility properly. The following steps are required:

- (1) The commissioner shall be notified at least thirty (30) days in advance that the facility is to be abandoned.
- (2) Closure, as described in this section, must be completed within one hundred twenty (120) days of the notification required in subdivision (1).
- (3) The contents of a facility must be disposed of in a manner consistent with this article.
- (4) Aboveground facilities must be dismantled and removed.
- (5) Earthen facilities must be:
  - (A) cleaned and leveled or filled with earth, and the appurtenances removed or closed in an alternative manner equally protective of human health and the environment that has been approved by the commissioner; and
  - (B) the site shall be returned approximately to its natural contours and be mounded to allow for settling and to divert surface waters.
- (6) A certification statement indicating that the requirements of this section have been met must be sent to the commissioner within thirty (30) days of completion of closure. The closure certification will be deemed adequate unless within ninety (90) days of receipt of the closure certification and subsequent review, the commissioner issues a notice of deficiency of closure, including actions necessary to correct the deficiency.

*(Water Pollution Control Board; 327 IAC 7.1-4-11)*

**Rule 5. Vehicle Licenses**

**327 IAC 7.1-5-1 Vehicle license requirements**

Authority: IC 13-14-8; IC 13-18-12-4  
 Affected: IC 13-18-12

Sec. 1. (a) An application for a wastewater management vehicle license, including a renewal, must be submitted to the commissioner, on a form provided by the commissioner. An application shall be considered complete only after all information required has been submitted, including all supplemental information as may be required by the commissioner.

(b) The application for renewal of an existing wastewater vehicle license must be postmarked prior to the expiration date of the license or the license will be invalid upon expiration. *(Water Pollution Control Board; 327 IAC 7.1-5-1)*

**327 IAC 7.1-5-2 Action on application**

Authority: IC 13-14-8; IC 13-18-12-4  
 Affected: IC 13-15-7; IC 13-18-12; IC 13-30-6; IC 36-9-30-35

Sec. 2. (a) The commissioner shall issue or renew a license only after the following:

- (1) Receipt of a completed application in accordance with section 1 of this rule.

(2) A vehicle and equipment inspection by a representative of the commissioner to determine compliance with the requirements of this rule.

(3) A valid wastewater management permit is issued to the vehicle owner under this article.

(4) The commissioner shall evaluate the applicant's compliance history in providing wastewater management services under this article and 327 IAC 7, which was repealed in 2001.

(b) A license may be renewed with new or modified conditions based on the information provided in subsection (a).

(c) The commissioner may deny a license application, including a renewal application, or place additional conditions on a license, including a renewal, for any of the following:

- (1) The applicant has been convicted of a crime under IC 13-30-6 or IC 36-9-30-35.
- (2) The commissioner, under IC 13-15-7, has revoked the applicant's previous license to operate under:
  - (A) this article; or
  - (B) 327 IAC 7, which was repealed in 2001.
- (3) The applicant has a history of two (2) or more violations of the Environmental Protection Acts or regulations as specified under the acts.
- (4) The applicant has been issued a notice of violation by the commissioner that is unresolved.

(d) The application for a license or the issuance of a license does not:

- (1) convey any property rights of any sort or any exclusive privileges to the licensee;
- (2) authorize:
  - (A) any injury to any person or private property;
  - (B) invasion of other property rights; and
  - (C) any infringement of federal, state, or local laws or regulations; or
- (3) preempt any duty to comply with other federal, state, or local requirements.

(e) After the transition process described in section 5 of this rule, all permits shall be issued for a period not to exceed three (3) years. In no case shall a license be issued for a term longer than the associated permit required under 327 IAC 7.1-3-1(1). *(Water Pollution Control Board; 327 IAC 7.1-5-2)*

**327 IAC 7.1-5-3 Updating information**

Authority: IC 13-14-8; IC 13-18-12-4  
 Affected: IC 13-18-12

Sec. 3. If the information provided in the application for the vehicle license changes, the applicant or licensee shall provide the new information to the commissioner no more than fifteen (15) days after the information provided in the



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application changes. The commissioner will then decide what, if any, action shall be taken, including modification of the license, based on this information. (*Water Pollution Control Board; 327 IAC 7.1-5-3*)

### 327 IAC 7.1-5-4 License conditions and restrictions

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-11-2-155; IC 13-18-12

Sec. 4. (a) The commissioner may include conditions and restrictions in a license that ensure compliance with this article.

(b) All wastewater management vehicle licenses are issued subject to the following conditions and any additional conditions contained in the license:

(1) The vehicle must be used only as authorized by the license and in compliance with any applicable restrictions or conditions stated on the license.

(2) The vehicle must not be used for the transport of any of the following:

(A) A hazardous waste that is regulated under 329 IAC 3.1.

(B) Wastewater containing PCBs equal to or greater than two (2) milligrams per kilogram on a dry weight basis.

(C) Petroleum based products.

(D) Pesticides.

(3) The vehicles and equipment used in cleaning sewage disposal systems or transporting wastewater must not be used for purposes other than the hauling of domestic waste, animal wastes, landfill leachate, or biosolids without prior written permission of the commissioner.

(c) A restricted license may be issued to a licensee for a vehicle that does not comply with specific requirements of this rule, but is adequate to clean designated sewage disposal systems or types of systems, or transport or land apply wastewater. The specific conditions that the vehicle is not required to meet shall be stated on the license.

(d) Wastewater management vehicle licenses are not transferable. (*Water Pollution Control Board; 327 IAC 7.1-5-4*)

### 327 IAC 7.1-5-5 Transition

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12

Sec. 5. (a) Any permittee possessing a valid vehicle license shall, prior to the expiration of that license, submit an application for renewal of the license in accordance with section 1 of this rule. A renewal license will be issued subject to section 2 of this rule and according to the following schedule:

(1) Any permittee located outside of Indiana or any permittee located in the counties of:

(A) Adams;

(B) Allen;

(C) Bartholomew;

(D) Benton;

(E) Blackford;

(F) Boone;

(G) Brown;

(H) Carroll;

(I) Cass;

(J) Clark;

(K) Clay;

(L) Clinton;

(M) Crawford;

(N) Daviess;

(O) Dearborn;

(P) Decatur;

(Q) DeKalb;

(R) Delaware;

(S) Dubois;

(T) Elkhart;

(U) Fayette;

(V) Floyd;

(W) Fountain;

(X) Franklin;

(Y) Fulton;

(Z) Gibson;

(AA) Grant; and

(BB) Greene;

in Indiana will be issued a license valid for one (1) year.

(2) Any permittee located in the counties of:

(A) Hamilton;

(B) Hancock;

(C) Harrison;

(D) Hendricks;

(E) Henry;

(F) Howard;

(G) Huntington;

(H) Jackson;

(I) Jasper;

(J) Jay;

(K) Jefferson;

(L) Jennings;

(M) Johnson;

(N) Knox;

(O) Kosciusko;

(P) LaGrange;

(Q) Lake;

(R) LaPorte;

(S) Lawrence;

(T) Madison;

(U) Marion; and

(V) Marshall;

in Indiana will be issued a license valid for two (2) years.

(3) Any permittee located in the counties of:

(A) Martin;

(B) Miami;

(C) Monroe;

- (D) Montgomery;
- (E) Morgan;
- (F) Newton;
- (G) Noble;
- (H) Ohio;
- (I) Orange;
- (J) Owen;
- (K) Parke;
- (L) Perry;
- (M) Pike;
- (N) Porter;
- (O) Posey;
- (P) Pulaski;
- (Q) Putnam;
- (R) Randolph;
- (S) Ripley;
- (T) Rush;
- (U) St. Joseph;
- (V) Scott;
- (W) Shelby;
- (X) Spencer;
- (Y) Starke;
- (Z) Steuben;
- (AA) Sullivan;
- (BB) Switzerland;
- (CC) Tippecanoe;
- (DD) Tipton;
- (EE) Union;
- (FF) Vanderburgh;
- (GG) Vermillion;
- (HH) Vigo;
- (II) Wabash;
- (JJ) Warren;
- (KK) Warrick;
- (LL) Washington;
- (MM) Wayne;
- (NN) Wells;
- (OO) White; and
- (PP) Whitley;

in Indiana will be issued a license valid for three (3) years.

(b) In no case shall a license be issued for a term longer than the associated permit required under 327 IAC 7.1-3-1(1). (*Water Pollution Control Board; 327 IAC 7.1-5-5*)

**Rule 6. Licensed Vehicle Operation**

**327 IAC 7.1-6-1 Vehicle and attendant equipment requirements; general**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 1. (a) The current vehicle license issued by the commissioner must be maintained in the vehicle at all times.

(b) The operator shall remove wastewater from the

sewage disposal system so as to minimize the occurrence of spills. Completion of wastewater removal includes the following:

- (1) Closing all access openings to the sewage disposal system.
- (2) Cleaning up any spilled wastewater.
- (3) Providing the customer with a completed, legible receipt or invoice showing the following:
  - (A) The customer's name and address.
  - (B) The date the customer's sewage disposal system was cleaned.
  - (C) The amount of wastewater removed from the system in gallons.
- (4) The receipt or invoice required in subdivision (3) must bear the following:
  - (A) The name and address of the permitted wastewater management business.
  - (B) The permittee's wastewater management permit number.
  - (C) The vehicle license number, as assigned by the commissioner, of the vehicle used in cleaning the customer's sewage disposal system.

(c) When transporting wastewater, licensed vehicles and attendant equipment must be maintained to prevent the leakage, spillage, or discharge of wastewater onto ground surfaces or public roads, including the following:

- (1) Portable sanitary units, including chemical toilets, and equipment on the vehicle must be secured to prevent detachment from the vehicle during transport.
- (2) Portable sanitary units, including chemical toilets, and equipment on the vehicle must be maintained to prevent any leakage or spillage of wastewater during transport.

(*Water Pollution Control Board; 327 IAC 7.1-6-1*)

**327 IAC 7.1-6-2 Vehicle and equipment requirements; tanks**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 2. The vehicle must be equipped with a leak-proof tank suitable for containment of wastewater from cleaning sewage disposal systems and must meet the following requirements unless otherwise specified under a restricted license:

- (1) The tank must be securely affixed to the vehicle chassis.
- (2) The tank must have a capacity of at least one thousand (1,000) gallons or as otherwise approved by the commissioner.
- (3) The tank must be constructed of steel adequate to prevent collapse when a vacuum is created or as otherwise approved by the commissioner.
- (4) The tank, if more than seven (7) feet long as measured along the axis of vehicle travel, must contain interior baffles of sufficient cross-sectional area to adequately

dampen movement of contained liquid during vehicle travel or braking. The baffles must be composed of the same material as the tank, and must have the same or greater thickness as the tank walls. The baffles must be firmly attached to the interior tank wall at least every seven (7) feet along the axis of vehicle travel, and must allow for complete draining of the contained wastewater. (5) The tank must have a discharge opening of a minimum of two and one-half (2½) inches in diameter and the discharge point shall allow for complete draining of the contained wastewater.

(6) The tank must have watertight valves provided at the tank's inlet and outlet. Watertight caps or plugs must be installed whenever the inlet and outlet openings are not being used to transfer the wastewater.

(7) The tank must be constructed so that its interior and exterior can be cleaned.

(8) A device must be installed on the tank to visually indicate from the exterior of the tank the wastewater level in the tank.

*(Water Pollution Control Board; 327 IAC 7.1-6-2)*

**327 IAC 7.1-6-3 Vehicle and equipment requirements; pumping system**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

**Sec. 3. A vehicle pumping system must meet the following requirements:**

- (1) The inlet and discharge of the sewage pumps must be a minimum of two and one-half (2½) inches in diameter.
- (2) The vehicle engine intake manifold must not be used as a vacuum source.
- (3) The pump installation must be such that leakage is prevented.
- (4) All exposed connections or openings must be made watertight with caps or plugs when the pumping system is being used to transfer liquid or wastewater.

*(Water Pollution Control Board; 327 IAC 7.1-6-3)*

**327 IAC 7.1-6-4 Vehicle and equipment requirements; hoses**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

**Sec. 4. A vehicle hose must meet the following requirements:**

- (1) The hose must:
  - (A) be maintained in good condition;
  - (B) have an inside diameter of not less than two and one-half (2½) inches; and
  - (C) be equipped with leak-proof connectors.
- (2) The hose must be of such material and construction that every portion of the interior and exterior can be cleaned.
- (3) All exposed hose openings or connections must be

capped or plugged watertight when not in use unless the hoses have been flushed and rinsed clean or are carried in a leak-proof storage compartment on the vehicle.

*(Water Pollution Control Board; 327 IAC 7.1-6-4)*

**327 IAC 7.1-6-5 Vehicle and equipment requirements; land application vehicles**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

**Sec. 5. Vehicles and equipment that will be used on-site for surface application of wastewater must have a spray bar or splash plate and a screening device that will distribute the wastewater while the vehicle is in motion. The screening device must be capable of preventing the application of solids not defined as wastewater. The wastewater distribution device must be designed to allow the device to be cleaned.** *(Water Pollution Control Board; 327 IAC 7.1-6-5)*

**327 IAC 7.1-6-6 Vehicle and equipment requirements; vehicle**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

**Sec. 6. Wastewater management vehicle identification labeling must be a minimum of three-eighths (¾) inch in width and of a color contrasting with the background. Such identification must be maintained in a legible condition at all times. All licensed wastewater management vehicles must bear the following visual identification:**

- (1) There must be labeled on both vehicle doors, or on the front quarter of the tank on both sides, where the tank wall is vertical, the word "VEHICLE" followed by the vehicle license number assigned by the commissioner, in letters and numbers all at least two (2) inches tall.
- (2) The business name and city or town where the business is located must appear on both doors of the vehicle.
- (3) The maximum capacity of the vehicle tank shall be painted at a location visible at all times, either on both sides of the tank or at the rear of the tank in letters and numbers at least two (2) inches tall.

*(Water Pollution Control Board; 327 IAC 7.1-6-6)*

**Rule 7. Wastewater Disposal**

**327 IAC 7.1-7-1 General requirements**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

**Sec. 1. (a) Disposal may be by discharge into a wastewater treatment plant or treatment works collection system that has a valid National Pollution Discharge Elimination System permit issued by the commissioner under 327 IAC 5 as follows:**

- (1) The discharge point, method of discharge, and wastewater quality must be in accordance with the requirements of the wastewater treatment plant accepting the wastewater.

(2) Wastewater must not be disposed of through a wastewater treatment plant or sewerage system without prior written permission of the responsible official.

(b) Domestic septage, grease, or mixed load may be disposed of in a permitted wastewater treatment facility as follows:

- (1) Disposal may be by discharge into a treatment facility specifically designed for the treatment of domestic septage, grease, or mixed load.
- (2) Facilities for the treatment of domestic septage, grease, or mixed load must have a valid wastewater management permit.

(c) Wastewater may be disposed of in a municipal solid waste landfill as follows:

- (1) Wastewater may be disposed at a municipal solid waste landfill possessing a valid solid waste management permit from the commissioner in accordance with the rules of the solid waste management board at 329 IAC 10.
- (2) Liquid waste must not be accepted for disposal by any municipal solid waste landfill. Free liquid shall be determined utilizing Method 9095 (Paint Filter Liquids Test) as described in the U.S. Environmental Protection Agency Publication SW-846. Free liquids must be removed or solidified before disposal.

(d) Wastewater may be disposed of at an approved land application site as follows:

- (1) Wastewater may be disposed at land application sites in compliance with this article. The wastewater may be in the form of grease, domestic septage, or a mixed load. No disposal of wastewater shall be permitted on the land at any property or location without a valid land application approval issued by the commissioner.
- (2) The contents of chemical toilets or Type III marine sanitation devices must not be land applied under this article.
- (3) Sludges or waste products that are not wastewater must not be land applied under this article.
- (4) Land application sites for disposal of wastewater cannot be used for the disposal of animal manures.

(e) Wastewater may be stored at a storage facility as follows:

- (1) Pending final disposal at an approved land application site.
- (2) Facilities for the storage of wastewater must be constructed or installed in compliance with this article.
- (3) Facilities for the storage of wastewater must have a valid wastewater management permit under this article.

*(Water Pollution Control Board; 327 IAC 7.1-7-1)*

**327 IAC 7.1-7-2 Wastewater origins; notifications**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-11-2-99; IC 13-18-12; IC 13-22-2-3

Sec. 2. A permittee, owner, or operator shall notify the commissioner if requested to haul wastewater where there is reason to believe the wastewater may contain one (1) or more of the following:

- (1) A pollutant listed as toxic under 307(a)(1) of the Clean Water Act.
- (2) A hazardous waste as generally described in IC 13-11-2-99.
- (3) A hazardous waste that is listed under IC 13-22-2-3.  
*(Water Pollution Control Board; 327 IAC 7.1-7-2)*

**Rule 8. Land Application; General Requirements**

**327 IAC 7.1-8-1 Land application approval requirements**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 1. (a) An application for a wastewater land application site approval, including a renewal, must be submitted to the commissioner, on a form provided by the commissioner. An application is considered complete only after all information required has been submitted, including all supplemental information that is required by the commissioner.

(b) The application for a renewal of an existing land application site approval must be postmarked prior to the expiration date of the approval or the approval will be invalid upon expiration.

(c) The application must be accompanied by all of the following:

- (1) A statement, signed by the property owner that:
  - (A) grants permission to dispose of wastewater on the property;
  - (B) acknowledges the crop and use limitations of sections 9 and 10 of this rule for land used for wastewater land application as set forth by this rule; and
  - (C) states activities specified in the application are not prohibited by any covenant of record.
- (2) The name, mailing address, and telephone number of the property owner.
- (3) A county map clearly indicating the location of the property on which wastewater application is proposed.
- (4) An accurate drawing clearly delineating the proposed wastewater application site and the area within one-half (½) mile of the site in all directions. The drawing must use a scale of one (1) inch per one hundred (100) feet and show North. The drawing shall clearly and accurately indicate the location of all features of interest, including the following:
  - (A) Potable water supplies.
  - (B) Lakes, ponds, streams, intermittent waterways, surface water impoundments, wetlands, or other bodies of water.
  - (C) Drainage inlets and tile systems.
  - (D) Rock outcrops, sinkholes, or undrained depressions.

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(E) The location and use of all structures, including residences or places of business and any public gathering places.

(F) The location of all property lines, easements, and public roads.

(G) Designated critical habitat of threatened or endangered species.

(H) Historical sites.

(I) Public water supply surface intake structures.

(J) Public water supply wells.

(5) A soil survey map or a report by a soil scientist certified by the American Registry of Certified Professionals in Agronomy, Crops, and Soils (ARCPACS), classifying the soils and their permeabilities within the proposed site and specifying the site's suitability for wastewater disposal by indicating the following:

(A) That at least three (3) feet of soil exists between the point of application and the:

(i) water table;

(ii) bedrock; or

(iii) both clauses (A) and (B).

(B) That the land application site is not located in the flood plain of the base flood or one hundred (100) year flood.

(C) That the soil permeability is slower than or equal to six (6) inches per hour for the first three (3) feet below the point of application.

(6) Additional information from the owner/operator as follows:

(A) A statement regarding the form or forms of wastewater to be land applied at the site; domestic septage, grease, or mixed load.

(B) Facts demonstrating that the site is not located in a sensitive area as defined at 327 IAC 7.1-2-31.

(C) Facts demonstrating that the site is land with a low potential for public exposure as defined at 327 IAC 7.1-2-18.

(D) The number of acres of area available for the application site after setbacks have been taken into consideration.

(E) A description of all land application methods to be utilized at the site.

(F) The annual amount of wastewater to be applied at the site.

(G) The total amount of wastewater that has been applied to the site in all previous years.

(H) A plan indicating what crops are to be grown on the site during the effective period of the permit, or if the site will be pasture land or set aside.

(7) A fee of thirty dollars (\$30) per site per year.

(d) Wastewater land application sites will not be approved unless the requirements of subsection (c) are met. *(Water Pollution Control Board; 327 IAC 7.1-8-1)*

### 327 IAC 7.1-8-2 Wastewater land application sites; prohibitions

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12

Sec. 2. The application of wastewater at a land application site must not:

(1) cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife;

(2) result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in 50 CFR 17;

(3) cause a discharge of pollutants into waters of the state that is in violation of the requirements of the National Pollutant Discharge Elimination System (NPDES) under 327 IAC 5;

(4) cause nonpoint source pollution to waters of the state;

(5) contaminate a drinking water source; or

(6) cause soil erosion.

*(Water Pollution Control Board; 327 IAC 7.1-8-2)*

### 327 IAC 7.1-8-3 Action on application

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-30-6; IC 36-9-30-35

Sec. 3. (a) The commissioner may issue or renew a land application approval only after the following:

(1) Receipt of a completed application in accordance with section 1 of this rule.

(2) An inspection of the proposed land application site to determine if the site and proposed methods of application will comply with the requirements of this rule.

(3) A valid wastewater management permit has been issued to the applicant under this article.

(4) The commissioner has evaluated the applicant's compliance history for land applying wastewater under this article and 327 IAC 7, which was repealed in 2001.

(b) An approval may be renewed with new or modified conditions based on the information provided in subsection (a).

(c) The commissioner may deny an approval application, including a renewal application, or place additional conditions on an approval, including a renewal, for any of the following:

(1) The applicant has been convicted of a crime under IC 13-30-6 or IC 36-9-30-35.

(2) The applicant's previous approval or permit to operate has been revoked by the commissioner under:

(A) this article; or

(B) 327 IAC 7, which was repealed in 2001.

(3) The applicant has a history of two (2) or more violations of IC 13 or rules promulgated by authority of IC 13.

(4) The applicant has been issued a notice of violation by the commissioner that is unresolved.

(d) The application for an approval or the issuance of an approval does not:

- (1) convey any property rights of any sort or any exclusive privileges to the applicant or approval holder;
- (2) authorize:
  - (A) any injury to any person or private property;
  - (B) invasion of other property rights; or
  - (C) any infringement of federal, state, or local laws or regulations; or
- (3) preempt any duty to comply with other federal, state, or local requirements.

(e) After the transition process described in section 6 of this rule, all approvals shall be issued for a period not to exceed three (3) years. No approval shall be issued for a term longer than the associated permit required under 327 IAC 7.1-3-1(1). *(Water Pollution Control Board; 327 IAC 7.1-8-3)*

**327 IAC 7.1-8-4 Updating information**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 4. If the information provided in the application for the land application approval changes, the applicant or holder of the approval shall provide the new information to the commissioner no more than fifteen (15) days after the information provided in the application changes. The commissioner will determine what, if any, action shall be taken, including modification of the approval, based on the updated information. *(Water Pollution Control Board; 327 IAC 7.1-8-4)*

**327 IAC 7.1-8-5 Approval conditions**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 5. All wastewater land application approvals shall be issued subject to the following conditions and such additional conditions as may be stated on the approval:

- (1) The valid wastewater land application approval or copy of the approval must be carried in any vehicle disposing of wastewater at an application site at all times; such approval or copy of the approval must be available for inspection by representatives of the commissioner or any law enforcement officer.
- (2) Surface application must be performed using equipment described in 327 IAC 7.1-6-5.
- (3) The property on which the wastewater land application site is located must be posted with signs reading, "NO TRESPASSING". Such signs must be posted along all access points to the site.
- (4) The usable portion of any land application site must be that area indicated on the application for approval and remaining after setbacks and all other restrictions are applied. This area must be clearly marked every one hundred (100) yards at its boundaries by flags or other boundary markers.

- (5) The applicable requirements of this rule must be met.
- (6) Land application approvals are not transferable. *(Water Pollution Control Board; 327 IAC 7.1-8-5)*

**327 IAC 7.1-8-6 Transition**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 6. (a) Any holder of a valid land application approval shall, prior to the expiration of that approval, submit an application for renewal of that approval in accordance with section 1 of this rule. A renewal approval will be issued subject to section 2 of this rule and according to the following schedule:

(1) Any holder of an approval located in the counties of:

- (A) Adams;
- (B) Allen;
- (C) Bartholomew;
- (D) Benton;
- (E) Blackford;
- (F) Boone;
- (G) Brown;
- (H) Carroll;
- (I) Cass;
- (J) Clark;
- (K) Clay;
- (L) Clinton;
- (M) Crawford;
- (N) Daviess;
- (O) Dearborn;
- (P) Decatur;
- (Q) DeKalb;
- (R) Delaware;
- (S) Dubois;
- (T) Elkhart;
- (U) Fayette;
- (V) Floyd;
- (W) Fountain;
- (X) Franklin;
- (Y) Fulton;
- (Z) Gibson;
- (AA) Grant; and
- (BB) Greene;

in Indiana will be issued an approval valid for one (1) year.

(2) Any holder of an approval located in the counties of:

- (A) Hamilton;
- (B) Hancock;
- (C) Harrison;
- (D) Hendricks;
- (E) Henry;
- (F) Howard;
- (G) Huntington;
- (H) Jackson;
- (I) Jasper;

- (J) Jay;
- (K) Jefferson;
- (L) Jennings;
- (M) Johnson;
- (N) Knox;
- (O) Kosciusko;
- (P) LaGrange;
- (Q) Lake;
- (R) LaPorte;
- (S) Lawrence;
- (T) Madison;
- (U) Marion; and
- (V) Marshall;

in Indiana will be issued an approval valid for two (2) years.

(3) Any holder of an approval located in the counties of:

- (A) Martin;
- (B) Miami;
- (C) Monroe;
- (D) Montgomery;
- (E) Morgan;
- (F) Newton;
- (G) Noble;
- (H) Ohio;
- (I) Orange;
- (J) Owen;
- (K) Parke;
- (L) Perry;
- (M) Pike;
- (N) Porter;
- (O) Posey;
- (P) Pulaski;
- (Q) Putnam;
- (R) Randolph;
- (S) Ripley;
- (T) Rush;
- (U) St. Joseph;
- (V) Scott;
- (W) Shelby;
- (X) Spencer;
- (Y) Starke;
- (Z) Steuben;
- (AA) Sullivan;
- (BB) Switzerland;
- (CC) Tippecanoe;
- (DD) Tipton;
- (EE) Union;
- (FF) Vanderburgh;
- (GG) Vermillion;
- (HH) Vigo;
- (II) Wabash;
- (JJ) Warren;
- (KK) Warrick;
- (LL) Washington;
- (MM) Wayne;

- (NN) Wells;
- (OO) White; and
- (PP) Whitley;

in Indiana will be issued an approval valid for three (3) years.

(b) No approval shall be issued for a term longer than the associated permit required under 327 IAC 7.1-3-1(1).  
*(Water Pollution Control Board; 327 IAC 7.1-8-6)*

**327 IAC 7.1-8-7 Wastewater land application rates and records**

Authority: IC 13-14-8; IC 13-18-12-4  
Affected: IC 13-18-12

Sec. 7. (a) The amount of wastewater to be applied shall not exceed the following:

(1) The maximum annual rate for domestic septage or mixed load shall not exceed:

- (A) seventy-seven thousand (77,000) gallons per acre on land being prepared for growing corn during the next growing season;
- (B) thirty-eight thousand (38,000) gallons per acre on land being prepared for growing soybeans, wheat, or hay during the next growing season; or
- (C) nineteen thousand (19,000) gallons per acre on land that is grass, pasture, set aside, or otherwise idle.

(2) The maximum annual rate for grease only shall not exceed ten thousand (10,000) gallons per acre.

(3) Land application of wastewater shall cease at the site when a total of two hundred thousand (200,000) gallons per acre of wastewater has been applied. The commissioner must be notified prior to further land application. The commissioner may require soil tests for heavy metals and PCBs utilizing representative soil samples from the areas of application to ensure that conditions are not created which would endanger public health or have an adverse impact on vegetation and future crop utilization. The initial test results must be submitted to and approved by the commissioner prior to further land application. The initial test results will determine if tests for heavy metals and PCBs will be required in the future.

(4) The wastewater must be surface spread, incorporated, or injected uniformly to prevent overlapping. Spot dumping from stationary vehicles is not permitted.

(5) The operator must keep an operating record of the amount of wastewater applied. This record must be:

- (A) updated each application day; and
- (B) located at the permitted wastewater management business address and made available to representatives of the commissioner during normal business hours for inspection.

(b) For each day that wastewater is land applied the operator must record and retain for five (5) years on a land application report form information as follows:





## Proposed Rules

Rock outcrops, sinkholes, or undrained depressions	100 feet	50 feet
Residences, places of business, or public gathering places	600 feet	500 feet
Public roads	300 feet	200 feet
Property lines or easements	100 feet	50 feet
Historic sites	1,000 feet	1,000 feet
Designated critical habitat of threatened or endangered species	1,000 feet	1,000 feet
Public water supply well or public water supply surface intake structure	1,000 feet	1,000 feet

*(Water Pollution Control Board; 327 IAC 7.1-8-8)*

### 327 IAC 7.1-8-9 Land application of wastewater; prohibitions; and management practices

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12

Sec. 9. (a) The land application of wastewater must be performed only in accordance with the following:

(1) No domestic septage or mixed load may be disposed at a land application site unless the domestic septage or mixed load has been treated to reduce pathogens prior to disposal as follows:

(A) If the load is domestic septage only, the pH must be raised to twelve (12) or higher by addition of alkaline material and, without the addition of more alkaline material, shall remain at twelve (12) or higher for at least thirty (30) minutes. This test must be done twice, at the start of the required time and at the end of the required time.

(B) If the load is a mixed load, then the pH must be raised to twelve (12) or higher by addition of alkaline material and, without the addition of more alkaline material, shall remain at twelve (12) or higher for at least two (2) hours. This test must be done twice, at the start of the required time and at the end of the required time.

(C) Processes to reduce pathogens other than lime stabilization may be utilized only as listed and described in 40 CFR 257, Appendix II A.

(D) Any treatment process for domestic septage or a mixed load other than lime stabilization must be approved by the commissioner prior to use.

(2) Grease must not be disposed of at any land application site unless injection or incorporation into the soil occurs within six (6) hours after application.

(3) Each container of wastewater applied to the land shall be monitored by the operator for compliance with the treatment process to domestic septage and mixed loads, or the land application method utilized under subdivision (2) for grease.

(4) Land application is prohibited under any of the following environmental conditions:

(A) When either or both of the following occurs:

(i) The surface soil temperature is less than thirty-two (32) degrees Fahrenheit at the time of intended application.

(ii) The site is snow covered.

(B) When the moisture holding capacity of the soil is exceeded as a result of previous wastewater applications or precipitation.

(C) Under any other conditions that would result in, or are likely to result in, run-off of wastewater from the site of application.

(5) Under no conditions shall wastewater be discharged or allowed to drain to the waters of the state. Wastewater shall not be applied to:

(A) road ditches; or

(B) swales, sink holes, field depressions, or channels that carry running water during snow melt or rainfall.

(6) Wastewater that is surface applied shall not be allowed to pool, pond, or remain as a liquid on the ground for more than twenty-four (24) hours after application.

(7) Injection of wastewater below the surface of the land must leave no significant amount of the wastewater present on the land within one (1) hour after application.

(8) All wastewater must be disposed so that no threat to human health or the environment is created.

(b) Land that is used for the application of a mixed load or grease must not be used for the production of any food crop unless the soil is tested yearly and the results found acceptable under 40 CFR 257.3-5(a) and 40 CFR 257.3-5(c). The test results must be submitted to IDEM on a yearly basis. The limitations and restrictions regarding land use and crop management also must be followed.

(c) Future property owners must be notified that grease or a mixture of domestic septage and grease had been applied to the land. The land must not be used for the production of any food crop unless the soil is tested and the results are acceptable under 40 CFR 257.3-5(a) and 40 CFR 257.3-5(c).

(d) Land that is used for the application of only domestic septage may be used for the production of food crops when the limitations and restrictions regarding land use and crop management contained in section 10 of this rule are followed. *(Water Pollution Control Board; 327 IAC 7.1-8-9)*

### 327 IAC 7.1-8-10 Limitations and restrictions regarding land use and crop management

Authority: IC 13-14-8; IC 13-18-12-4

Affected: IC 13-18-12

Sec. 10. (a) The following limitations and restrictions on

land use and crop management must be followed where grease only has been land applied:

- (1) Access to the site by the public must be prevented for twelve (12) months following the last grease application.
- (2) Access by animals whose products are consumed by humans must be prevented for at least thirty (30) days following the last grease application.
- (3) Food crops for direct human consumption must not be grown for eighteen (18) months following the last grease application.

(b) The following limitations and restrictions on land use and crop management must be followed where domestic septage only has been land applied:

- (1) Food crops with harvested parts that touch the septage and soil mixture and are totally above ground must not be harvested for fourteen (14) months after application of domestic septage.
- (2) Food crops with harvested parts below the surface of the land must not be harvested for twenty (20) months after application of domestic septage when the domestic septage remains on the land surface for four (4) months or longer prior to incorporation into the soil.
- (3) Food crops with harvested parts below the surface of the land must not be harvested for thirty-eight (38) months after application of domestic septage when the domestic septage remains on the land surface for less than four (4) months prior to incorporation into the soil.
- (4) Animal feed, fiber, and those food crops whose harvested parts do not touch the soil surface must not be harvested for thirty (30) days after application of the domestic septage.
- (5) Turf grown on land where domestic septage is applied must not be harvested for one (1) year after application of the domestic septage when the harvested turf is placed on either a lawn or land with a high potential for public exposure unless otherwise specified by the commissioner.

(c) The following limitations and restrictions on land use and crop management must be followed where a mixed load has been land applied:

- (1) Access to the site by the public must be prevented for twelve (12) months following the last mixed load application.
- (2) Access by animals whose products are consumed by humans must be prevented for at least thirty (30) days following the last mixed load application.
- (3) Food crops for direct human consumption must not be grown for eighteen (18) months following the last mixed load application.
- (4) Food crops with harvested parts that touch the mixed load and soil mixture and are totally above ground must not be harvested for fourteen (14) months after application of the mixed load.
- (5) Food crops with harvested parts below the surface of the land must not be harvested for twenty (20) months

after application of the mixed load when the mixed load remains on the land surface for four (4) months or longer prior to incorporation into the soil.

- (6) Food crops with harvested parts below the surface of the land must not be harvested for thirty-eight (38) months after application of the mixed load when the mixed load remains on the land surface for less than four (4) months prior to incorporation into the soil.
- (7) Animal feed, fiber, and those food crops whose harvested parts do not touch the soil surface must not be harvested for thirty (30) days after application of the mixed load.
- (8) Turf grown on land where the mixed load is applied must not be harvested for one year after application of the mixed load when the harvested turf is placed on either a lawn or land with a high potential for public exposure, unless otherwise specified by the commissioner.

*(Water Pollution Control Board; 327 IAC 7.1-8-10)*

SECTION 2. THE FOLLOWING ARE REPEALED: 327 IAC 7-1; 327 IAC 7-2-1; 327 IAC 7-2-2; 327 IAC 7-2-3; 327 IAC 7-2-4; 327 IAC 7-2-5; 327 IAC 7-2-7; 327 IAC 7-3; 327 IAC 7-4-1; 327 IAC 7-4-2; 327 IAC 7-4-3; 327 IAC 7-4-4; 327 IAC 7-4-5; 327 IAC 7-4-6; 327 IAC 7-4-7; 327 IAC 7-4-8; 327 IAC 7-4-10; 327 IAC 7-4-11; 327 IAC 7-5; 327 IAC 7-6; 327 IAC 7-7; and 327 IAC 7-8.

#### **Notice of Public Hearing**

*Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on March 13, 2002 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Water Pollution Control Board will hold a public hearing on proposed new rules concerning management of wastewater from sewage disposal systems.*

*The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rules. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996, Indiana Register, page 1710 (19 IR 1710).*

*Additional information regarding this action may be obtained from Pam Koons, Rules, Planning and Outreach Section, Office of Land Quality, (317) 232-8899 or (800) 451-6027 (in Indiana).*

*Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:*

*Attn: ADA Coordinator  
Indiana Department of Environmental Management  
100 North Senate Avenue  
P.O. Box 6015  
Indianapolis, Indiana 46206-6015*

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## Proposed Rules

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or call (317) 233-6947 (V) or (317) 232-6565 (TDD). Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Twelfth Floor, Central File Room and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Mary Beth Tuohy  
Assistant Commissioner  
Office of Land Quality

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### TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

#### Proposed Rule LSA Document #01-372

#### DIGEST

Amends 405 IAC 5-24-4 and 405 IAC 5-24-6 to revise reimbursement policy for pharmacy services in the Medicaid program. NOTE: 405 IAC 5-24-4 and 405 IAC 5-24-6 were amended by LSA Document 01-22(F), printed at 25 IR 60. However, that final rule was preliminarily enjoined pursuant to an order issued on October 9, 2001, in the Marion Superior Court, Cause No. 49D05-0109-CP-1480, and those changes not implemented. Effective 30 days after filing with the secretary of state.

#### 405 IAC 5-24-4 405 IAC 5-24-6

SECTION 1. 405 IAC 5-24-4, PROPOSED TO BE AMENDED AT 25 IR 847, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

#### 405 IAC 5-24-4 Reimbursement for legend drugs

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

Sec. 4. (a) The office shall reimburse pharmacy providers for covered legend drugs at the lowest of the following:

- (1) The estimated acquisition cost (EAC) of the drug as of the date of dispensing, plus any applicable Medicaid dispensing fee.
- (2) The maximum allowable cost (MAC) of the drug as determined by the Health Care Financing Administration under 42 CFR 447.332 as of the date of dispensing, plus any applicable Medicaid dispensing fee.
- (3) The state maximum allowable cost (MAC) of the drug as determined by the office as of the date of dispensing, plus any applicable Medicaid dispensing fee.
- (4) The provider's submitted charge, representing the provider's usual and customary charge for the drug, as of the date of dispensing.

(b) For purposes of this section, the Indiana Medicaid EAC is ~~ninety eighty-seven percent (90%)~~ **(87%)** of the average wholesale price for each National Drug Code according to the Medicaid contractor's drug database file.

(c) The state MAC is equal to the average actual acquisition cost per drug adjusted by a multiplier of at least 1.0. The actual acquisition cost will be determined using pharmacy invoices and other information that the office determines is necessary. The purpose of the multiplier is to ensure that the applicable state MAC rate is sufficient to allow reasonable access by providers to the drug at or below the established state MAC rate.

(d) OMPP will review state MAC rates on an ongoing basis, and adjust the rates as necessary to reflect prevailing market conditions and ensure reasonable access by providers to drugs at or below the applicable state MAC rate.

(e) Pharmacies and providers that are enrolled in the Indiana health coverage programs (IHCP) are required, as a condition of participation, to make available and submit to the OMPP or its designee acquisition cost information, product availability information, or other information deemed necessary by the OMPP for the efficient operation of the pharmacy benefit within the IHCP in the format requested by the OMPP or its designee. Providers will not be reimbursed for this information and will submit information to the OMPP or its designee within thirty (30) days following a request for such information unless the OMPP or its designee grants an extension upon written request of the pharmacy or provider. (*Office of the Secretary of Family and Social Services; 405 IAC 5-24-4; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3345; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Aug 29, 2001, 9:50 a.m.: 25 IR 60 [NOTE: On October 9, 2001, the Marion Superior Court issued an Order in Cause No. 49D05-0109-CP-1480, enjoining the Family and Social Services Administration from implementing LSA Document #01-22(F), published at 25 IR 60.]*)

SECTION 2. 405 IAC 5-24-6, AS AMENDED AT 25 IR 60, IS AMENDED TO READ AS FOLLOWS:

#### 405 IAC 5-24-6 Dispensing fee

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

Sec. 6. (a) For purposes of this rule, the Indiana Medicaid dispensing fee maximum is ~~four~~ **three** dollars-~~(\$4)~~ **(\$3)** per legend drug.

(b) A maximum of one (1) dispensing fee per month is allowable per recipient per drug order for legend drugs provided to Medicaid recipients residing in Medicaid certified long term care facilities.

(c) The practice of split billing of legend drugs, defined as the

dispensing of less than the prescribed amount of drug solely for the purpose of collecting more dispensing fees than would otherwise be allowed, is prohibited. In cases in which the pharmacist's professional judgment dictates that a quantity less than the amount prescribed be dispensed, the pharmacist should contact the prescribing practitioner for authorization to dispense a lesser quantity. The pharmacist must document the result of the contact and the pharmacist's rationale for dispensing less than the amount prescribed on the prescription or in the pharmacist's records. (*Office of the Secretary of Family and Social Services; 405 IAC 5-24-6; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3345; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Aug 29, 2001, 9:50 a.m.: 25 IR 60 [NOTE: On October 9, 2001, the Marion Superior Court issued an Order in Cause No. 49D05-0109-CP-1480, enjoining the Family and Social Services Administration from implementing LSA Document #01-22(F), published at 25 IR 60.]*)

**SECTION 3. The amendments proposed by this rule rulemaking action were previously finalized in amendments to 405 IAC 5-24-4 and 405 IAC 5-24-6 by LSA Document #01-22(F), printed at 25 IR 60. However, that final rule was preliminarily enjoined pursuant to an order issued on October 9, 2001, in the Marion Superior Court, Cause No. 49D05-0109-CP-1480, and the changes promulgated by LSA Document #01-22(F) were not implemented.**

#### ***Notice of Public Hearing***

*Under IC 4-22-2-24, notice is hereby given that on January 24, 2002 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Auditorium, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed amendments to revise Medicaid reimbursement rates to pharmacy providers.*

*In accordance with the public notice requirements established at 42 CFR 447.205, the Indiana Family and Social Services Administration, Office of Medicaid Policy and Planning (OMPP) gives notice of proposed changes to methods and standards governing reimbursement policy for pharmacy services under the Indiana Medicaid program.*

*The Medicaid program biennial budget (State Fiscal Years 02-03) was not fully appropriated by the General Assembly during the 2001 legislative session. The under-appropriation for the Medicaid program was \$141 million over the biennium, therefore, OMPP does not have sufficient funds to cover the growing costs of health care delivered to those who depend on the Medicaid program. Additionally, after the close of the 2001 Session, the State lost a lawsuit that is expected to add thousands more disabled Hoosiers to the Medicaid disability program at a cost estimated to be around \$136 million over the biennium. As a result, OMPP has had no choice but to pursue a number of cost containment initiatives that will reduce overall expenditures to levels that will enable the State to pay all*

*providers for the services delivered, and to ensure access to services for eligible Medicaid recipients.*

*In response to rapidly escalating expenditures for Medicaid covered legend drugs, the OMPP proposes changes to the following reimbursement elements applicable to legend drugs: decrease dispensing fee from \$4.00 to \$3.00 and increase from ten percent to thirteen percent, the percentage subtracted from published average wholesale price (AWP).*

*OMPP's research reveals that the current \$4.00 dispensing fee is substantially higher than dispensing fee is substantially higher than dispensing fees of other payors. In early 2000, the National Association of Medicaid Fraud Control Units advised Medicaid agencies that they had determined that inflated AWP's were causing payors to over-reimburse for drugs nationwide. In August 2001, the Office of the Inspector General of the United States Department of Health and Human Services issued a final report entitled "Medicaid Pharmacy-Actual Acquisition Cost of Brand Name Prescription Drug Products" that provided the results of OIG's review of pharmacy acquisition costs for brand name drugs reimbursed under the Medicaid prescription drug program. The review included pricing information from eight states, including Indiana. The OIG estimated that nationally, pharmacy actual acquisition cost was an average of 21.84 percent below AWP. Shortly after release of the OIG's study, claims surfaced that the referenced percentage was incorrect, due to flaws in the OIG's data. Even if the 21.84 percent figure is eventually revised downward somewhat, it clearly remains the case that what providers actually pay as actual acquisition cost for a drug is less than what they are reimbursed for the drug under the current AWP minus 10 percent methodology. Analysis of Indiana-specific data by Myers and Stauffer indicates that a more accurate percentage figure corresponding to the OIG's study would be in the range of 17 percent to 18 percent. In addition, OMPP's research reveals that average commercial pharmacy pricing in Indiana and the midwest entails AWP minus 40 percent for generic drugs and AWP minus 14.5 percent for brand name drugs. For these reasons and in order to bring Medicaid payments more in line with rates paid and accepted in the marketplace, a reduction of the dispensing fee to \$3.00 and AWP minus thirteen percent are proposed.*

*The policies implemented by these proposals are expected to result in Medicaid program savings (both state and federal dollars) of approximately \$2.7 million in SFY 2002 and approximately \$24.4 million in SFY 2003.*

*All parties who are interested in the rule are invited to attend that hearing and offer public testimony. Written comments concerning the rule received at or after the hearing are available for public inspection by contacting, Office of Medicaid Policy and Planning, 402 West Washington Street, Room W382, Indianapolis, Indiana 46204.*

*Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325,*

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Indianapolis, Indiana and are open for public inspection. Also, copies of these rules and this public notice are now on file and open for public inspection by contacting the Director of the local office of the Division of Family and Children, except in Marion County. The inspection material will be maintained for viewing in Marion County at the Office of Medicaid Policy and Planning, 402 West Washington Street, Room W382, and will be available from 8:30 a.m. to 4:30 p.m., Monday through Friday. Written comments from any source regarding these changes should be sent to the above listed address to the attention of Catherine Rudd in order to be made part of the public record to be considered by the agency. Correspondence should be identified by reference to LSA 01-372.

John Hamilton  
Secretary  
Office of the Secretary of Family and Social  
Services

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### TITLE 412 INDIANA HEALTH FACILITIES COUNCIL

#### Proposed Rule LSA Document #01-281

#### DIGEST

Adds 412 IAC 2 to establish standards to govern training, testing, and practice of qualified medication aides. Effective 30 days after filing with the secretary of state.

#### 412 IAC 2

SECTION 1. 412 IAC 2 IS ADDED TO READ AS FOLLOWS:

#### ARTICLE 2. QUALIFIED MEDICATION AIDES

##### Rule 1. General Provisions

#### 412 IAC 2-1-1 "Qualified medication aide" or "QMA" defined

Authority: IC 16-28-1-7; IC 16-28-1-11  
Affected: IC 16-28-1

Sec. 1. As used in this rule, "qualified medication aide" or "QMA" means an individual who has satisfactorily completed the state-qualified medication aide course and test. (Indiana Health Facilities Council; 412 IAC 2-1-1)

#### 412 IAC 2-1-2 "Supervised practicum" defined

Authority: IC 16-28-1-7; IC 16-28-1-11  
Affected: IC 16-28-1

Sec. 2. As used in this rule, "supervised practicum" means training in a long term care setting in which the QMA student demonstrates competency while dispensing and passing medications and/or applying/administering

treatments under the direct supervision of a registered nurse or a licensed practical nurse. (Indiana Health Facilities Council; 412 IAC 2-1-2)

#### 412 IAC 2-1-3 QMA training

Authority: IC 16-28-1-11  
Affected: IC 16-28-1

Sec. 3. A QMA program shall include, at a minimum, the following:

(1) One hundred (100) hours of training to include sixty (60) hours of classroom instruction and forty (40) hours of supervised practicum.

(2) Classroom training performed by a registered nurse who possesses a minimum of two (2) years of licensed nursing experience, of which at least one (1) year shall be in the provision of long term care facility services. Instructors shall have documentation of completion of an Indiana state department of health approved QMA course.

(3) A curriculum that includes a review of the following areas:

(A) Communication and interpersonal skills, including communication with a cognitively impaired or combat-ive resident as follows:

(i) Techniques for addressing the unique needs and behaviors of individuals with dementia (Alzheimer's and others).

(ii) Communicating with cognitively impaired resi-dents.

(iii) Understanding the behavior of cognitively im-paired residents.

(iv) Appropriate responses to behavior of cognitively impaired residents.

(v) Methods of reducing the effects of cognitive impairments.

(B) Infection control/hand washing.

(C) Safety/emergency procedures, including the Heimlich maneuver.

(D) Resident independence.

(E) Resident rights.

(F) Abuse, neglect, and misappropriation of resident property.

(4) A curriculum that includes instruction and training on the scope of practice for a QMA, including, but not limited to, the following:

(A) Fundamentals of pharmacology.

(B) Medication orders.

(C) Care of long term residents and monitoring for effects of medication usage.

(D) Fundamentals of the following systems and medica-tions affecting each system:

(i) Gastrointestinal.

(ii) Musculoskeletal.

(iii) Skin and sensory.

- (iv) Urinary.
- (v) Cardiovascular.
- (vi) Respiratory.
- (vii) Endocrine.
- (viii) Male and female reproductive.
- (ix) Nervous.

- (E) Psychotherapeutic medications.
- (F) Inflammation, infection, immunity, and malignant disease.
- (G) Nutritional deficiencies.
- (H) Principles of administering medications.
- (I) Documentation of medication administration.
- (J) Hand washing/standard precautions.
- (K) Positioning of resident in preparation for medication/treatment administration, including the following:
  - (i) Supine position.
  - (ii) Lateral/Sim's position.
  - (iii) Fowlers positions.
  - (iv) Prone position.
- (L) Obtaining temperature via oral, axillary, otic, or rectal route using a thermometer (glass and electronic).
- (M) Measurement of vital signs, including pulse, respiratory rate, and blood pressure.
- (N) Scope of practice of the QMA.
- (O) Reporting of observations to the licensed nurse and documentation of those observations in the medical record.
- (P) Clean technique in handling medications and dressings.
- (Q) Administration of oxygen per nasal cannula or nonsealing mask.
- (R) Obtaining oxygen saturation utilizing an oximeter.
- (S) Administration of medications per G-tube or J-tube.
- (T) Administration of medication via metered dose inhaler.
- (U) Hemocult testing.
- (V) Finger stick blood glucose testing.
- (W) Applying a dressing to a minor skin tear.
- (X) Applying a dressing to a healed G-tube or J-tube site.
- (Y) Emptying and changing colostomy bag.
- (Z) Instilling a commercially prepared disposal enema.
- (AA) Administering a sitz bath.
- (BB) Applying a cold dry compress.
- (CC) Conducting diabetic urine testing.
- (DD) Collecting fecal or urine specimens.

*(Indiana Health Facilities Council; 412 IAC 2-1-3)*

#### **412 IAC 2-1-4 Means to assess progress**

Authority: IC 16-28-1-7; IC 16-28-1-11  
Affected: IC 16-28-1

Sec. 4. The training program shall use an evaluation system that appropriately assesses the student's ongoing progress. Documentation of the student's ongoing progress and competency during the training program must be

available for review by the Indiana state department of health. *(Indiana Health Facilities Council; 412 IAC 2-1-4)*

#### **412 IAC 2-1-5 Practicum**

Authority: IC 16-28-1-7; IC 16-28-1-11  
Affected: IC 16-28-1

Sec. 5. (a) The supervisor of the forty (40) hour practicum shall be a:

- (1) registered nurse licensed in Indiana; or
- (2) licensed practical nurse licensed in Indiana who has a minimum of one (1) year of licensed nursing experience.

(b) The supervised practicum shall be completed within three (3) months of completion of the classroom instruction.

(c) During the supervised practicum, students are required to demonstrate competency via return demonstration in the presence of the practicum supervisor, who, in turn, shall complete a state approved practicum checklist. Each checklist shall be completed with one hundred percent (100%) accuracy. A student shall have the opportunity to repeat said checklists until one hundred percent (100%) accuracy is obtained. *(Indiana Health Facilities Council; 412 IAC 2-1-5)*

#### **412 IAC 2-1-6 Location for supervised practicum**

Authority: IC 16-28-1-7; IC 16-28-1-11  
Affected: IC 16-28-1

Sec. 6. (a) The site for the supervised practicum shall be a facility or unit operating under 410 IAC 16.2. The practicum training site shall have written approval from the Indiana state department of health every two (2) years.

(b) If the supervised practicum site is conducted at a location other than the site of the classroom training, a written agreement shall be in place stating the practicum is being conducted under appropriate supervision. *(Indiana Health Facilities Council; 412 IAC 2-1-6)*

#### **412 IAC 2-1-7 Classroom requirements**

Authority: IC 16-28-1-7; IC 16-28-1-11  
Affected: IC 16-28-1

Sec. 7. (a) The classroom training may be provided by one (1) of the following:

- (1) A licensed long term care facility.
- (2) A program of an Indiana vocational school governed by the department of education or North Central Accreditation.
- (3) A program conducted by an accredited school of nursing.
- (4) A nonfacility based program.

(b) The classroom training site or program shall have necessary supplies and equipment to train QMAs.

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## Proposed Rules

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(c) Maximum enrollment for any class size shall not exceed twenty (20) students.

(d) The classroom training site or program shall have written approval from the Indiana state department of health every two (2) years. (*Indiana Health Facilities Council; 412 IAC 2-1-7*)

### 412 IAC 2-1-8 QMA competency evaluation

Authority: IC 16-28-1-7; IC 16-28-1-11

Affected: IC 16-28-1

Sec. 8. (a) A QMA competency evaluation test shall be administered consisting of multiple choice questions requiring a passing score of eighty percent (80%) by the state-approved training entity. Ongoing revision of test questions may be necessary in an effort to maintain a valid exam that includes new medications and updated materials for various medication classifications. The application for competency exam shall be submitted within thirty (30) days of practicum completion.

(b) The competency evaluation test may be retaken three (3) times within one (1) year of the completion date of classroom training. Prior to the student applying to take the second or third test, the student shall provide documentation to the testing entity of additional training conducted by a registered nurse. However, if the student is unsuccessful after three (3) attempts, he or she shall repeat the training program in its entirety. Testing will be administered and scored by an entity under contract with the Indiana state department of health.

(c) The student has six (6) months from the completion of the sixty (60) hour classroom portion of the program to complete the forty (40) hour practicum and successfully pass the competency evaluation test, including the retake in case of initial failure.

(d) Graduate nursing students that do not pass the state nursing boards may function as a QMA after successfully completing the competency evaluation test with a passing score of eighty percent (80%).

(e) Nursing students who have completed a pharmacology class with a grade of "C" or above would be exempt from the classroom training, however, the student is required to complete the practicum and successfully complete the competency evaluation test. (*Indiana Health Facilities Council; 412 IAC 2-1-8*)

### 412 IAC 2-1-9 Scope of practice

Authority: IC 16-28-1-7; IC 16-28-1-11

Affected: IC 16-28-1

Sec. 9. (a) The following tasks are within the scope of practice for the QMA unless prohibited by facility policy:

(1) Observe and report to the facility's licensed nurse reactions and side effects to medications exhibited by a resident.

(2) Measure and document vital signs prior to the administration of medication that could affect or change the vital signs. Report any abnormalities to the licensed nurse that would prohibit medication administration.

(3) Administer regularly prescribed medication which the QMA has been trained to administer only after personally preparing (setting up) the medication to be administered. The QMA shall document in a resident's clinical record all medications that the QMA personally administered. The QMA shall not document in a resident's clinical record any medication that was administered by another person or not administered at all.

(4) Initiate oxygen per nasal cannula or nonsealing mask only in an emergency. Immediately after the emergency, the QMA shall verbally notify the licensed nurse on duty or on call and appropriately document the action and notification.

(5) Obtain oxygen saturation utilizing an oximeter that has been calibrated by a licensed or certified professional and report results to the licensed nurse.

(6) Apply physician-ordered oral, ophthalmic, otic, nasal, vaginal, and rectal medications.

(7) Crush and administer medications if such preparation is appropriate per manufacturer's instructions or physician's order.

(8) Alter capsules if prescribed to be administered in this altered manner by the physician.

(9) Count, administer, and document controlled substances.

(10) Administer medications per G-tube or J-tube.

(11) Administer previously ordered pro re nata (PRN) medication only if authorization is obtained from the facility's licensed nurse on duty or on call. If authorization is obtained, the QMA must do the following:

(A) Document in the resident record symptoms indicating the need for the medication and time the symptoms occurred.

(B) Document in the resident record that the facility's licensed nurse was contacted, symptoms were described, and permission was granted to administer the medication, including the time of contact.

(C) Obtain permission to administer the medication each time the symptoms occur in the resident.

(D) Ensure that the resident's record is cosigned by the licensed nurse who gave permission by the end of the nurse's shift, or if the nurse was on call, by the end of the nurse's next tour of duty.

(12) Apply topical medication to minor skin conditions such as dermatitis, scabies, pediculosis, fungal-infection, psoriasis, eczema, first degree burn, stage one decubitus ulcer.

(13) Administer medication via metered dose inhaler.

- (14) Conduct hemocult testing and report result to the licensed nurse.
- (15) Conduct finger stick blood glucose testing (specific to the glucose meter used), reporting result to the licensed nurse.
- (16) Apply a dressing to a minor skin tear that has been assessed by a licensed nurse.
- (17) Provide ordered site care and apply a dressing to a healed G-tube or J-tube site.
- (18) Empty and change colostomy bag.
- (19) Instill a commercially prepared disposable enema (approximately one hundred twenty (120) milliliters or four and one-half (4.5) ounces) after the resident has been assessed by the licensed nurse (for bowel sounds and potential impaction) and the licensed nurse has instructed the QMA to instill the enema.
- (20) Administer a sitz bath, if ordered by the physician, and report any unusual observations to the licensed nurse.
- (21) Apply a cold, dry compress as directed by the physician or by the licensed nurse in emergency situations requiring first-aid treatment.
- (22) Conduct diabetic urine testing, for example, tablet, dipstick, or test tape methods.
- (23) Collect fecal or urine specimens as ordered by the physician.
- (24) Document in the clinical record the QMA observations, including what the QMA sees, hears, or smells and document what is reported to the QMA by the resident.

(b) The following tasks shall not be included in the QMA scope of practice:

- (1) Administer medication by the injection route, including the following:
  - (A) Intramuscular route.
  - (B) Intravenous route.
  - (C) Subcutaneous route.
  - (D) Intradermal route.
- (2) Administer medication used for intermittent positive pressure breathing (IPPD) treatments or any form of medication inhalation treatments, other than metered dose inhaler.
- (3) Administer medication per nasogastric tube.
- (4) Instill irrigation fluids of any type, including, but not limited to:
  - (A) colostomy;
  - (B) catheter; and
  - (C) enema;except as described in subsection (a)(19).
- (5) Assume responsibility for receiving in writing or receive a verbal or telephone order.
- (6) Administer a treatment that involves advanced skin conditions, including stage II, III, and IV decubitus ulcers.

*(Indiana Health Facilities Council; 412 IAC 2-1-9)*

***Notice of Public Hearing***

*Under IC 4-22-2-24, notice is hereby given that on January 23, 2002 at 2:00 p.m., at the Indiana State Department of Health, 2 North Meridian Street, Rice Auditorium, Indianapolis, Indiana the Indiana Health Facilities Council will hold a public hearing on proposed new rules to govern the training, testing, and practice of qualified medication aides. Copies of these rules are now on file at the Indiana State Department of Health, 2 North Meridian Street and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

James A. Murphy, A.C.S.W.  
Chairman  
Indiana Health Facilities Council

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**TITLE 675 FIRE PREVENTION AND BUILDING  
SAFETY COMMISSION**

**Proposed Rule**

LSA Document #01-376

DIGEST

Amends 675 IAC 14-4.2, the 2001 Indiana Residential Code, so as not to be in conflict with provisions of the 2002 Indiana Electrical Code, 675 IAC 17-1.6. Adds 675 IAC 17-1.6, which adopts by reference and amends the 2002 National Electrical Code as the Indiana Electrical Code, 2002 Edition. Repeals 675 IAC 17-1.5. Effective 30 days after filing with the secretary of state.

675 IAC 14-4.2-182.1	675 IAC 14-4.2-192.5
675 IAC 14-4.2-185.1	675 IAC 14-4.2-192.6
675 IAC 14-4.2-187	675 IAC 14-4.2-192.7
675 IAC 14-4.2-187.1	675 IAC 14-4.2-192.8
675 IAC 14-4.2-187.2	675 IAC 14-4.2-193.1
675 IAC 14-4.2-187.3	675 IAC 14-4.2-193.2
675 IAC 14-4.2-187.4	675 IAC 14-4.2-193.3
675 IAC 14-4.2-190.1	675 IAC 14-4.2-193.4
675 IAC 14-4.2-190.2	675 IAC 14-4.2-193.5
675 IAC 14-4.2-190.3	675 IAC 14-4.2-194.1
675 IAC 14-4.2-190.4	675 IAC 14-4.2-194.2
675 IAC 14-4.2-190.5	675 IAC 14-4.2-194.3
675 IAC 14-4.2-191.1	675 IAC 14-4.2-194.4
675 IAC 14-4.2-191.2	675 IAC 14-4.2-194.5
675 IAC 14-4.2-191.3	675 IAC 14-4.2-194.6
675 IAC 14-4.2-192.1	675 IAC 14-4.2-194.7
675 IAC 14-4.2-192.2	675 IAC 17-1.5
675 IAC 14-4.2-192.3	675 IAC 17-1.6
675 IAC 14-4.2-192.4	

SECTION 1. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:



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### 675 IAC 14-4.2-182.1 Section E3302.2; penetrations of fire-resistance-rated assemblies

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

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 182.1. Delete “Section R320.2” in the last sentence and replace with “Section R321”. (Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-182.1)**

SECTION 2. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

### 675 IAC 14-4.2-185.1 Section E3306.5; individual conductor insulation

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

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 185.1. Delete the second sentence in Section E3306.5 without substitution. Delete the period after the last sentence and add “in accordance with Table E3605.1.”. (Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-185.1)**

SECTION 3. 675 IAC 14-4.2-187, AS ADDED AT 24 IR 3062, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

### 675 IAC 14-4.2-187 Section E3401; general

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

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 187. Change SECTION E3401 as follows: (a) Delete the definition of APPROVED and substitute to read as follows: See the definition of APPROVED in SECTION R202.**

**(b) Delete the definition of BRANCH CIRCUIT, GENERAL PURPOSE and substitute: A branch circuit that supplies two or more receptacles or outlets for lighting and appliances.**

**(c) Delete the definition of GROUND-FAULT CIRCUIT-INTERRUPTER and substitute: A device intended for the protection of personnel that functions to de-energize a circuit or portion thereof within an established period of time when a current to ground exceeds the values established for a Class A device.**

**(d) Delete the definition of LABELED and substitute as follows: See the definition of LABELED in SECTION R202.**

**(e) Delete the definition of LISTED and substitute to read as follows: See the definition of LISTED AND LISTING in SECTION R202. (Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-187; filed May 23, 2001, 4:02 p.m.: 24 IR 3062; errata filed Jun 12, 2001, 2:18 p.m.: 24 IR 3070)**

SECTION 4. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

### 675 IAC 14-4.2-187.1 Section E3501.6.2; service disconnect location

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

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 187.1 At the end of Section E3501.6.2, add a sentence to read as follows: “Conductors shall be considered outside of a building or structure under any of the following conditions:**

**(1) where installed under not less than 51 mm (2 in.) of concrete beneath a building or other structure,**

**(2) where installed within a building or other structure in a raceway that is encased in concrete or brick not less than 51 mm (2 in.) thick, or,**

**(3) where installed in conduit and under not less than 457 mm (18 in.) of earth beneath a building or other structure.” (Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-187.1)**

SECTION 5. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

### 675 IAC 14-4.2-187.2 Table E3503.1; service conductor and grounding electrode conductor sizing

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

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 187.2. Delete all references to insulation types without substitution. (Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-187.2)**

SECTION 6. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

### 675 IAC 14-4.2-187.3 Section E3504.2.1; above roofs

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

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 187.3. In Exception 1, after “pedestrian” insert “or vehicular”. (Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-187.3)**

SECTION 7. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

### 675 IAC 14-4.2-187.4 Section E3505.5; protection of service cables against damage

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

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 187.4. Delete “rigid nonmetallic conduit suitable for the location” and insert “Schedule 80 rigid nonmetallic conduit”. (Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-187.4)**

SECTION 8. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-190.1 Section E3602.10; branch circuits serving heating loads**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 190.1.** In the second sentence, insert “25” to the list of circuit ratings. (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-190.1*)

SECTION 9. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-190.2 Section E3602.12; branch circuits serving room air conditioners**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 190.2.** In item 4, delete “or the rating of the branch-circuit conductors,”. (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-190.2*)

SECTION 10. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-190.3 Section E3602.12.1; where no other loads are supplied**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 190.3.** Delete “appliances are also supplied” and insert “loads are supplied”. (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-190.3*)

SECTION 11. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-190.4 Section E3602.12.2; where lighting units or other appliances are also supplied**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 190.4.** Delete the text and substitute: The total marked rating of a cord-and-attachment-plug-connected room air conditioner shall not exceed 50 percent of the rating of a branch circuit where lighting outlets, other appliances, or general-use receptacles are also supplied. Where the circuitry is interlocked to prevent simultaneous operation of the room air conditioner and energization of other outlets on the same branch circuit, a cord-and-attachment-plug-connected room air conditioner shall not

exceed 80 percent of the branch-circuit rating. (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-190.4*)

SECTION 12. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-190.5 Section E3703.3; protection from damage**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 190.5.** In the third sentence of Section E3703.3, delete “service laterals” and substitute “underground service conductors”. (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-190.5*)

SECTION 13. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-191.1 Section E3801.4.5; receptacle outlet location**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 191.1. (a)** Change the first statement to read: Receptacle outlets shall be located above, but not more than 20 inches (508mm) above the countertop.

**(b)** In the first sentence of the exception, change “18 inches (458mm)” to “20 inches (508mm)”. (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-191.1*)

SECTION 14. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-191.2 Section E3801.6; bathroom**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 191.2.** Delete the second sentence and substitute: The receptacle outlet shall be located on a wall or partition that is adjacent to the basin or basin countertop. (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-191.2*)

SECTION 15. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-191.3 Section E3801.9; basements and garages**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 191.3.** In the last sentence, change “in the unfinished portion” to “in each separate unfinished portion”. (*Fire*

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*Prevention and Building Safety Commission; 675 IAC 14-4.2-191.3)*

SECTION 16. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-192.1 Section E3802; ground-fault and arc-fault circuit-interrupter protection**

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

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 192.1. Add SECTION E3802.75 after SECTION E3802.7 to read: **Boathouses. All 125-volt, single-phase, 15- or 20-ampere receptacles installed in boathouses shall have ground-fault circuit-interrupter protection for personnel.** (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-192.1*)

SECTION 17. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-192.2 Section E3802.8; exempt receptacles**

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

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 192.2. Change to read as follows: **Receptacles installed under exceptions to Sections E3802.2 and E3802.5 shall not be considered as meeting the requirements of Section E3801.9.** (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-192.2*)

SECTION 18. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-192.3 Section E3803.3; additional locations**

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

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 192.3. In the second sentence, the third sentence, and the Exception, delete “egress door” and substitute “entrances or exits”. (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-192.3*)

SECTION 19. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-192.4 Section E3805.1; box, conduit body, or fitting; where required**

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

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 192.4. In the first sentence, after “junction point”,

insert “, termination point”. (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-192.4*)

SECTION 20. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-192.5 Section E3805.3.1; nonmetallic-sheathed cable and nonmetallic boxes**

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

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 192.5. After “Where nonmetallic-sheathed cable”, insert “or multiconductor Type UF cable”. After “1/4 inch (6.4mm)”, insert “and beyond any cable clamp”. (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-192.5*)

SECTION 21. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-192.6 Section E3805.3.2; securing to box**

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

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 192.6. In the Exception, after “Where nonmetallic-sheathed”, insert “or multiconductor Type UF”. At the end of the Exception, insert “Multiple cable entries shall be permitted in a single cable knockout opening”. (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-192.6*)

SECTION 22. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-192.7 Section E3806.5; in wall or ceiling**

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

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 192.7. In the first sentence, after “tile”, insert “, gypsum, plaster”. In the second sentence, after “combustible”, insert “surface”. (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-192.7*)

SECTION 23. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-192.8 Section E3806.8.2.1; nails**

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

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 192.8. Change the section heading to “Nails and screws”. In the text, delete “Nails”, and insert “Nails and screws,”. (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-192.8*)

SECTION 24. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-193.1 Section E3808.8; types of equipment grounding conductors**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 193.1. Delete the first phrase in Item 1 and insert “A copper, aluminum, or copper-clad aluminum conductor”.** (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-193.1*)

SECTION 25. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-193.2 Section E3901.3; indicating**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 193.2. In the second sentence, delete “single throw”. Add an exception to read as follows: “Vertically operated double-throw switches shall be permitted to be in the closed (on) position with the handle in either the up or down position”.** (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-193.2*)

SECTION 26. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-193.3 Section E3902.12; outdoor installation**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 193.3. Delete Section E3902.12 without substitution.** (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-193.3*)

SECTION 27. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-193.4 Section E3903.11; fixtures in clothes closets**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 193.4. In Item 4, delete “on”.** (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-193.4*)

SECTION 28. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-193.5 Table E4103.5; overhead conductor clearances**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 193.5. In the second column, change “22” to “22.5”, and change “14” to “14.5”.** (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-193.5*)

SECTION 29. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-194.1 Section E4104.1; bonded parts**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 194.1. At the end of Item 1, add a sentence to read as follows: Where reinforcing steel is encapsulated with a nonconductive compound, provisions shall be made for an alternative means to eliminate voltage gradients that would otherwise be provided by unencapsulated, bonded reinforcing steel.** (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-194.1*)

SECTION 30. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-194.2 Section E4106.8.2; other enclosures**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 194.2. Add requirement 6 to read as follows: 6. Comprised of copper, brass, suitable plastic, or other approved corrosion-resistant material.** (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-194.2*)

SECTION 31. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

**675 IAC 14-4.2-194.3 Section E4106.9.2; wiring methods**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 194.3. In the first sentence, after “corrosion-resistant metal,” insert “, liquidtight flexible nonmetallic conduit (LFNC-B).” In the second sentence, after the words “rigid nonmetallic conduit,” insert “or liquidtight flexible nonmetallic conduit”.** (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-194.3*)

SECTION 32. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

## Proposed Rules

### 675 IAC 14-4.2-194.4 Section E4106.10; electrically operated pool covers

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 194.4.** Add a sentence to read as follows: **The device that controls the operation of the motor for an electrically operated pool cover shall be located so that the operator has full view of the pool.** (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-194.4*)

SECTION 33. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

### 675 IAC 14-4.2-194.5 Section E4106.12.2; permanently wired radiant heaters

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 194.5.** After the second sentence, delete the period and insert “unless otherwise approved”. (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-194.5*)

SECTION 34. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

### 675 IAC 14-4.2-194.6 Section E4201.2; definitions

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 194.6.** Before the definition of Class 2 circuit, insert “ABANDONED CLASS 2 CABLE” and its definition to read as follows: **Installed Class 2 cable that is not terminated at equipment and not identified for future use with a tag.** (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-194.6*)

SECTION 35. 675 IAC 14-4.2, AS ADDED AT 24 IR 3032, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

### 675 IAC 14-4.2-194.7 Section E4201.3; spread of fire or products of combustion

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 194.7.** Add a new section E4201.3 to the end of section E4201 to read as follows: **E4201.3 Spread of fire or products of combustion. The accessible portion of abandoned Class 2 cables shall not be permitted to remain.** (*Fire Prevention and Building Safety Commission; 675 IAC 14-4.2-194.7*)

SECTION 36. 675 IAC 17-1.6 IS ADDED TO READ AS FOLLOWS:

### Rule 1.6. Indiana Electrical Code, 2002 Edition

#### 675 IAC 17-1.6-1 Adoption by reference

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 1.** That certain document, being titled as National Electrical Code, 2002 edition, published by the National Fire Protection Association, One Batterymarch Park, Quincy, Massachusetts 02269, is hereby incorporated by reference and made a part of this rule, except those portions as are amended and adopted in sections 3 through 26 of this rule. (*Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-1*)

#### 675 IAC 17-1.6-2 Title; availability

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 2. (a)** This rule shall be known as the Indiana Electrical Code, 2002 edition, and shall be published, except for incorporated documents, by the fire and building services department for general distribution and use under the title. Whenever the term “this code” is used within this rule, including incorporated documents, it shall mean the Indiana Electrical Code.

**(b)** This rule, with the incorporated National Electrical Code, 2002 edition, is available for purchase from the Fire and Building Services Department, 402 West Washington Street, Room E221, Indianapolis, Indiana 46204. (*Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-2*)

#### 675 IAC 17-1.6-3 Article 80; administration and enforcement

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 3.** Article 80 is deleted in its entirety without substitution. (*Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-3*)

#### 675 IAC 17-1.6-4 Section 90.2; scope

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 4.** Section 90.2 is amended to read as follows: **(A) Covered.** This code covers: **Installations of electric conductors and equipment within or on Class 1 and Class 2 structures, including industrialized building systems, and other premises wiring covered by rules of the Commission in this title.**

**Class 1 and Class 2 Structures covered by the Indiana Residential Code shall be made to comply with the provisions of this code, or the electrical provisions of the Indiana Residential Code (675 IAC 14).**

**(B) Not Covered.** This code does not cover:

- (1) Installations in ships, watercraft, railway rolling stock, aircraft, automotive vehicles, and buildings or structures that are not Class 1 or Class 2 structures.
- (2) Installations underground in mines.
- (3) Installations of railways for generation, transformation, transmission, or distribution of power used exclusively for operation of rolling stock or installations used exclusively for signaling and communication purposes.
- (4) Installations of communication equipment under the exclusive control of communication utilities, located outdoors or in building spaces used exclusively for such installations.
- (5) Installations, including associated lighting under the exclusive control of electric utilities for the purpose of communication, or metering; or for the generation, control, transformation, transmission, and distribution of electric energy located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, roads, etc., or outdoors on private property by established rights such as easements.
- (6) Installations of electrical wiring, equipment, and devices, factory installed in manufactured homes under the authority of the U.S. Department of Housing and Urban Development (HUD).

*(Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-4)*

**675 IAC 17-1.6-5 Section 90.4; enforcement**

Authority: IC 22-13-2-2; IC 22-13-2-13  
 Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 5. Section 90.4 is amended to read as follows: Requirements covering enforcement, granting of variances, and approval of alternate methods or materials are covered in Indiana statutes and 675 IAC 12, the General Administrative Rules of the Commission. *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-5)*

**675 IAC 17-1.6-6 Section 90.6; formal interpretations**

Authority: IC 22-13-2-2; IC 22-13-2-13  
 Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 6. Section 90.6 is deleted in its entirety without substitution. *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-6)*

**675 IAC 17-1.6-7 Section 90.7; examination of equipment for safety**

Authority: IC 22-13-2-2; IC 22-13-2-13  
 Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 7. Section 90.7 is deleted in its entirety without substitution. *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-7)*

**675 IAC 17-1.6-8 Section 90.8; wiring planning**

Authority: IC 22-13-2-2; IC 22-13-2-13  
 Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 8. Section 90.8 is deleted in its entirety without substitution. *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-8)*

**675 IAC 17-1.6-9 Section 90.9; units of measurement**

Authority: IC 22-13-2-2; IC 22-13-2-13  
 Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 9. Delete the text of Section 90.9 and substitute the following: For the purpose of this code, the measurement system is the English (U.S. customary or inch-pound) system. Compliance with the numbers shown in the inch-pound system shall constitute compliance with this code. *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-9)*

**675 IAC 17-1.6-10 Article 100; definitions**

Authority: IC 22-13-2-2; IC 22-13-2-13  
 Affected: IC 22-12; IC 22-13-2-7; IC 22-13-2-11; IC 22-14-2-10; IC 22-15-2-7; IC 36-7-9; IC 36-8-17-9

Sec. 10. (a) In Part 1 of Article 100, delete the text of the definition of APPROVED and substitute to read as follows: APPROVED. Acceptance by the AUTHORITY HAVING JURISDICTION by one (1) of the following methods:

- (1) investigation or tests conducted by recognized authorities; or
- (2) investigation or tests conducted by technical or scientific organizations; or accepted principles.

The investigation, tests or principles shall establish that the materials, equipment and types of construction are safe for their intended purpose.

(b) In Part 1 of Article 100, delete the text of the definition of AUTHORITY HAVING JURISDICTION and substitute to read as follows: AUTHORITY HAVING JURISDICTION. The office of the state building commissioner authorized under IC 22-15-2-7; the office of the state fire marshal authorized under IC 22-14-2-10; the local building official authorized under IC 36-7-9 and local ordinance; the fire department authorized under IC 36-8-17-9.

(c) In Part 1 of Article 100, delete the text of the definition of SPECIAL PERMISSION and substitute to read as follows: SPECIAL PERMISSION. A variance granted by the commission under IC 22-13-2-11 or a variance granted by a political subdivision and approved by the commission under IC 22-13-2-7(b). *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-10)*

**675 IAC 17-1.6-11 Section 110.26; working clearances**

Authority: IC 22-13-2-2; IC 22-13-2-13  
 Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

## Proposed Rules

**Sec. 11.** Change Section 110.26(A)(1)(b) to read as follows: When approved, smaller spaces may be permitted where all uninsulated parts are at a voltage no greater than 30 volts RMS, or 42 volts peak, or 60 volts DC. (*Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-11*)

**675 IAC 17-1.6-12 Section 210.12; arc-fault circuit-interrupter protection**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 12.** In Section 210.12(B), Dwelling unit bedrooms, delete “outlets” and insert “receptacle outlets”. (*Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-12*)

**675 IAC 17-1.6-13 Section 210.60; guest rooms**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 13.** The first sentence in Section 210.60(A) is amended to read as follows: Guest rooms in hotels, motels, health care facilities, and similar occupancies shall have receptacle outlets installed in accordance with Section 210.52(A) and 210.52(D). (*Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-13*)

**675 IAC 17-1.6-14 Section 230.2; number of services**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 14.** (a) Change the second sentence of Section 230.2 to read as follows: For the purpose of Section 230.40, Exception No. 2 only, underground sets of conductors, size 1/0 AWG and larger, running to the same location as close as practical and connected together at their supply end, but not connected together at their load end, shall be considered to be one lateral.

(b) Amend Section 230.2(B) Special occupancies, by deleting “By special permission” and inserting “When approved”. (*Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-14*)

**675 IAC 17-1.6-15 Section 230.40; service-entrance conductors**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 15.** Change the second Exception to Section 230.40 to read as follows: Exception No. 2: Where two to six service disconnecting means in separate enclosures are grouped as close as practical at one location and supply separate loads from one service drop or lateral, one set of service-entrance conductors shall be permitted to supply each or several such service equipment enclosures. (*Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-15*)

**675 IAC 17-1.6-16 Section 250.104; bonding of piping and exposed structural steel**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 16.** In the first sentence of Section 250.104(B), delete “including gas piping,” and insert “other than gas piping.”. At the end of Section 250.104(B), add a sentence to read as follows: All aboveground metal gas piping upstream from the equipment shutoff valve shall be electrically continuous. (*Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-16*)

**675 IAC 17-1.6-17 Table 314.16(A); metal boxes**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 17.** In the line for 4 x 1-1/4-inch round/octagonal boxes and in the column for 8AWG conductor, delete “5” and insert “4”. In the line for 3-3/4 x 2 x 3-1/2-inch masonry box/gang boxes and in the column for 6AWG conductor, delete “2” and insert “4”. (*Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-17*)

**675 IAC 17-1.6-18 Section 334.10; uses permitted**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 18.** (a) Delete the text of (2) in Section 334.10 and substitute: (2) In any building or structure not exceeding three (3) stories (see Section 362.10 for the definition of STORY).

(a) For exposed work except as prohibited in Section 334.12.

(b) Concealed within walls, floors, and ceilings except as prohibited in Section 334.12.

(b) Delete the text of (3) in Section 334.10 and substitute: (3) In any building or structure exceeding three (3) stories (see Section 362.10 for the definition of STORY), Type NM, Type NMC, and Type NMS cables shall be concealed within walls, floors, and ceilings that provide a thermal barrier of material that has at least a 15-minute finish rating identified in listings of fire-rated assemblies. The 15-minute-finish-rated thermal barrier shall be permitted to be used for combustible walls, floors, and ceilings, except as prohibited in Section 334.12.

Exception: Where the building is provided with an approved automatic sprinkler system throughout, Type NM, Type NMC, and Type NMS cables are permitted to be used within walls, floors, ceilings, exposed or concealed, in buildings exceeding three (3) stories.

(*Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-18*)

**675 IAC 17-1.6-19 Section 334.12; uses not permitted**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 19.** In Section 334.12(A), delete Item 1 without substitution. (*Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-19*)

**675 IAC 17-1.6-20 Section 362.10; uses permitted**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 20. (a)** Delete the first two sentences of text in Uses Permitted and substitute to read as follows: For the purpose of this Section a story is that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more than 6 feet (1,829mm) above grade for more than 50 percent of the total perimeter or is more than 12 feet (3,658mm) above grade at any point, such usable or unused under-floor space shall be considered as a story.

**(b)** In Item (1) under Uses Permitted, delete “floors above grade” and substitute “stories”.

**(c)** In Item (2) under Uses Permitted, delete “floors above grade” and substitute “stories”.

**(d)** Delete the text of the exceptions to Items (2) and (5) and substitute to read as follows: Where the building is provided with an approved automatic sprinkler system throughout, ENT is permitted to be used within walls, floors, and ceilings, exposed or concealed, in buildings exceeding three stories. (*Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-20*)

**675 IAC 17-1.6-21 Section 362.12; uses not permitted**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 21.** In Item (7) under Uses not permitted, add 362.10(2) to the listed sections. (*Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-21*)

**675 IAC 17-1.6-22 Section 525.5; overhead conductor clearances**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 22.** Change Section 525.5(B) to read as follows: (B) Clearance to Rides and Attractions. Amusement rides and amusement attractions shall be maintained not less than 3.048m (10ft) in any direction from overhead conductors operating at 600 volts or less, except for the conductors

supplying the amusement ride or attraction. Amusement rides or attractions shall not be located within 4.57m (15ft) horizontally of conductors operating in excess of 600 volts. (*Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-22*)

**675 IAC 17-1.6-23 Section 547.1; scope**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 23.** Change Section 547.1 to read as follows: The provisions of this section shall apply to the following agricultural buildings or that part of a building or adjacent areas of similar or like nature as specified in (A) and (B) below, unless the building is not a Class 1 structure. Agricultural buildings that are not Class 1 structures may be regulated by local ordinance. (*Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-23*)

**675 IAC 17-1.6-24 Section 550.25; arc-fault circuit-interrupter protection**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 24.** Delete the text of Section 550.25(B), Bedrooms of Mobile Homes and Manufactured Homes, and substitute to read as follows: All branch circuits that supply 125-volt, single-phase, 15- and 20-ampere receptacle outlets installed in bedrooms of mobile homes and manufactured homes shall be protected by an arc-fault circuit-interrupter listed to provide protection of the entire branch circuit. (*Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-24*)

**675 IAC 17-1.6-25 Section 550.4; general requirements**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 25.** Section 550.4(B) is amended by adding a second sentence to read as follows: Modular homes, constructed under 675 IAC 15, Industrialized Building Systems, shall comply with the provisions of Article 545 of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-25*)

**675 IAC 17-1.6-26 Section 600.1; scope**

Authority: IC 22-13-2-2; IC 22-13-2-13  
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

**Sec. 26.** Section 600.1 is amended to read as follows: This section covers the installation of conductors and equipment for electric signs and outline lighting as defined in Article 100 that are within or connected to Class 1 or Class 2 buildings or structures. (*Fire Prevention and Building Safety Commission; 675 IAC 17-1.6-26*)

SECTION 37. 675 IAC 17-1.5 IS REPEALED.

**Notice of Public Hearing**

*Under IC 4-22-2-24, notice is hereby given that on March 18, 2002 at 9:00 a.m., at the Indiana Government Center-South,*



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## Proposed Rules

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402 West Washington Street, Conference Center Room 1, Indianapolis, Indiana; **AND** on May 8, 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 amend provisions of the 2001 Indiana Residential Code, 675 IAC 14-4.2 so as not to be in conflict with provisions of the 2002 Indiana Electrical Code, 675 IAC 17-1.6; to add 675 IAC 17-1.6, which adopts by reference and amends the 2002 National Electrical Code as the Indiana Electrical Code, 2002 Edition; and to repeal 675 IAC 17-1.5. 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  
Secretary  
Fire Prevention and Building Safety Commission

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### TITLE 925 MERIDIAN STREET PRESERVATION COMMISSION

**Proposed Rule**  
LSA Document #01-70

#### DIGEST

Adds 925 IAC 2 to establish new rules governing the procedures of the Meridian Street Preservation Commission. Repeals 925 IAC 1. NOTE: Under IC 4-22-2-40, LSA Document #01-70, printed at 24 IR 3779, was recalled by the Meridian Street Preservation Commission. This document was revised and readopted. Effective 30 days after filing with the secretary of state.

#### 925 IAC 1 925 IAC 2

SECTION 1. 925 IAC 2 IS ADDED TO READ AS FOLLOWS:

#### ARTICLE 2. GENERAL PROVISIONS

##### Rule 1. Definitions

#### 925 IAC 2-1-1 Definitions

Authority: IC 36-7-11.2-27  
Affected: IC 36-7-11.2

Sec. 1. (a) The definitions in this rule apply throughout this article and are in addition to the definitions in IC 36-7-11.2.

(b) "Act" means IC 36-7-11.2.

(c) "Case" means any matter subject to a determination by the commission for which an application or petition has been properly filed.

(d) "Certificate" means a certificate of appropriateness issued by the commission.

(e) "Commission" means the Meridian Street preservation commission as established by IC 36-7-11.2.

(f) "Rezoning" means amending the zoning map to change the zoning district classification. (*Meridian Street Preservation Commission; 925 IAC 2-1-1*)

#### Rule 2. Public Hearings; Meetings

#### 925 IAC 2-2-1 Time and location of public hearings and meetings

Authority: IC 36-7-11.2-27  
Affected: IC 36-7-11.2-31

Sec. 1. Regular meetings, designated as public hearings of the commission, shall be held at 4 p.m. on the third Tuesday of each month. If such regular meeting day falls on a legal holiday, the meeting shall be held on the following Tuesday. The commission shall determine the location of the following regular meeting at the immediately preceding regular meeting. (*Meridian Street Preservation Commission; 925 IAC 2-2-1*)

#### 925 IAC 2-2-2 Notice of special meetings

Authority: IC 36-7-11.2-27  
Affected: IC 36-7-11.2-31

Sec. 2. Written notice of a special meeting is not required if the time of the special meeting is fixed at a previous regular meeting. However, notice shall be posted on the public notice bulletin board in the lobby of the Indianapolis Marion County City-County Building. (*Meridian Street Preservation Commission; 925 IAC 2-2-2*)

#### 925 IAC 2-2-3 Meetings and hearings open to public

Authority: IC 36-7-11.2-27  
Affected: IC 5-14-1.5; IC 36-7-11.2-31

Sec. 3. All regular or special meetings and hearings of the commission shall be open to the public. (*Meridian Street Preservation Commission; 925 IAC 2-2-3*)

#### 925 IAC 2-2-4 Vote by ballot; public access

Authority: IC 36-7-11.2-27  
Affected: IC 5-14-3; IC 36-7-11.2

Sec. 4. (a) In all cases for certificates of appropriateness, variances, zoning ordinances, and zoning amendments, the commission's vote shall be by written ballot.

(b) The result of the vote shall be announced immediately after it is tallied and, in the case of a split decision, the

names of commission members voting against an application or petition shall be announced. A commissioner may be asked for the basis of his or her vote.

(c) All ballots shall remain on file in the office of the commission and are public records. (*Meridian Street Preservation Commission; 925 IAC 2-2-4*)

**925 IAC 2-2-5 Appearance; testimony of agent or attorney; written submissions**

Authority: IC 36-7-11.2-27

Affected: IC 36-7-11.2-28; IC 36-7-11.2-34

**Sec. 5. (a)** At hearings before the commission, any party may appear in person, by representative, or by attorney.

(b) An attorney or other representative of any party, petitioner, or remonstrator may testify to facts within that person's own knowledge relating to the issues of the case. In such cases, all parties appearing before the commission shall be sworn and be subject to questions from the commission.

(c) Plans, photographs, letters, petitions, or other nonverbal information in support of or opposition to an application or petition may be submitted to the commission prior to the hearing by submitting such information to the chairman of the commission, who shall make all such information part of the public record. (*Meridian Street Preservation Commission; 925 IAC 2-2-5*)

**925 IAC 2-2-6 Notice of continuances**

Authority: IC 36-7-11.2-27

Affected: IC 36-7-11.2

**Sec. 6.** No notice of continuance must be given to interested parties if a case is continued at a hearing for which proper notice was given. (*Meridian Street Preservation Commission; 925 IAC 2-2-6*)

**925 IAC 2-2-7 Evidence; time allowed; order of presentation**

Authority: IC 36-7-11.2-27

Affected: IC 36-7-11.2-34

**Sec. 7. (a)** Petitioners and remonstrators, respectively, shall each be permitted a total of fifteen (15) minutes, as described in subsections (b) through (d), for the presentation of evidence, statements, and argument at the public hearing of every case by the commission.

(b) Petitioners and persons appearing in support of a case shall first have a cumulative of ten (10) minutes for the presentation of evidence, statements, and argument in support of the matter being considered.

(c) Remonstrators and persons appearing in opposition to a case shall then have fifteen (15) minutes for the presenta-

tion of evidence, statements, and argument in opposition to the matter being considered.

(d) The petitioner shall then be permitted five (5) minutes for rebuttal and a closing statement. Rebuttal shall include only evidence, statements, or argument to rebut the opposing party's presentation.

(e) The commission members may ask questions of all parties and witnesses at any time during the presentation of evidence and after the close of evidence presented under subsections (b) through (d).

(f) The chair or a majority of the commission shall have authority to extend the times specified in subsections (a) through (d). (*Meridian Street Preservation Commission; 925 IAC 2-2-7*)

**925 IAC 2-2-8 Application fees**

Authority: IC 36-7-11.2-27

Affected: IC 36-7-11.2-49

**Sec. 8. (a)** Fees to be paid by persons filing a petition with the commission for a certificate of appropriateness are set for the following classifications:

(1) Certificate of appropriateness for construction of a new building, one hundred dollars (\$100).

(2) Certificate of appropriateness for demolition or removal of a building or a portion of a building, one hundred dollars (\$100).

(3) Certificate of appropriateness for renovation or alteration or addition to an existing building, one hundred dollars (\$100).

(4) Certificate of appropriateness for new swimming pools, driveways, walkways, patios, fences, removal of trees or other site improvements that do not include buildings, fifty dollars (\$50).

(b) Persons filing a petition with the commission for prior approval of a variance shall pay a fee of one hundred dollars (\$100).

(c) Persons filing a petition with the commission for a recommendation to the city of Indianapolis metropolitan development commission regarding the amendment or adoption of a zoning ordinance shall pay a fee of one hundred dollars (\$100).

(d) Fees are cumulative and shall be paid for each classification of request contained in a single petition. For example, the filing fees for a petition requesting:

(1) a variance of development standards;

(2) a certificate of appropriateness for removal of a building;

(3) a certificate of appropriateness for alteration to an existing building; and

(4) a certificate of appropriateness for a patio; will be three hundred fifty dollars (\$350).

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(e) Fees shall be due at the time of filing. The commission shall consider a case only if the fee has been paid in full unless a majority of the commissioners present and voting at the meeting vote to reduce the fee for good cause shown. In no event shall the fee be reduced to less than fifty dollars (\$50).

(f) In addition to the filing fees set forth above, petitioner shall at the time of filing pay the estimated cost of newspaper advertising, which advertisement shall be placed by the commission.

(g) If the commission has not otherwise set a fee under this rule for a type of application or petition, the fee shall be fifty dollars (\$50). (*Meridian Street Preservation Commission; 925 IAC 2-2-8*)

### 925 IAC 2-2-9 Conduct of parties

Authority: IC 36-7-11.2-27  
Affected: IC 36-7-11.2-26

Sec. 9. Every person appearing before the commission shall abide by the order and direction of the commission's chair or presiding officer. (*Meridian Street Preservation Commission; 925 IAC 2-2-9*)

### 925 IAC 2-2-10 Testimony under oath or affirmation

Authority: IC 36-7-11.2-27  
Affected: IC 33-16-4-1; IC 36-7-11.2-36

Sec. 10. All testimony before the commission shall be given under oath or affirmation, administered by a person authorized by the chair or presiding officer and who has the authority to administer the oath or affirmation pursuant to IC 33-16-4-1. (*Meridian Street Preservation Commission; 925 IAC 2-2-10*)

## Rule 3. Zoning Matters

### 925 IAC 2-3-1 Petition for a zoning variance, zoning ordinance adoption or amendment

Authority: IC 36-7-11.2-27  
Affected: IC 36-7-11.2

Sec. 1. The petitioner for any zoning variance, zoning ordinance adoption or amendment shall file with the chair an original and nine (9) complete copies of the petition with all exhibits. (*Meridian Street Preservation Commission; 925 IAC 2-3-1*)

## Rule 4. Certificate of Appropriateness

### 925 IAC 2-4-1 Certificate of appropriateness required; exceptions

Authority: IC 36-7-11.2-27  
Affected: IC 36-7-11.2-61

Sec. 1. A certificate of appropriateness from the commis-

sion is required prior to the construction, reconstruction, alteration, or demolition of any structure or feature on any Meridian Street property, except that no certificate shall be required for the following:

- (1) Normal repair and maintenance work consonant with proper upkeep of the property and which does not alter original materials, patterns, dimensions, location, style, size, and type.
- (2) Interior decoration, interior remodeling, and interior renovation not involving a change in the use of the property.
- (3) Removal of chain-link fences.
- (4) Installation or removal (except for healthy trees) of plant materials, provided they were not required in a previously issued certificate of appropriateness.
- (5) Installation of low borders on planting beds.
- (6) Installation of ground lighting in back yards.
- (7) Facade illumination that illuminates only the subject property.
- (8) Security lights mounted on buildings or installed by Indianapolis Power and Light on existing utility poles at the rear of properties that are deflected light sources and not visible from the street.
- (9) Incandescent wall or ceiling mounted light fixtures at the rear entrances of a building.
- (10) Fixtures in the public right-of-way placed there by governmental agencies, such as mail collection boxes and traffic regulation devices.
- (11) Temporary accessory items in rear yards, including garden furniture, children's play equipment, and small doghouses.
- (12) Reroofing of any roof surface, provided that any new materials match those of the previous in composition, size, shape, color, and texture.
- (13) Alteration of any flat roof when no change is visible from the ground.
- (14) Repointing of mortar joints with mortar matching in composition, color, and texture to the original.
- (15) Replacement of deteriorated wood siding or trim if less than five percent (5%) of any facade and if replacement wood matches the original exactly.
- (16) Removal of siding made of aluminum, vinyl, particle board, asphalt, asbestos, plywood, hardboard, or synthetic masonry.
- (17) Installation of interior storm windows and interior stained glass.
- (18) Replacement of missing or broken glass with new glass to match the previous.
- (19) Installation of visually unobtrusive exterior storm windows and doors provided no alterations are made to the opening and they are not attached to, or cover, any exterior trim.
- (20) Repainting with appropriate colors for the architectural styles represented in the area.
- (21) Window air conditioning units requiring no alter-

ation to the window or opening and on a nonprimary facade.

(22) Air conditioning equipment and meter boxes on the rear of a house and not visible from the street.

(23) HVAC and utility equipment on roofs if not visible from the front of the property at street level.

(24) Burial of electric, telephone, and television cable requiring no new utility poles.

(25) Aboveground installation of utility cables at the rear of the structure when underground service is not available.

(26) Exterior surface-mounted vents, such as those for dryers, heaters, bathrooms, and kitchens if no larger than one (1) square foot and not visible from the street.

(27) Replacement of any utility pole with one (1) of matching materials and of equal or lesser height and for the same use.

*(Meridian Street Preservation Commission; 925 IAC 2-4-1)*

**925 IAC 2-4-2 Application for certificates of appropriateness**

Authority: IC 36-7-11.2-27

Affected: IC 36-7-11.2-34

Sec. 2. (a) The applicant for a certificate shall file with the chair one (1) original and nine (9) complete copies the application with all exhibits.

(b) An application for a certificate shall contain the following:

(1) State the name and address of the petitioner, who may or may not be the owner of the subject property.

(2) State the name of the owner or owners and street address of the property that is the subject of the application.

(3) Describe, in detail, the following:

(A) The work to be done.

(B) The change resulting from such work, if any, in architectural features of the structure upon which such work is to be done.

(C) The nature and type of materials to be employed, specifying which such materials will be external and visible upon completion of the work.

(D) The name of the person who prepared plans.

(c) The application shall be accompanied by the following:

(1) A current photograph of the property taken from Meridian Street, if the work will be visible from Meridian Street.

(2) A photograph depicting the location of the work to be done and clearly showing all features to be altered or affected.

(3) A site plan indicating the accurate distance between the proposed construction and all property lines if new construction is proposed.

(4) If appropriate to the type of work being proposed, accurate drawings, with dimensions, showing the prop-

erty or structure before and after the work for which the certificate is sought.

(5) Samples, pamphlets, or other information explaining the materials to be used.

*(Meridian Street Preservation Commission; 925 IAC 2-4-2)*

**925 IAC 2-4-3 Notice of application for certificate of appropriateness**

Authority: IC 36-7-11.2-27

Affected: IC 36-7-11.2-7

Sec. 3. (a) Any person who files an application for a certificate shall, within ten (10) days after such filing, serve notice upon all interested parties defined in IC 36-7-11.2-7.

(b) Notice shall be personally served or mailed, first class postage prepaid, and include the following:

(1) The full name and address of the person filing the application.

(2) The street address of the property that is the subject of the application.

(3) A description of the type of work proposed to be performed.

(4) The date, time, and place of the meeting at which the application will be considered by the commission.

*(Meridian Street Preservation Commission; 925 IAC 2-4-3)*

**925 IAC 2-4-4 Hearing on application; expedited consideration**

Authority: IC 36-7-11.2-27

Affected: IC 14-3-3.2-17; IC 36-7-11.2-61

Sec. 4. (a) No certificate shall be approved or denied without a hearing.

(b) The commission may consider, but not conclusively rule on, an application for a certificate at a regular or special meeting for which proper notice of the application has not been given, provided reasonable notice to interested parties can be demonstrated and a majority of those present and voting at the meeting agree to consider the matter.

*(Meridian Street Preservation Commission; 925 IAC 2-4-4)*

**Rule 5. Dismissal; Withdrawal; Redocketing of Cases**

**925 IAC 2-5-1 Dismissal of cases**

Authority: IC 36-7-11.2-27

Affected: IC 36-7-11.2-46

Sec. 1. (a) A majority vote of the commission members present and voting at the meeting may dismiss a case for want of prosecution or for lack of jurisdiction.

(b) Dismissal of a case does not prevent a person from reapplying at any time in the future.

(c) No fees paid to the commission for an application or petition shall be refunded after dismissal, except by a

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majority vote of the members present and voting at a regular meeting. (*Meridian Street Preservation Commission; 925 IAC 2-5-1*)

### 925 IAC 2-5-2 Withdrawal of cases; redocketing

Authority: IC 36-7-11.2-27  
Affected: IC 36-7-11.2-28

Sec. 2. (a) Any person who has filed a case may withdraw such case from commission consideration at any time before or during a hearing, but not after the chair has called for a vote.

(b) Withdrawn cases may be docketed as a new case at any time, provided all filing and notice requirements are met.

(c) No fees paid to the commission for a case subsequently withdrawn shall be refunded except by a majority vote of the members present and voting at a regular meeting. (*Meridian Street Preservation Commission; 925 IAC 2-5-2*)

### 925 IAC 2-5-3 Adverse decisions; redocketing

Authority: IC 36-7-11.2-27  
Affected: IC 36-7-11.2-28

Sec. 3. (a) No case that has been decided adversely against an applicant or petitioner shall again be placed on the docket for consideration within a period of six (6) months from the date of the adverse decision.

(b) Upon motion to permit redocketing adopted by six (6) affirmative votes, the commission may decide to consider such a case in less than six (6) months.

(c) In determining whether or not to consider a case that was previously decided adversely against an applicant or petitioner, the commission shall take into account evidence that the request is substantially different from the denied petition or application, especially with respect to those aspects of the request that caused the commission to deny it. (*Meridian Street Preservation Commission; 925 IAC 2-5-3*)

## Rule 6. General Conduct of Business

### 925 IAC 2-6-1 Officers of commission; selection; presiding officer

Authority: IC 36-7-11.2-27  
Affected: IC 36-7-11.2-26

Sec. 1. (a) The commission may elect by majority vote of those present and voting a vice chair from among its members at any regular or special meeting.

(b) The vice chair shall preside at meetings in the event that the chair is absent, is disabled, or has chosen to abstain from hearing and voting on a case or has otherwise disqualified himself or herself from hearing and voting on a case.

(c) The commission may elect by majority vote of those present and voting a secretary/treasurer from among its members at any regular or special meeting.

(d) The chair shall preside at all meetings at which he or she is present unless he or she has chosen to disqualify himself or herself or has abstained from hearing and voting on a matter.

(e) In the event that neither the chair nor the vice chair is available to preside at a meeting, the chair, or the vice chair in the absence of the chair, shall assign the duty of presiding officer to another member of the commission. (*Meridian Street Preservation Commission; 925 IAC 2-6-1*)

### 925 IAC 2-6-2 Points of order and procedure; chair's authority

Authority: IC 36-7-11.2-27  
Affected: IC 4-21.5; IC 36-7-11.2-26

Sec. 2. The chair, subject to IC 36-7-11.2 and IC 4-21.5, shall decide all points of order or procedure unless otherwise directed by a majority of the commission present and voting at the meeting. (*Meridian Street Preservation Commission; 925 IAC 2-6-2*)

### 925 IAC 2-6-3 Prohibited contact regarding pending cases

Authority: IC 36-7-11.2-27  
Affected: IC 36-7-11.2

Sec. 3. (a) No information pertaining to a pending case shall be discussed by, with, or in the presence of any commission member, and no person shall contact any commission member, orally or in writing, in advance of a public hearing on a case in an effort to influence such member's votes, except as follows:

(1) Plans, photographs, letters, petitions, or other nonverbal information in support or opposition of an application or petition may be submitted to the commission prior to the hearing by submitting such information to the chair of the commission, who shall make all such information part of the public record.

(2) The chair, or his or her designee, may provide to commission members in advance of a public hearing copies of applications, plans, photographs, letters, petitions, planning facts, and other nonverbal documentation submitted in support or opposition of an application or petition, provided the information is part of the public record.

(3) Prior to the hearing, verbal communication between the chair and applicants or petitioners shall be limited to procedural issues related to filing, documentation, notification, and hearing procedures.

(b) The applicant, petitioner, interested parties, or any attorney of record shall be informed of all letters, petitions,

or other nonverbal communication received by the chair or by any other member of the commission at the public hearing and shall be provided a copy in accordance with Indiana's Access to Public Records laws. (*Meridian Street Preservation Commission; 925 IAC 2-6-3*)

**925 IAC 2-6-4 Commissioner investigation**

Authority: IC 36-7-11.2-27

Affected: IC 36-7-11.2-37

**Sec. 4. (a)** Before voting on a case, the petitioner or applicant, an interested party, or a commission member may request the case to be continued so that an investigative committee of commission members may have the opportunity to investigate the site and the facts of the case.

**(b)** If a majority of the commissioners present and voting at the meeting concur with the request, the commission may chose two (2) or three (3) commission members to serve on a committee to proceed with an investigation and report its findings to the commission at the hearing to which the case has been continued.

**(c)** There shall not be less than two (2) or more than three (3) members chosen for an investigative committee, and all members of the committee must be present during any visit to the site or fact investigation.

**(d)** While undertaking its investigation of the facts, the committee may:

- (1)** visit the site;
- (2)** talk to the petitioner or applicant and persons involved in developing the petitioner's plans in order to obtain a clear understanding of the submitted proposal and any alternative the petitioner wishes to propose; and
- (3)** talk with professionals about the facts of the case.

**(e)** While investigating, the committee shall not:

- (1)** make any determination;
- (2)** make any comments on the facts of the case or express any opinion on the investigation or recommendations that may be made to the commission; or
- (3)** commit any or all commission members to any opinion or action.

**(f)** Nothing contained in this rule shall be construed to prohibit an individual commissioner from doing a drive-by or walk-by site inspection provided that there is no communication with any interested party or petitioner. (*Meridian Street Preservation Commission; 925 IAC 2-6-4*)

SECTION 2. 925 IAC 1 IS REPEALED.

***Notice of Public Hearing***

*Under IC 4-22-2-24, notice is hereby given that on January 22, 2002 at 4:00 p.m., at the Meridian Street Methodist Church library, 5500 North Meridian Street, Indianapolis, Indiana the Meridian Street Preservation Commission will hold a public hearing on proposed new rules governing the procedures of the commission. Copies of these rules are now on file at the Indianapolis Department of Metropolitan Development, 2042 City-County Building and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Tammara Tracy  
Chairman  
Meridian Street Preservation Commission

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