TITLE 35 BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT FUND

LSA Document #01-196(F)

DIGEST

Adds 35 IAC 1.2-6-7 regarding plan loan procedures for making loans to participants from the legislators' defined contribution plan. Establishes maximum loan amounts, maximum loan duration, and other procedural requirements for receiving a loan pursuant to Section 72(p) of the Internal Revenue Code. Effective 30 days after filing by the secretary of state.

35 IAC 1.2-6-7

SECTION 1. 35 IAC 1.2-6-7 IS ADDED TO READ AS FOLLOWS:

35 IAC 1.2-6-7 Legislators' defined contribution plan loans

Authority: IC 2-3.5-5-11; IC 5-10.3-3-8
Affected: IC 2-3.5-5-11

Sec. 7. (a) Any participant in the legislators' defined contribution plan may apply on the applicable form to the fund for a loan from the legislators' defined contribution plan pursuant to this rule and such other procedures as may be established by the fund. Such loans will be available to all such participants on a uniform and nondiscriminatory basis. All loans are subject to the approval of the fund, or its designee.

(b) The maximum amount of such loan, when added to the outstanding balance of all other loans from the fund, shall not exceed the lesser of:

(1) fifty thousand dollars ($50,000), reduced by the excess, if any, of the highest outstanding balance of loans from the fund during the one (1) year period ending on the day before the date on which the loan is made, over the outstanding balance of loans from the fund on the date on which such loan is made; or

(2) one-half (½) of the employee's accounts within the defined contribution plan of the participant under the fund.

(c) Subject to subsection (b), the minimum amount of a loan shall be one thousand dollars ($1,000).

(d) The loan program described in this rule shall by administered by the fund. All loans shall comply with the following terms and conditions:

(1) All loans shall be subject to the approval of the fund and subject to applicable Internal Revenue Service restrictions.

(2) A participant may apply for a loan by completing the applicable forms.

(3) Each loan shall be amortized on a substantially level basis with monthly payments. Payments shall be made on the first of a month for that month. The period of repayment shall be a minimum of twelve (12) months and shall not exceed five (5) years from the loan origination date. Notwithstanding the preceding sentence, the term of the loan shall not extend beyond the earlier of:

(A) in the case of a distribution which begins after the date of the loan, the date such distribution of the employee's accounts within the defined contribution plan of the participant under the fund begins; or

(B) the date of a default on the loan.

(e) The participant receiving the loan shall make the required repayments in accordance with the loan agreement.

(f) The rate of interest shall be the prime rate per annum, as published in The Wall Street Journal on the first day of the quarter (or the earliest publication day of the quarter in the event of a publication holiday) in which a completed loan application is submitted, plus one percent (1%). A loan will carry the same interest rate throughout its term.

(g) The fund shall declare a default on a loan as of:

(1) the last day of the calendar quarter following the calendar quarter in which the participant fails to make a payment, unless the participant pays the amount due plus accrued interest prior to such date; or

(2) the date thirty (30) days after the fund in good faith deems the plan insecure with respect to the repayment of the loan and notifies the participant of this deemed insecurity.

(h) On default, the entire amount outstanding on the participant's loan will be due and payable.

(i) On default, the fund shall report to the Internal Revenue Service the outstanding loan balance (principal and interest) as a taxable distribution to the participant, which may also be subject to an additional ten percent (10%) excise tax under the Internal Revenue Code.

(j) Each loan shall be adequately secured. The plan shall have a security interest in the employee's accounts within the defined contribution plan of the participant under the fund.

(k) Any loan to a participant shall be considered to be a separate asset of the legislators' defined contribution plan segregated for the benefit of such participant. The interest paid on the loan shall be credited to the employee's accounts within the defined contribution plan of the participant. Such portion of the employee's accounts within the defined contribution plan on loan to the participant shall not share in the allocation of gains or losses. The principal and interest paid on the loan shall be credited to such employee's accounts within the defined contribution plan as determined by the fund.

(l) A participant may not take more than two (2) loans in any calendar year.

(m) A participant may have any number of loans outstanding as long as all of the requirements of this rule are met.

(n) Any loan processing fee charged by a third party will be paid by the participant from the employee's accounts within the defined contribution plan of the participant.

(o) The loan proceeds will come from the employee's accounts within the defined contribution plan of the participant on a pro rata basis, and from the directed investment options of the participant on a pro rata basis.

(p) The participant may prepay, without penalty, the entire (or any part of the) outstanding principal balance of the loan and accrued interest to date of repayment. Prepayments should be made by check or other negotiable instrument (excluding cash) made payable to the fund and delivered to the fund. No reamortization will apply. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-6-7; filed Dec 18, 2001, 9:09 a.m.: 25 IR 1488)*

LSA Document #01-196(F)
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TITLE 50 STATE BOARD OF TAX COMMISSIONERS

LSA Document #00-284(F)

DIGEST

Adds 50 IAC 4.3 for the assessment of tangible personal property. Repeals 50 IAC 4.2-1, 50 IAC 4.2-2, 50 IAC 4.2-3-1, 50 IAC 4.2-3-2, 50 IAC 4.2-3-3, 50 IAC 4.2-4, 50 IAC 4.2-5, 50 IAC 4.2-6, 50 IAC 4.2-8, 50 IAC 4.2-9, 50 IAC 4.2-10, 50 IAC 4.2-11, 50 IAC 4.2-12, 50 IAC 4.2-14, 50 IAC 4.2-15, and 50 IAC 4.2-16. Partially effective 30 days after filing with the secretary of state and partially effective March 1, 2002.

50 IAC 4.2-1
50 IAC 4.2-2
50 IAC 4.2-3-1
50 IAC 4.2-3-2
50 IAC 4.2-3-3
50 IAC 4.2-4
50 IAC 4.2-5
50 IAC 4.2-6
50 IAC 4.2-8
50 IAC 4.2-9
50 IAC 4.2-10
50 IAC 4.2-11
50 IAC 4.2-12
50 IAC 4.2-14
50 IAC 4.2-15
50 IAC 4.2-16
50 IAC 4.3

SECTION 1. 50 IAC 4.3 IS ADDED TO READ AS FOLLOWS:

ARTICLE 4.3. ASSESSMENT OF TANGIBLE PERSONAL PROPERTY

Rule 1. Administration; Procedure; Applicability

50 IAC 4.3-1-1 Primary definitions
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-1-11; IC 6-1.1-3-7; IC 6-1.1-3-11; IC 6-1.1-7; IC 6-1.1-8; IC 6-1.1-22-9; IC 6-6-5; IC 6-6-5.5

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

(1) "Assessed value" means an amount equal to one hundred percent (100%) of the true tax value of property as defined in subdivision (16).

(2) "Assessment date" means March 1.

(3) "Construction in process" means tangible personal property not placed in service. It includes tangible personal property that has not been depreciated and is not yet eligible for federal income tax depreciation. It does not include inventory, leased property, or returnable containers.

(4) "Critical spare parts" means replacement parts that are not intended to ever be used. These parts are not readily available, and the owner's books and records must reflect that they are not used in any type of regular rotation as repair parts and are in fact replacement parts only used under extraordinary circumstances.

(5) "Depreciable personal property" means all tangible personal property as defined in subdivision (11), that is used in a trade or business, used for the production of income or held as an investment that should be or is subject to depreciation for federal income tax purposes, except to the extent that property is treated otherwise in this article.

(6) "Filing date" means May 15 following the assessment date, unless an extension of time to file is obtained under IC 6-1.1-3-7(b). If the filing date falls on a Saturday, a Sunday, a national legal holiday recognized by the federal government, or a statewide holiday, the next succeeding business day that is not a Saturday, Sunday, or federal or state holiday becomes the filing date.

(7) "Inventory" means the following:

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

(i) held for sale in the ordinary course of business;

(ii) currently in the process of production for subsequent sale;

(iii) ultimately to be consumed in the production of the goods or services to be available for sale;

(iv) used in marketing or distribution activities; or

(v) critical spare parts.

(B) The term includes the following:
(i) Goods or commodities awaiting sale, which include, but are not limited to, the following:
(AA) The merchandise of a retail or wholesale concern.
(BB) The finished goods of a manufacturer.
(CC) Commodities from farms, mines, and quarries.
(DD) Goods that are used or trade-in merchandise and byproducts of a manufacturer.
(ii) Goods or commodities that are in the course of production at the Indiana location, that is, items needing further processing to be considered finished or ready for shipment.
(iii) Goods that will be consumed or used in either the Indiana manufacturing process or in any other manner by the taxpayer, directly or indirectly. This category would include, but not be limited to, the following:
(AA) Raw materials.
(BB) Supplies.
(CC) Repair parts.
(DD) Critical spare parts.
(EE) Expendable tools.
(FF) Samples.
(C) To the extent that critical spare parts are depreciated for federal tax purposes, they shall be treated as depreciable tangible personal property subject to 50 IAC 4.3-4.

(8) "Mobile vehicles" means vehicles assessed as depreciable personal property and not subject to excise tax that, by the nature of their existence, may not be located in the state on the assessment date.

(9) "Nonsubstantial compliance" means a tax return that:
(A) omits five percent (5%) or more of the cost per books of the tangible personal property at the location in the taxing district for which a return is filed;
(B) omits leased property, consigned inventory, and other nonowned personal property where such omitted property exceeds five percent (5%) of the total assessed value of all reported personal property; or
(C) is filed with the intent to evade personal property taxes or assessment.

(10) "Original personal property return" means a personal property tax return filed with the proper assessing official by May 15, or if an extension is granted, the extended filing date.

(11) "Personal property" means the following:
(A) Property defined under IC 6-1.1-1-11. Included in this definition, and subject to taxation under this article, are:
(i) vehicles that are not registered and are used solely on the owner's property;
(ii) equipment attached to excise vehicles not used directly in the operation of the vehicle; and
(iii) nonautomotive equipment attached to excise vehicles.
(B) Excluded from this definition, and not subject to taxation under this article, are:
(i) utility property subject to taxation under IC 6-1.1-8;
(ii) mobile homes subject to taxation under IC 6-1.1-7;
(iii) household goods;
(iv) vehicles subject to commercial vehicles excise tax under IC 6-6-5.5; and
(v) vehicles subject to motor vehicle excise tax under IC 6-6-5.

(12) "Repair parts" means replacement parts that can reasonably be expected to be used. These parts are readily available to the taxpayer and are either used in a regular rotation or can be expected to be used in the operation of the business.

(13) "Resident" means a person or entity who has a primary dwelling or is incorporated within Indiana.

(14) "Tax payment date" means May 10 and November 10 in the year subsequent to the assessment date as defined under IC 6-1.1-22-9. If any tax payment date falls on a Saturday, a Sunday, a national legal holiday recognized by the federal government, or a statewide holiday, the next succeeding business day that is not a Saturday, Sunday, or federal or state holiday becomes the tax payment date.

(15) "Taxing district" means an area within the state having tax levies and rates different from the tax levies and rates in other areas of the state.

(16) "True tax value" means the resultant value of property determined in accordance with this article.

(State Board of Tax Commissioners; 50 IAC 4.3-1-1; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1489)

50 IAC 4.3-1-2 Powers and duties of state board of tax commissioners

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

Sec. 2. The state board of tax commissioners (hereafter state board) is responsible under Indiana law for promulgating rules, appraisal manuals, instructional bulletins, directives, returns, and forms to govern the assessment of personal property subject to the ad valorem (tax on value) property tax. Duly appointed personnel of the state board have the responsibility for holding hearings and recommending changes in the assessment of the taxpayer's property. The state board may reconsider the evidence submitted at the original hearing or consider additional information submitted after the original hearing. The state board has the administrative authority to determine the final assessment of personal property. *(State Board of Tax Commissioners; 50 IAC 4.3-1-2; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1490)*

50 IAC 4.3-1-3 All property taxable

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-1; Article 10, Section 1 of the Indiana Constitution

Sec. 3. Generally, all tangible property shall be taxed as either personal property, real estate, public utility, commercial vessel, mobile home, motor vehicle excise, commercial vehicle excise, aircraft excise, or subject to financial institutions tax unless specifically exempted by law. *(State Board of Tax Commissioners; 50 IAC 4.3-1-3; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1490)*

50 IAC 4.3-1-4 Amendments to rules
Authority: IC 6-1.1-31-1
Affected: IC 4-22-2

Sec. 4. This article may be amended in whole or in part at the discretion of the state board. The procedure for the amendment is specified in IC 4-22-2. *(State Board of Tax Commissioners; 50 IAC 4.3-1-4; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1491)*

50 IAC 4.3-1-5 Instructional bulletins
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31

Sec. 5. (a) The state board may issue instructional bulletins that will be published in the Indiana Register as nonrule policy statements. The instructional bulletins, designated I-02-1, I-02-2, etc., instruct taxing officials of their duties and provide administrative forms to be used by taxpayers and local assessing officials as required by the various rules of the state board. These instructional bulletins will be effective for the year designated and will remain in effect for later tax years unless specifically rescinded or revised by subsequent instructional bulletins.

(b) Copies of instructional bulletins issued pursuant to this article may be obtained for a fee per page, as established by the department of administration, plus mailing costs by contacting:
State Board of Tax Commissioners
100 North Senate Avenue, Room 1058
Indianapolis, Indiana 46204
(State Board of Tax Commissioners; 50 IAC 4.3-1-5; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1491)

50 IAC 4.3-1-6 Administrative adjudications by state board; effect
Authority: IC 6-1.1-31-1
Affected: IC 4-21.5

Sec. 6. (a) The state board may, at its discretion, issue an "administrative adjudication determination" on the ad valorem tax consequences of a taxpayer's proposed transaction or unusual circumstances prior to the filing date of May 15 for the assessment year in question. If the taxpayer has received an extension for filing from the assessor, the date shown in the assessor's letter of extension will be the date used in this section. This "administrative adjudication determination" will be effective only for the tax year designated in the determination.

(b) The taxpayer should make a written request not later than March 31 of the assessment year in question stating all the facts and circumstances that affect the transaction on which a determination is requested.

(c) The "administrative adjudication determination", as issued by the state board, will be in writing and executed by a quorum of the members of the state board.

(d) The taxpayer may rely upon the "administrative adjudication determination" for the tax year designated. The "administrative adjudication determination" as granted is conditioned upon the following:
(1) That the facts and circumstances as represented by the taxpayer in the request are accurate.
(2) That all facts and circumstances related to the transaction have been disclosed to the state board.
(State Board of Tax Commissioners; 50 IAC 4.3-1-6; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1491)

50 IAC 4.3-1-7 Practice before state board
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31-1

Sec. 7. The practice of taxpayer representatives in proceedings before local officials and the state board are governed by 50 IAC 15-5. *(State Board of Tax Commissioners; 50 IAC 4.3-1-7; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1491)*

50 IAC 4.3-1-8 Applicability
Authority: IC 6-1.1-31-1; IC 6-1.1-31-7
Affected: IC 6-1.1-3

Sec. 8. (a) This article applies to the assessment of all tangible personal property under IC 6-1.1-3.

(b) All tangible personal property assessed after February 28, 2002, must be assessed in accordance with this article. *(State Board of Tax Commissioners; 50 IAC 4.3-1-8; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1491)*

50 IAC 4.3-1-9 United States Code citations
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31-1

Sec. 9. All references to the United States Code in this article refer to the version in effect on November 6, 2001. *(State Board of Tax Commissioners; 50 IAC 4.3-1-9; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1491)*

Rule 2. Filing Requirements

50 IAC 4.3-2-1 Place of filing; assessment
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-1-20; IC 6-1.1-3-1; IC 6-1.1-3-10

Sec. 1. (a) A personal property tax return must be filed in each taxing district where property is located or held on

March 1, subject to the qualifications contained in this article. A return may cover all business locations in a single taxing district. However, if the property is located in two (2) or more taxing districts within the same township, a separate return must be filed reporting the property in each of the taxing districts.

(b) Personal property owned by a person who is a resident of this state shall be assessed at the place where the owner is a "resident". If personal property is regularly used, permanently located or held on the assessment date at a location in the state other than where the owner is a "resident", the assessment shall be made in such location. "Mobile vehicles" regularly used or regularly located in Indiana such that they have a substantial nexus with this state but that are at a location outside of the state on the assessment date shall be assessed where they are regularly used or located.

(c) Personal property owned by a person who is a nonresident of this state shall be assessed at the place where the owner's principal office is located within this state. If personal property is regularly used, permanently located or held on the assessment date at a location in the state other than where the owner has its principal office, the assessment shall be made in such location. When the owner does not have a principal office in the state, the property will be assessed where located on the assessment date.

(d) To the extent that "residence" determines the place of assessment of personal property held by a fiduciary in its fiduciary capacity, the residence of the fiduciary shall govern, except that in the assessment of personal property of an estate of a deceased person, the "actual residence" in this state of the deceased person immediately before death shall be the place of assessment until such property has been distributed.

(e) If a controversy arises concerning the appropriate taxing district for assessing personal property, the determination made as follows shall be final:

(1) The county assessor shall determine the correct taxing district for assessment purposes if a question arises as to the appropriate taxing district within the county.

(2) The state board shall determine the proper county for assessment if the question arises as to which county within the state is the proper tax situs.

(State Board of Tax Commissioners; 50 IAC 4.3-2-1; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1491)

50 IAC 4.3-2-2 Who must file

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-2-4; IC 6-1.1-3-7

Sec. 2. Every person, as defined in IC 6-1.1-1-10, including any firm, company, partnership, association, corporation, fiduciary, or individual owning, holding, possessing, or controlling personal property with a tax situs within the state on March 1 of any year is required to file a personal property tax return on or before May 15 of that year unless an extension of time to file a return is obtained pursuant to section 3 of this rule. The obligation to file a return is not diminished or affected by the failure of an assessor to deliver or mail forms to a taxpayer. It is the responsibility of the taxpayer to obtain forms from the assessor and file a timely return in compliance with this article. *(State Board of Tax Commissioners; 50 IAC 4.3-2-2; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1492)*

50 IAC 4.3-2-3 Time to file returns

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

Sec. 3. (a) File returns on or before May 15 of each year.

(b) An extension of time to file a return of up to thirty (30) days may be granted provided the extension is requested in writing before the statutory filing date (May 15). If the extended filing date falls on a Saturday, a Sunday, a national legal holiday recognized by the federal government, or a statewide holiday, the return is timely if filed by the next succeeding day that is not a Saturday, a Sunday, or a federal or state holiday.

(c) The request must be made to the assessor with whom the return should be filed. The request must clearly state the reason for the extension. The assessor may, at the assessor's discretion, approve the request and shall notify the taxpayer in writing if approved. A copy of the approved request must be attached to each taxpayer's return required to be filed. *(State Board of Tax Commissioners; 50 IAC 4.3-2-3; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1492)*

50 IAC 4.3-2-4 Full disclosure

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-3-7; IC 6-1.1-3-9

Sec. 4. (a) Full disclosure is required as defined under IC 6-1.1-3-9.

(b) The owner of any personal property subject to assessment and taxation on the assessment date has the responsibility for reporting such property for assessment and taxation on the owner's personal property tax return. In addition to the reporting requirement in subsection (a), the owner of property, under circumstances in which possession is transferred to another person, but ownership is retained, shall be required to furnish in the taxing district where the property is located a complete listing of such property showing the name and address of person in possession, model, description, location, quantities, date of installation, and value per this article reported for assessment and taxation. This listing is required in order to

provide a means of verification and cross reference by the assessing official that all property is being properly reported for assessment and taxation. (See special instructions in 50 IAC 4.3-8 for reporting leased personal property.)

(c) The person holding, possessing or controlling, in any capacity, any tangible property that is subject to taxation under this article is required to file and attach with the return a complete listing of all not owned property. The listing is to be filed in the taxing district where the property is located and must include the name and address of the owner, model, description, location, quantities on hand, date of installation, value (if known) per this article, and any other information requested on the appropriate form. This listing is required to be filed by the possessor even if the owner is liable for the taxes under a contract, thereby assuring that the assessing official has the necessary information to correctly assess the property in question. (See special instructions in 50 IAC 4.3-8 for reporting leased personal property.) *(State Board of Tax Commissioners; 50 IAC 4.3-2-4; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1492)*

50 IAC 4.3-2-5 Returns filed in duplicate
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-3-7

Sec. 5. (a) When the assessed value of the personal property declared on all returns filed in a taxing district by a taxpayer is one hundred fifty thousand dollars ($150,000) or more, each return must be filed in duplicate. A legible, reproduced copy will be acceptable for this requirement.

(b) Returns forwarded to county assessor. Whether or not a taxpayer has filed the return in duplicate, each assessor of a township must forward to the county assessor, on or before July 31 of each year, a copy of each personal property tax return filed by a taxpayer who has a total assessed valuation declared on returns filed in a taxing district of one hundred fifty thousand dollars ($150,000) or more.

(c) Returns forwarded to the state board by county assessor. The county assessor shall forward to the state board, on or before August 31 of each year, a copy of all duplicate returns forwarded to the county assessor by the township assessors as provided in subsection (b). *(State Board of Tax Commissioners; 50 IAC 4.3-2-5; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1493)*

50 IAC 4.3-2-6 Short form returns
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-3-7

Sec. 6. When the assessed value of personal property required to be reported in a township is less than one hundred fifty thousand dollars ($150,000), the taxpayer may elect to file Form 103-Short Form if:

(1) the business is not a manufacturer or processor;

(2) no elections are made to utilize the "average" inventory reporting method;

(3) no exemptions or deductions (other than the enterprise zone credit) are claimed that affect the business personal property assessment; and

(4) no special valuation adjustments, such as equipment not placed in service, permanently retired equipment, or abnormal obsolescence, are claimed in determining the value of the business personal property.

(State Board of Tax Commissioners; 50 IAC 4.3-2-6; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1493)

50 IAC 4.3-2-7 Authorized forms
Authority: IC 6-1.1-31-1
Affected: IC 4-10-13-5; IC 6-1.1-3; IC 6-1.1-35-9; IC 6-1.1-37-3

Sec. 7. (a) The state board is required by statute to adopt tax return forms and schedules for personal property assessment purposes.

(b) The following are the authorized return forms provided for personal property assessment purposes pursuant to this article:

Form #	Form Description
101	Individual Tangible Personal Property Return
102	Confidential Farmers Tangible Personal Property Return
103/C	Consolidated Return
103/S	Short Form Confidential Business Tangible Personal Property Return
103/L	Long Form Confidential Business Tangible Personal Property Return
103-I	Confidential Return of Commercial Airline Carriers and Buslines
103-N	Return of Not Owned Personal Property
103-O	Return of Owned Personal Property Not in Possession of Owner
103-P	Confidential Claim for Exemption of Air or Water Pollution Control Facilities
103-T	Confidential Return of Special Tools
103-W	Confidential Return of Personal Property in Warehouses, Grain Elevators or Other Storage Places claimed to be Exempt from Assessment
104	Business Tangible Personal Property Return
105	Business Tangible Personal Property Summary of Returns (To be filed directly with State Board of Tax Commissioners)
106	Schedule of Adjustments to Business Tangible Personal Property

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

(1) contains all of the information as set forth in the prescribed form;

(2) properly identifies the form or schedule being substituted; and
(3) is approved by the state board.

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

Form Number	Form Description
111/PP	Notice of Review of Current Year's Assessment for Personal Property by Township Assessor or Property Tax Assessment Board of Appeals
113/PP	Notice of Assessment or Change in Assessment by Assessing Official
114/PP	Notice of Hearing on Petition by PTABOA
115	Notice of Final Assessment Determination by PTABOA
116	Notice of Hearing and Review of Assessment by State Board of Tax of Commissioners
117	Notice of Hearing on Petition By State Board of Tax Commissioners
118	Notice of Final Assessment Determination by State Board of Tax Commissioners
130/PP	Petition to the PTABOA for Review of Assessment
131/PP	Petition to the State Board of Tax Commissioners for Review of Assessment
133	Petition for Correction of Error
322 ERA/PPME	Application for Deduction from Assessed Valuation - New Manufacturing Equipment in Economic Revitalization Area (ERA)
322 ERA/PPR & DE	Application for Deduction from Assessed Valuation - New Research and Development Equipment in Economic Revitalization Area (ERA)
CF-1	Compliance with Statement of Benefits (ERA)
SB-1	Statement of Benefits (ERA)
MOD-1	Maritime Opportunity District Personal Property Tax Credit
EZ1	Enterprise Zone Business Personal Property Tax Credit
IR-1	Industrial Recovery Site Inventory Tax Credit
17-T	Petition for Refund of Taxes (Prescribed by the State Board of Accounts)

(e) Every person required to file a personal property tax return pursuant to section 2 of this rule must report all personal property, as defined in 50 IAC 4.3-1-1(11), on the authorized form. The return forms as listed in subsections (b) and (d) do not constitute a return unless signed under the penalties of perjury by a person authorized to file such return.

(f) Prescribed Forms 102, 103, 103-I, 103-N, 103-O, 103-P, 103-T, 103-W, and 106, together with any schedules or other information attached thereto, are confidential and shall not be disclosed to any person unless specifically authorized by law. For further information on confidentiality see IC 6-1.1-35-9.

(g) Personal property is a self-assessment method of taxation requiring the taxpayer to complete the assessment return in accordance with the rules prescribed by the state board.

(h) The township assessor's responsibility is defined in IC 6-1.1-3-6, IC 6-1.1-3-7, and IC 6-1.1-3-14. This language clearly demonstrates that personal property returns are required to be self-assessment returns prepared and signed by the taxpayer (authorized person) "under the penalties of perjury" that it "is a true, correct, and complete" return and that it is prepared in accordance with IC 6-1.1 et seq., as amended, and rules promulgated with respect thereto.

(i) The taxpayer is responsible for the accuracy of the information on the return and for assuring that it is a complete return that has been prepared in accordance with the law and rules of the state board.

(j) The township assessor should provide whatever assistance is reasonable and necessary to ensure that the taxpayer may file a correct tax return. This would include:
(1) furnishing copies of assessment return forms;
(2) providing copies of this article and amendments;
(3) providing copies of rules and instructional bulletins applicable to that business, for example, 50 IAC 4.3-15-7, for petroleum prices prescribed; and
(4) answering any questions on how to properly file an assessment return.

If a taxpayer requests assistance in the preparation of a return because the taxpayer does not understand how to complete the form, the official should explain each step to the taxpayer. In no instance should the official fill out the return for the taxpayer. The taxpayer should complete and be responsible for all information on the return. The taxpayer must sign and date the return in all cases. *(State Board of Tax Commissioners; 50 IAC 4.3-2-7; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1493)*

50 IAC 4.3-2-8 Penalties

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-1-6; IC 6-1.1-3-7; IC 6-1.1-3-9; IC 6-1.1-5-13; IC 6-1.1-15-5; IC 6-1.1-37-7

Sec. 8. (a) Any person who willfully makes and subscribes any return, statement, or other document that is verified

under oath, which is certified as to the truth of the information occurring thereon or which contains a written declaration that is made under the penalties of perjury and which they do not believe to be true and correct in every material respect shall be guilty of a crime and shall be subject to the same penalties as provided by law for perjury.

(b) The incomplete return penalty is defined in IC 6-1.1-37-7(d). The purpose of this penalty is to require a full disclosure of the information related to the value, nature, or location of personal property on the personal property tax return for that year which is necessary for an assessing official to review the return. If this information is not provided, a thorough review of the return as required by law cannot take place.

(c) The penalty for failure to file a timely return is defined in IC 6-1.1-37-7(a). No return shall be considered due within the meaning of this article until the expiration of a period of any extension of time which may have been granted pursuant to section 3 of this rule.

(d) The undervaluation penalty is defined in IC 6-1.1-37-7(e).

(1) The purpose of the twenty percent (20%) penalty is to ensure a complete disclosure of all information required by the state board on the prescribed self-assessment personal property forms. This enables the township assessor, county property tax assessment board of appeals, and state board to carry out their statutory duties of examining returns each year to determine if they substantially comply with the rules of the state board. This examination cannot take place if all required information is not shown on the self-assessment return form.

(2) It is not the purpose of this provision to impose a penalty on a person who has made a complete disclosure of information required on the assessment return form. Therefore, if the person filing the self-assessment personal property return shows that they are claiming an exemption or taking an adjustment for abnormal obsolescence or permanently retired equipment on the return form and has complied with all of the requirements for claiming that exemption or adjustment, no penalty should be added to the extent of the amounts accounted for on the return form. In considering whether or not a taxpayer has made a full and complete disclosure of information, the complete return package must be considered. A complete return package consists of the return form itself (Form 102 or 103), and all necessary supplemental forms and supporting schedules which must be filed with the return.

(3) If a person has complied with all of the requirements for claiming an exemption or adjustment for abnormal obsolescence or permanently retired equipment, then the increase in assessed value that results from a denial of the exemption or change in the amount of adjustment is considered to be an interpretive difference not subject to the twenty percent (20%) penalty for undervaluation for purposes of this subsection. However, all other amounts not fully disclosed through omission or undervaluation which represent property subject to the reporting requirements of this article and the laws of this state are subject to the twenty percent (20%) penalty.

(A) An exemption is defined as a situation where a certain type of property, or the property of a certain kind of taxpayer, is not taxable (IC 6-1.1-1-6). There are three (3) basic types of exemptions which are permitted to be claimed on the annual business personal property return that are available to a taxpayer. These exemptions include:

(i) air pollution control equipment;

(ii) industrial waste control equipment; and

(iii) inventory exemptions, including:

(AA) interstate commerce; and

(BB) government-owned.

(B) It should be noted that when the reporting requirements have been met, but for some reason the exemption is not allowed, the amount disallowed is an interpretive difference and is not subject to the omitted or undervalued personal property tax penalty. However, when items that would otherwise qualify for an exemption are omitted from the return, the property is taxable, because the exemption was waived, and the omitted and undervalued personal property tax penalty must be applied.

(C) Allowable adjustments can be defined as an adjustment that affects the value of personal property when the adjustment is truly elective. The taxpayer must elect the adjustment when the return is filed. If the taxpayer fails to properly elect the adjustment when the return is filed, the taxpayer is not entitled to the adjustment. The adjustment is not mandatory. The allowable adjustments are:

(i) average inventory adjustment; and

(ii) elective inventory valuation method.

(4) Mandatory adjustments reflect the value of personal property required to be reported in conformity with the provisions of this article. Therefore, regardless of whether the taxpayer shows the adjustment in their tax return, the assessing official must make the adjustment in order to arrive at the proper value for assessment purposes per the provisions of this article. Permanently retired equipment and abnormal obsolescence are adjustments which should be recognized to the extent that the property qualifies and the taxpayer is able to substantiate the facts, circumstances, and amount of the claim in order to properly determine the true tax value of the subject property.

(A) The mandatory adjustments for depreciable assets include:

(i) adjust to federal tax basis;
(ii) add fully depreciated property still in use but written off;
(iii) add cost of installation and foundation applicable to depreciable personal property;
(iv) equipment not placed in service;
(v) permanently retired equipment;
(vi) valuation of commercial aircraft and commercial buslines;
(vii) abnormal obsolescence;
(viii) percent good factors applicable to each year's acquisitions; and
(ix) placement by year of acquisition in the proper pool based upon life utilized for computing cost recovery (depreciation) for federal tax purposes.

(B) The mandatory adjustments for inventory include:
(i) adjust book inventory to March 1;
(ii) add unrecorded inventory;
(iii) adjust to "first-in-first-out" (FIFO);
(iv) add manufacturing overhead not included in inventory;
(v) add freight-in not included in inventory;
(vi) add royalties, editorial, license, or copyright fees not included in inventory;
(vii) add taxes not included in inventory;
(viii) deduct inventory recorded but not received;
(ix) deduct purchase or trade discounts; and
(x) adjustment from standard to actual cost.

With the exception of the valuation of permanently retired equipment and abnormal obsolescence, mandatory adjustments for depreciable assets and inventory are not interpretive differences. They are adjustments which must be applied to any omitted or undervalued property when discovered. Any resulting differences in assessment between the amount reported by the taxpayer and the amount of assessment determined by the assessing official after making all mandatory adjustments is subject to the twenty percent (20%) penalty, while interpretive differences and math errors on the face of the return are not subject to the penalty.

(e) A penalty is due with an installment under subsection (b), (c), or (d) whether or not an appeal is filed under IC 6-1.1-15-5 with respect to the tax due on that installment. *(State Board of Tax Commissioners; 50 IAC 4.3-2-8; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1494)*

50 IAC 4.3-2-9 Interest
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-22-9; IC 6-1.1-37; IC 33-3-5-11

Sec. 9. (a) Interest shall apply on taxes due when:
(1) an assessment is made or increased after the date on which the taxes were originally due for the year for which the assessment is made;
(2) the assessment upon which the taxpayer has been paying taxes is less than the assessment that results from the final determination of the petition for review or of the appeal to court; or
(3) the collection of property taxes has been enjoined under IC 33-3-5-11.

(b) A taxpayer shall pay taxes and interest with respect to an action or determination described in subsection (a) on or before:
(1) the next May 10; or
(2) the next November 10;
whichever occurs first. *(State Board of Tax Commissioners; 50 IAC 4.3-2-9; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1496)*

50 IAC 4.3-2-10 Amended returns
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-3-7; IC 6-1.1-3-7.5

Sec. 10. (a) A taxpayer may file an amended personal property tax return not more than six (6) months after the later of the following:
(1) If no extension was granted under IC 6-1.1-3-7(b), an amended return must be filed before November 16 of the year in which the original personal property tax return was filed.
(2) If an extension was granted under IC 6-1.1-3-7(b), an amended return must be filed within six (6) months of the extended filing date.

(b) A taxpayer who files a personal property tax return under IC 6-1.1-3 may file no more than one (1) amended return under IC 6-1.1-3-7.5.

(c) A taxpayer may claim on an amended personal property tax return any adjustment or exemption that would have been allowable as if the adjustment or exemption had been claimed on the original personal property return.

(d) In no case will a taxpayer be allowed to file an amended return if the original return was not filed by May 15 or, in the case of an extension, by the extended filing date.

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

(f) Notwithstanding the provisions of this article, an amended return remains subject to the review and adjustment of assessing officials in same manner as original personal property returns.

(g) The township assessor must report the assessed value resulting from amended return to the county auditor on forms prescribed by the state board.

(h) Within ten (10) days of receipt of a report submitted under subsection (e), the county auditor shall reflect the assessed value resulting from amended returns on the auditor's records of assessed valuation. *(State Board of Tax Commissioners; 50 IAC 4.3-2-10; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1496)*

50 IAC 4.3-2-11 Additional filing requirements
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-3-7

Sec. 11. Every taxpayer required by statute or this article to file in more than one (1) taxing district in the state shall be required to file a Summary of Returns, Form 105, directly with the state board by July 15 of the year the assessment is made. This form must indicate the taxing districts where returns are required to be filed and the assessed values reported to the local assessor. This requirement is in addition to all other requirements imposed by law and this article relating to the filing of personal property tax forms and returns. *(State Board of Tax Commissioners; 50 IAC 4.3-2-11; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1497)*

Rule 3. Review and Appeal Procedures

50 IAC 4.3-3-1 Township assessor review
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-3-14; IC 6-1.1-3-15; IC 6-1.1-9-3; IC 6-1.1-15-1; IC 6-1.1-15-14; IC 6-1.1-16-1

Sec. 1. (a) The township assessor shall review returns as required under IC 6-1.1-3-14 and IC 6-1.1-3-15. The township assessor shall notify the taxpayer, on Form 113, if the assessor changes the assessment reported by the taxpayer on the return.

(b) The assessor may make an assessment of personal property if the assessor has sufficient information to indicate there is omitted property as described in IC 6-1.1-9-3(a).

(c) If a person owning, holding, possessing, or controlling any personal property fails to file a personal property return or list with the township assessor, the assessor may follow the procedures outlined in IC 6-1.1-3-15.

(d) As an alternative to the township assessor directly performing the duties under subsections (a) through (c), the township assessors may contract with a private vendor to perform these duties.

(e) A township or county assessing official must make a change in the assessed value and give notice of the change on or before the latter of:
(1) September 15 of the year for which the assessment is made; or
(2) four (4) months from the date the personal property return is filed;
if the return is filed after May 15 of the year for which the assessment is made provided the return has been filed in substantial compliance with this article. If the taxpayer has failed to file a return, a notice of assessment must be given within the ten (10) year period after the date on which the return should have been filed. If a fraudulent return has been filed, the assessor has no limitation of time within which to act. If the taxpayer fails to file a personal property return that substantially complies with the provisions of IC 6-1.1 and the rules of the state board, the assessment may be increased if notice is given within three (3) years after the date the return is filed.

(f) Upon receiving a notification of estimated value from the township assessor, the taxpayer may elect to file a personal property return within thirty (30) days from the date of the written notice of assessment by the assessor subject to the penalties imposed under 50 IAC 4.3-2-8. The notice shall instruct the taxpayer on the procedures necessary to obtain a review before the property tax assessment board of appeals. *(State Board of Tax Commissioners; 50 IAC 4.3-3-1; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1497)*

50 IAC 4.3-3-2 Direct review of assessment by property tax assessment board of appeals
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-3; IC 6-1.1-9; IC 6-1.1-13-1; IC 6-1.1-13-3; IC 6-1.1-15-1; IC 6-1.1-15-14; IC 6-1.1-16-1

Sec. 2. (a) The property tax assessment board of appeals may review, at its own discretion, any assessment of any taxpayer within the county as described in IC 6-1.1-13-3.

(b) The property tax assessment board of appeals may contract with a private vendor to assist in the review.

(c) The property tax assessment board of appeals shall give the proper notice as described in IC 6-1.1-13-1.

(d) After the property tax assessment board of appeals has completed the review of the taxpayer's assessment, it shall notify the taxpayer by mail of the assessment on Form 115.

(e) A property tax assessment board of appeals must make a change in the assessed value, including the final determination by the board of an assessment changed by a township or county assessing official, and give the notice of the change on or before the latter of:
(1) October 30 of the year for which the assessment is made; or

(2) five (5) months from the date the personal property return is filed;

if the return is filed after May 15 of the year for which the assessment is made provided the return has been filed in substantial compliance with this article. If the taxpayer fails to file a return, a notice of assessment must be given within the ten (10) year period after the date on which the return should have been filed. If a fraudulent return has been filed, there is no limitation of time within which it may act. If the taxpayer fails to file a personal property return that substantially complies with the provisions of this article, the assessment may be increased if notice is given within three (3) years after the date the return is filed. *(State Board of Tax Commissioners; 50 IAC 4.3-3-2; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1497)*

50 IAC 4.3-3-3 Direct review by state board

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-14-10; IC 6-1.1-15; IC 6-1.1-30

Sec. 3. (a) The state board, on its own initiative, may conduct an audit to review a taxpayer's personal property assessment under IC 6-1.1-14-10.

(b) A notice of audit of assessment on Form 116 will be mailed to the taxpayer advising the taxpayer at least ten (10) days in advance of the date, time, and place of the scheduled audit.

(c) The taxpayer is required to make available to the auditor of the state board sufficient books, records, federal and state income tax returns, and related data to determine the assessment of the property in question. If the books, records, tax returns, and related data are not made available, a subpoena or a subpoena duces tecum will be issued to obtain this information unless in the judgment of the state board other action would be more appropriate.

(d) Upon the completion of the audit, the auditor from the state board shall make his findings and proposed assessed valuation known to the taxpayer.

(e) Upon the completion of the audit, the auditor from the state board shall make a report to the state board that includes recommendations and proposed assessed valuation. *(State Board of Tax Commissioners; 50 IAC 4.3-3-3; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1498)*

50 IAC 4.3-3-4 Final determination of state board

Authority: IC 6-1.1-31-1
Affected: IC 4-21.5; IC 6-1.1-15-4; IC 6-1.1-15-5; IC 6-1.1-30; IC 6-1.1-31

Sec. 4. (a) The report, proposed assessment, and related information shall be considered by the state board in determining the assessment of the taxpayer.

(b) If the taxpayer does not agree with the assessment recommended by the auditor, the taxpayer may petition the state board to consider additional information, provided that the petition is made before the determination of the final assessment.

(c) If the taxpayer wants a hearing, the taxpayer must submit a letter requesting an administrative hearing to the state board. Accompanying the letter should be a written brief or statement, along with any evidence, supporting the taxpayer's request for a hearing. The brief or statement should include a concise statement of the question in dispute and a summary of laws, regulations, and facts in support of such question.

(d) The state board may hold an administrative hearing or appoint personnel to hold an administrative hearing at its discretion provided that the taxpayer has properly requested a hearing and the state board determines that the taxpayer's facts and circumstances warrant an administrative hearing. The discussion at the hearing will be limited to the issues presented in the request for hearing unless, at the discretion of the state board, it determines other issues should be discussed.

(e) If a hearing is held by the state board, the board shall issue written findings of fact and conclusions of law related the administrative hearing.

(f) A written notice, Form 118, of the final assessment will be given to the taxpayer, township assessor, county assessor, and county auditor when an audit was conducted by state board on its own initiative.

(g) Any change in assessment by the state board must be made and the notice of the assessment sent not later than October 1 of the year following the year of the assessment. If an extension of time to file was granted, the state board has sixteen (16) months from the date the personal property tax return was filed to change the assessment. This general statute of limitations does not apply in the following circumstances:

(1) The taxpayer may petition for a correction of error if a statutory basis for the correction of error exists (as prescribed in section 6 of this rule).

(2) There is a three (3) year limitation on the ability to change an assessment when a taxpayer has not filed a property tax return in substantial compliance with the provisions of this article.

(3) When a taxpayer is required to file a tax return as provided by law under this article and fails to file a return.

(4) A ten (10) year limitation on the ability to change an assessment when the taxpayer files a fraudulent personal property return or files a return with the intent to evade the payment of property taxes.

(State Board of Tax Commissioners; 50 IAC 4.3-3-4; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1498)

50 IAC 4.3-3-5 Appeal of assessments
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-15-1; IC 6-1.1-15-5; IC 6-1.1-22-9; IC 6-1.1-37; IC 33-3-5

Sec. 5. In the event the taxpayer does not agree with the assessment made by an assessing official, an appeal may be made as follows:

(1) The taxpayer may appeal an assessment made by a township or county assessor to the county property tax assessment board of appeals by filing a Form 130, petition for review of assessment with the county assessor in the county where the property was assessed pursuant to IC 6-1.1-15-1(b).

(2) If a taxpayer or township assessor or a member of a county property tax assessment board of appeals does not agree with an assessment as determined by the county property tax assessment board of appeals, a petition for review of assessment must be filed on Form 131, with the county assessor of the respective county requesting a review by the Indiana board of tax review pursuant to IC 6-1.1-15-3(c).

(3) Appeal to the Indiana tax court under IC 6-1.1-15-5. *(State Board of Tax Commissioners; 50 IAC 4.3-3-5; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1499)*

50 IAC 4.3-3-6 Petition for correction of error
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-15-12

Sec. 6. If a taxpayer files a petition for correction of error (Form 133) with respect to a personal property assessment for years before March 1, 2002, the taxpayer opens that entire assessment to review. If errors other than those identified by the taxpayer are found in the process of review, they can be corrected, regardless of the net effect on the assessment. A taxpayer who claims that an error in an assessment entitles the taxpayer to a refund, the taxpayer must file both a Form 133, for correction of the assessment, and a Form 17T, for a refund. For more details and specific information on this process see IC 6-1.1-15-12. *(State Board of Tax Commissioners; 50 IAC 4.3-3-6; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1499)*

Rule 4. Valuation of Depreciable Tangible Personal Property

50 IAC 4.3-4-1 "Depreciable personal property" defined
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-1-11

Sec. 1. As used in this rule, "depreciable personal property" means all tangible personal property defined in 50 IAC 4.3-1-1(5) that is used in a trade or business, used for the production of income, or held as an investment that is subject to depreciation for federal income tax purposes, except to the extent that property is treated otherwise in this article. *(State Board of Tax Commissioners; 50 IAC 4.3-4-1; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1499)*

50 IAC 4.3-4-2 Book cost determinative
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31

Sec. 2. (a) The cost of depreciable property, both real and personal, shall be the total amount as recorded on the taxpayer's books and records as of the assessment date and must be utilized in determining the value of the depreciable personal property, except as provided in section 3 of this rule.

(b) Per the provisions of this article, the cost of depreciable personal property must include, but is not limited to, the following:

(1) Direct costs and an appropriate portion of indirect costs attributable to its production or acquisition and preparation for use. These costs include, but are not limited to, the following:
(A) The purchase price.
(B) Transportation costs to the place of use.
(C) Installation costs.
(D) Foundations and electrical wiring.
(E) Interest incurred during construction and installation.
(F) Sales tax.

(2) If the asset is constructed by the company, the original cost must be made up of, but not limited to, the following costs:
(A) Direct and indirect labor costs and fringe benefits.
(B) Direct material costs.
(C) Designing.
(D) Supervision.
(E) Insurance.
(F) Depreciation of equipment used in construction.
(G) Claims for damage during construction not compensated by insurance.
(H) Taxes during construction.
(I) Interest incurred during construction.
(J) Sales taxes.
(K) Other costs directly chargeable to construction.

(3) If the asset is constructed by the company, the original cost should not include the following costs:
(A) Profit should not be added to the actual costs since the company cannot make a profit on itself.
(B) Any credits in the form of sales of scrap materials, discounts received on purchases of materials, and return premiums on surrender of insurance policies should be subtracted from the gross costs of construction to determine the actual cost of the asset.

(4) The allocation of interest incurred during construction and installation must be made (capitalized) for personal property tax purposes regardless of how the property is required to be treated under federal income tax laws.

(c) The cost of additions and betterments must be added to the original cost of the asset. If an additional part is added or some other change is made in the fixed asset that increases its estimated useful life, its production capacity or efficiency, or changes it to a different use, such an expenditure is a betterment and should be capitalized by adding it to the original cost of the asset. If a part is replaced with a similar part, the new part would be shown as a new acquisition while the part replaced would be removed from the original cost of the asset. The cost of additions, betterments, or replacements would be reported as an addition, betterment, or replacement in the year the actual expenditure occurred.

(d) In the event a taxpayer cannot determine from the taxpayer's books and records the cost of the depreciable property on the assessment date, the taxpayer must use the following procedure:

(1) The book cost as of the close of the annual financial period immediately prior to the assessment date and so indicate on the return.

(2) This book cost will then be adjusted to reflect all acquisitions and disposals that have occurred between such date and the assessment date.

(3) This adjustment should be taken as provided in section 5 of this rule.

(4) Add installation costs and foundations applicable to machinery and equipment.

These additions shall be reported and assessed on the same basis as the asset to which they apply.

(e) A taxpayer must be able to reconcile the cost of the depreciable personal property reported with the cost of all depreciable property as recorded on the taxpayer's books and records on the assessment date.

(f) Taxpayers with locations in more than one (1) taxing district in this state may fulfill the requirements of this section by making one (1) computation as required in subsection (e) for the entire state, provided that the cost of the depreciable personal property for each taxing district where the taxpayer has property on the assessment date is identified in such computation. *(State Board of Tax Commissioners; 50 IAC 4.3-4-2; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1499)*

50 IAC 4.3-4-3 Fully depreciated, retired, or nominally valued property; report and valuation

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

Sec. 3. (a) Depreciable personal property, as defined in 50 IAC 4.3-1-1(5), not retired from use must be reported whether or not the cost of such property has been removed from, recorded on, or recorded at a nominal value on the taxpayer's books and records.

(b) Any fully-depreciated personal property that has been written off the taxpayer's books and records, is at the tax situs, and not permanently retired on the assessment date must be reported on the return. The cost of such property must be clearly shown as an adjustment as provided on the tax return as provided in section 5 of this rule.

(c) As used in this rule, "permanently retired depreciable personal property" means property that has been removed from the manufacturing process, or has been removed from service other than manufacturing, on the assessment date. In addition, if it is awaiting disposition, or scheduled to be scrapped, removed, or disposed of, it will be considered to be permanently retired providing the taxpayer actually scraps or sells such property. If a taxpayer has permanently retired depreciable property, the following applies:

(1) Depreciable personal property that is on hand, included in the book cost as reported by the taxpayer, and permanently retired on the assessment date may be adjusted in the following manner:

(A) The book cost of permanently retired depreciable property can be taken as an adjustment from the total book cost provided the cost of such property is included in the total book cost.

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

(2) Permanently retired depreciable personal property should be valued at its net scrap or net sale value. The valuation of this property should be shown separately on the tax return.

(d) Depreciable personal property recorded on the books and records at a nominal or no value must be reported at its year of acquisition insurable value. This category of property would include, but is not limited to, bulk purchase or the acquisition of a going business concern. *(State Board of Tax Commissioners; 50 IAC 4.3-4-3; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1500)*

50 IAC 4.3-4-4 Computer equipment; report and valuation

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

Sec. 4. (a) Computer equipment is made up of the following elements, as used in this rule:

(1) "Hardware" means physical equipment used for input, processing, and output activities in an information system. It is composed of mechanical, magnetic, and electronic devices and other components which constitute the physical computer assembly.

(2) "System software" means a set of generalized programs that manage the computer's resources, such as the central processor, communication links, and peripheral devices. It is not normally accessible or modifiable by the user. Also system software may be referred to as the operating system.

(3) "Application software" means programs written for a specific application to perform functions specified by end users.

(b) Computer hardware and system software must be reported at the actual acquisition cost regardless of how it may be valued on the taxpayers books and records. If the value for computer equipment recorded on the books and records reflects charges for customer support services, such as educational services, maintenance, or application software, that relate to future periods and not to the value of the tangible personal property, such charges may be deducted as intangible personal property to the extent that a separate charge or value can be identified. *(State Board of Tax Commissioners; 50 IAC 4.3-4-4; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1500)*

50 IAC 4.3-4-5 Adjustments to cost
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31

Sec. 5. (a) The adjusted costs of the assessable depreciable personal property as computed in subsection (d) must be reported at the tax basis of such property as defined in 26 U.S.C. § 1012, without any adjustments that may be authorized under federal income tax laws concerning:
(1) 26 U.S.C. § 167 (depreciation);
(2) 26 U.S.C. § 179 (expense deduction);
(3) any credits (such as investment tax credit) that diminished the cost basis of the property;
(4) the value of any trade-in property; or
(5) any other assessable property that is allowed to be expensed under federal income tax laws.
Therefore, if the tax basis of the taxpayer's assessable depreciable personal property is different than the cost per books of such property, except for the depreciable personal property defined and required to be reported by section 3 of this rule, an adjustment must be made to the cost per books of the assessable personal property reported in Indiana.

(b) The adjustment from book to tax basis must be computed on Form 106 and shown on line 2 of Form 103–Long, Schedule A.

(c) This adjustment is required to be made regardless of whether it is an increase or decrease from the cost per books.

(d) Other adjustments include deducting the cost of the following types of property:
(1) Air pollution control system.
(2) Industrial waste control facility.
(3) Real property.
(4) Airplanes subject to excise tax.
(5) Vehicles subject to excise tax.

(e) The adjusted cost of depreciable personal property is the resultant amount obtained by adjusting the cost per books, as defined in section 2 of this rule, by all adjustments within this section. *(State Board of Tax Commissioners; 50 IAC 4.3-4-5; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1501)*

50 IAC 4.3-4-6 Pools of property; determination of costs by acquisition year
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31

Sec. 6. (a) The adjusted cost of depreciable personal property, as computed in section 5 of this rule, is required to be segregated into four (4) separate pools. The depreciable life utilized for federal income tax purposes determines the pool to be utilized for Indiana property tax purposes. The pools are as follows:
(1) Pool No. 1: All assets that have a life of one (1) through four (4) years.
(2) Pool No. 2: All assets that have a life of five (5) through eight (8) years.
(3) Pool No. 3: All assets that have a life of nine (9) through twelve (12) years.
(4) Pool No. 4: All assets that have a thirteen (13) year or longer life.

(b) "Depreciable life" means the life used to determine the proper selection of the pool in which an asset must be included. It is based upon the life utilized to compute depreciation on the federal income tax return of the taxpayer unless the following occurs:
(1) The state board determines that such life is either unrealistic in relation to all of the taxpayer's facts and circumstances or the life used on the federal tax return has been changed by the Internal Revenue Service on audit.
(2) The lives used by taxpayers in the state for a particular category of assets are varied and the state board, in order to obtain equalization in assessments, determines that a uniform life should be used by all taxpayers in the state pursuant to 50 IAC 4.3-7-2.
(State Board of Tax Commissioners; 50 IAC 4.3-4-6; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1501)

50 IAC 4.3-4-7 Determination of the year of acquisition
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31

Sec. 7. (a) After calculating the total adjusted cost of depreciable tangible personal property, as provided in section 5 of this rule, it is necessary to determine the cost by year of acquisition for each pool.

(b) Each pool is required to be segregated by year of acquisition as detailed on the annually updated personal property forms prescribed in 50 IAC 4.3-2.

(c) The year of acquisition for Indiana property tax purposes is a fiscal year of March 2 to March 1 unless the

taxpayer elects to use the same year as that used for federal tax purposes as follows:

(1) If a taxpayer has a fiscal year that ends on December 31 or January 31, the taxpayer may elect to use the alternative fiscal year that is used for federal income tax purposes to determine the year of acquisition of assets for Indiana property tax reporting purposes. Otherwise, a taxpayer is not eligible to elect to use an alternative fiscal year to compute year of acquisition for Indiana personal property tax purposes and must use a fiscal year of March 2 to March 1.

(2) If an alternative fiscal year election is made, any acquisitions made after the close of the taxpayer's federal taxable year, up to and including the assessment date, must be included in the space provided on the appropriate form.

(d) For Indiana property tax purposes, it will be presumed that the disposal of depreciable personal property occurs on a first-in, first-out basis unless the taxpayer establishes that such was not the case. *(State Board of Tax Commissioners; 50 IAC 4.3-4-7; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1501)*

50 IAC 4.3-4-8 True tax value determination; exception

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

Sec. 8. (a) The true tax value for Indiana property tax purposes is computed by multiplying the adjusted cost of each year's acquisitions in the respective pool by a percentage good factor obtained in subsection (b). These factors automatically reflect all forms of depreciation for Indiana property tax purposes, except abnormal obsolescence as provided in section 9 of this rule.

(b) The table in this subsection provides the percentage good factors applied to the adjusted cost within each pool in order to compute true tax value for each pool. Once the true tax value for each year within each pool is calculated, they are summed to determine the true tax value of each pool. The true tax values for each of the four (4) pools is *[sic., are]* then summed and placed in the "Total All Pools" cell. The table of percentage factors is as follows:

Table of Percentage Good Factors

	Depreciable Lives Utilized for Federal Income Taxes			
Year of Acquisition (as detailed on the personal property forms)	Pool 1 1 to 4 Years	Pool 2 5 to 8 Years	Pool 3 9 to 12 Years	Pool 4 13 Years and Longer
1	76 %	88 %	92 %	93 %
2	53 %	76 %	84 %	85 %
3	29 %	64 %	75 %	78 %
4	5 %	51 %	67 %	71 %
5	5 %	39 %	59 %	63 %
6	5 %	27 %	51 %	56 %
7	5 %	15 %	43 %	49 %
8	5 %	15 %	35 %	42 %
9	5 %	15 %	26 %	34 %
10	5 %	15 %	18 %	27 %
11	5 %	15 %	10 %	20 %
12	5 %	15 %	10 %	12 %
13	5 %	15 %	10 %	5 %
Over 13	5 %	15 %	10 %	5 %

(c) If personal property is leased, such property will not be valued in accordance with this rule, rather it is to be reported in accordance with the provisions of 50 IAC 4.3-8. *(State Board of Tax Commissioners; 50 IAC 4.3-4-8; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1502)*

50 IAC 4.3-4-9 Adjustment for abnormal obsolescence

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

Sec. 9. (a) A taxpayer may claim an adjustment for abnormal obsolescence, as defined in 50 IAC 4.3-9-3, provided that such taxpayer follows the procedures and meets the requirements regarding such adjustment outlined in 50 IAC 4.3-9.

(b) Limitations are as follows:

(1) No adjustment will be allowed for normal obsolescence, as defined in 50 IAC 4.3-9-2, since it is accounted for in the percentage good factor(s).

(2) If an abnormal obsolescence adjustment is made, the dollar amount of the adjustment may not exceed the true tax value, as computed in section 8 of this rule, for the specific depreciable asset(s) on which the taxpayer claims the adjustment.

(3) In no instance may the abnormal obsolescence adjustment result in a true tax value less than the net scrap or net sale value of the affected asset.

(State Board of Tax Commissioners; 50 IAC 4.3-4-9; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1502)

50 IAC 4.3-4-10 Determination of property as real or personal

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

Sec. 10. (a) The following guide is intended to assist in the identification of property as either real or personal.

(b) The use of a unit of machinery, equipment, or structure determines its classification as real or personal property. If the unit is directly used for manufacturing, or a process of manufacturing, it is considered personal property. If the unit is a land or building improvement, it is considered real property.

(c) On-site utility piping, such as sanitary and storm sewers, potable water and fire prevention lines, and gas lines are considered on-site development costs and are included in the base rate when calculating the value of land.

Real property land improvements are those improvements extraneous to site development, which are placed on the land to improve the parcel. They are normally considered yard items. Real property land improvements include, but are not limited to, the following:

(1) Retaining walls.
(2) Private roads.
(3) Paved roads.
(4) Bridges.
(5) Fencing.
(6) Reservoirs.
(7) Dams.
(8) Fixed river, lake, or tidewater wharves and docks.
(9) Permanent standard gauge railroad trackage, bridges, and trestles.
(10) Walls forming storage yards and fire prevention dikes.

(d) Structural components and other improvements to buildings are considered real property. These include, but are not limited to, the following:

(1) Foundations.
(2) Walls.
(3) Floors.
(4) Roof.
(5) Insulation.
(6) Stairways.
(7) Partitions.
(8) Loading and unloading platforms.
(9) Canopies.
(10) Areaways.
(11) Heating systems.
(12) Air conditioning.
(13) Ventilation systems.
(14) Sanitation.
(15) Fixed fire protection.
(16) Lighting.
(17) Plumbing and drinking water.
(18) Elevators and escalators.

(e) The following table identifies property as either real property or personal property:

Real and Personal Property

Property	Type
Agricultural irrigation system, including the distribution system above or below ground	Personal
Air conditioning	
Building air conditioning for comfort of occupants	Real
Package units, through the wall commercial type	Real
Special process equipment to maintain controlled temperature and humidity	Personal
Window units, through the wall or inserted in window	Personal
Air lines for machinery and equipment	Personal
Aluminum pot lines	Personal
Anhydrous ammonia tanks and equipment	
Stationary	Real
Portable	Personal
Ash handling system, pit and framing related to system	Personal
Asphalt mixing plant and equipment (moveable)	Personal
Auto-call and telephone system	Personal
Bar and equipment	Personal
Bins, permanently affixed for storage	Real
Boilers	
Manufacturing process	Personal
Building service	Real
Booths for welding	Personal
Bowling alley lanes	Personal
Bucket elevators, open or enclosed, including casing	Personal
Buildings, such as specially constructed storage, poultry, or livestock processing buildings, not including machinery or equipment	Real
Bulkheads making additional land area to be assessed with and as a part of the improved land	Real
Carpeting, commercial A real property assessment includes a finished floor. If the carpet is installed over an existing finished floor, carpeting is personal property. If, as in the case of many newer buildings, carpeting has been specified and is the only finished floor, carpeting is assessed as real property.	Real or Personal, depending on the circumstances
Cistern	Real
Coal handling system	Personal
Cold storage	
Built-in cold storage rooms	Real
Cold storage refrigeration equipment	Personal
Cold storage, prefab walk-in type	Personal
Control booth	Personal
Conveyor	
Housing	Personal
Tunnels	Real
Unit, including belt and drives	Personal
Cooling towers	
Primary use for manufacturing	Personal
Primary use for building	Real

Crane	
Moving crane	**Personal**
Runways, including supporting columns or structure and foundation, inside or outside of buildings	**Personal**
Dock levelers	**Personal**
Drapes	**Personal**
Drying rooms	
Structure	**Real**
Heating system	**Personal**
Dust catchers	**Personal**
Fence, security	**Real**
Fire alarm system	**Personal**
Fire walls, masonry	**Real**
Floors, computer room	**Real**
Foundations for machinery and equipment	**Personal**
Gaming riverboats	**Real**
Gas lines for equipment or processing	**Personal**
Grain bins, storage	**Real**
Grain drying equipment	**Personal**
Grain drying equipment, such as augers and aerators	**Personal**
Grain elevators (commercial, industrial) storage, silos, tanks, cupolas, working house, head-house, and milling space	**Real**
Grain elevator machinery and equipment (commercial, industrial), such as inside or outside conveyors, spouting, hopper scales, man lifts, aeration systems, grain cleaners, grain dryers, mechanical grain dumping equipment, loading and unloading systems, truck scales, and all processing machinery and equipment	**Personal**
Grain storage tents (blow-up)	**Personal**
Gravel plant, machinery, and equipment	**Personal**
Greenhouses	
Building	**Real**
Building, plastic cover, in place on assessment date	**Personal**
Benches and heating system	**Personal**
Heating system	
Building heating for comfort of occupants	**Real**
Special purpose to maintain controlled temperature	**Personal**
Hoist, hoist pits	**Personal**
Hydraulic lines	**Personal**
Irrigation equipment	**Personal**
Kilns	
Lumber, drying kiln structure	**Real**
Concrete block, drying kiln structure	**Real**
Circular down draft, beehive	**Real**
Heating or drying system	**Personal**
Landscaping, priced with land	**Real**
Laundry, steam generating equipment	**Personal**
Lighting	
Yard	**Personal**
Special purpose, inside	**Personal**
Service station, except building	**Personal**
Mixers and mixing houses	**Personal**
Ore bridge foundation	**Personal**
Ovens, processing	**Personal**
Piping, process piping above or below ground	**Personal**
Pits for equipment or processing	**Personal**
Pools swimming, in-ground or aboveground	**Real**
Power lines and auxiliary equipment	**Personal**
Pumps and motors	**Personal**
Pump house, including substructure	**Real**
Racks and shelving, portable or removable	**Personal**
Railroad siding, except belonging to railroad	**Real**
Ready-mix concrete batch plant and equipment	**Personal**
Refrigeration equipment	**Personal**
Refrigerated display cabinets	**Personal**
Sanitary system	**Real**
Satellite dishes	
Commercial use	**Personal**
Residential use	**Personal**
Scale houses	**Real**
Scales	
Truck or railroad scales, including pit	**Personal**
Dormant scales	**Personal**
Septic system, priced with land	**Real**
Sheds or buildings	
Permanent, affixed, or portable confinement buildings	**Real**
Agricultural open portable pull-type	**Personal**
Detached storage structures	**Real**
Portable utility sheds	**Real**
Signs, including supports and foundation	**Personal**
Silos	
Containing a manufacturing process	**Personal**
Farm storage silos	**Real**
Silo equipment	**Personal**
Storage	**Real**
Spray pond	
Masonry reservoir	**Real**
Piping and equipment	**Personal**

Sprinkler system	Real
Stacks	
Supported individually and servicing heating boilers	Real
Servicing personal property units or a process	Personal
Steam electric generating facility	
Equipment	Personal property or distributable property
Building	Real
Stone crushing plant and equipment	Personal
Storage facilities, permanent of masonry or wood	Real
Storage vaults and doors, including bank vaults and doors	Real
Substation	
Building	Real
Equipment	Personal
Tanks	
(A) Storage only, except as indicated in clauses (B) and (C), above or below ground	Real
(B) Used as part of manufacturing process	Personal
(C) Underground gasoline tanks at service stations	Personal
Towers, TV or radio broadcasting	Personal
Transformers	Personal
Tunnels	Real
Tunnels, waste heat or processing	Personal
Unit heaters	
Nonportable	Real
Portable	Personal
Unloader runway	Personal
Ventilating	
Ventilating system for manufacturing equipment	Personal
Ventilating system for comfort of employees	Real
Walls, portable partitions	Personal
Water lines, for processing above or below ground	Personal
Water pumping station, building and structure	Real
Water pumps and motors	Personal
Water treating and softening plant	
Building and structure	Real
Water treating and softening equipment	Personal
Wells used for potable water, priced with land	Real
Wells, pumps, motors, and equipment	Personal
Wiring, power wiring	Personal

(State Board of Tax Commissioners; 50 IAC 4.3-4-10; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1502)

Rule 5. Valuation of Inventory

50 IAC 4.3-5-1 Definitions

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-1-11; IC 6-1.1-2; IC 6-1.1-3; IC 6-1.1-31; IC 26-1

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

(1) "Cost of inventory" includes the following:

(A) The primary basis of accounting for inventories is cost, which has been defined generally as the price paid or consideration given to acquire an asset. As applied to inventories, cost means, in principle, the sum of the applicable expenditures and charges directly or indirectly incurred in bringing an article to its existing condition and location as of the assessment date. Uniform capitalization rules generally require capitalization of all direct material, direct labor, and an allocable portion of indirect costs attributable to acquiring or producing tangible personal property.

(B) Manufactured or work in process inventory located at the manufacturing or processing plant will include all costs paid or incurred for materials, labor, and manufacturing expenses to bring the inventory to the actual state of completion on the assessment date.

(C) As used in the phrase "lower of cost or market" cost should be carried forward for assignment in future periods, except when it is evident that the utility of the goods is no longer as great as their cost. Where there is evidence that the utility of goods, in their disposal in the ordinary course of business, will be less than cost, whether from damage, deterioration, obsolescence, style change, over-supply, reduction in price levels, or other causes, the inventory items should be stated at a lower level commonly designated as "market".

(2) "Intra-company profits" means the net profits on intra-company transfers within the legal entity filing the tax return and not profits from a separate legal entity, regardless of any intercorporate relationships. Intra-company profits are not required to be included in the valuation of inventory for assessment purposes since they have not been earned.

(3) "Manufacturing expenses" (overhead or indirect costs) means those costs of manufacturing that in an accounting sense are costs that are not directly attributable to the item being produced. These indirect costs consist of, but are not limited to, such items as the following:

(A) Repairs and maintenance of equipment and facilities.

(B) Utilities.

(C) Rental of equipment, facilities, or land.
(D) Indirect labor.
(E) Supervisory wages.
(F) Indirect materials and supplies.
(G) Quality control and inspection.
(H) Depreciation, amortization, and cost recovery allowable on equipment and facilities.
(I) Rework labor.
(J) Scrap and spoilage.
(K) Factory administrative cost.
(L) Administrative, service, or support functions related to production.
(M) Production officers' salaries.
(N) Insurance on production plant, production equipment, and inventory.
(O) Employee benefits (not including the past service portion of pension plans).
(P) Bidding costs on awarded contracts.
(Q) Engineering and design expenses (other than research and experimental expenses).
(R) Off-site storage and warehousing.
(S) Purchasing costs.
(T) Handling costs.
(U) A portion of general and administrative costs allocated to these functions.

Many of these costs are of such nature that the taxpayer in its regular accounting system determines by an estimate the amount of each cost that is used in a specific operation and consequently, for accounting purposes, allocates such costs at various stages, processes or upon completion, based upon a percentage of a determinable cost. A determinable cost is a cost that in an accounting sense is measured as incurred. Consequently, indirect cost or overhead is comprised of those expense items or costs that, for the accounting purposes of the taxpayer filing the return, are allocated to the product being produced on a percentage basis or based on some other reasonable relationship. Physical association of these costs with the items produced is seldom possible; nevertheless, the past experience of a company will offer a valid basis for allocation.

(4) "Market" means current replacement cost (by purchase or by reproduction, as the case may be) except that market should not:

(A) exceed the net realizable value, that is, estimated selling price in the ordinary course of business less reasonably predictable costs of completion and disposal; and

(B) be less than net realizable value reduced by an allowance for an approximately normal profit margin.

(5) "New taxpayers" means a taxpayer will be deemed to be a new taxpayer in a taxing district when the taxpayer has not had inventory in the given taxing district for any month during the preceding calendar year.

(6) "Public warehouse" means a storage facility that is operated by one engaged in the business of receiving, shipping, or storing goods of others for hire, through the issuance of warehouse receipts and releases, in accordance with the Indiana Uniform Commercial Code (IC 26-1). The storage facility must be under the supervision and control of the warehouseman and staffed by its employees or agents, thereby excluding from this definition leased facilities operated by a lessee not engaged in the business of public warehousing.

(7) "Warehouse" means an area, enclosure, building, or structure, public or private, maintained for the storage of inventory or other tangible personal property.

(State Board of Tax Commissioners; 50 IAC 4.3-5-1; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1505)

50 IAC 4.3-5-2 Inventory subject to assessment

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

Sec. 2. (a) Generally, all inventory with a tax situs in the state on the assessment date shall be subject to assessment. Certain inventories have specific exemption procedures noted in 50 IAC 4.3-12. Every person, including any firm, partnership, association, corporation, fiduciary, or individual owning, holding, possessing, or controlling inventory in any capacity whatsoever with a tax situs within the state on the assessment date, is required to file a personal property tax return and report such inventory as provided in 50 IAC 4.3-2-2.

(b) The inventory subject to assessment includes all inventory, whether or not in the actual possession of the owner, within the state on the assessment date. Inventory maintained in a warehouse will be taxed to the owner of the inventory unless, as of the filing date, the owner of the property as of the assessment date is unknown by the assessor, in which case said property shall be assessed to the possessor. Every owner or operator of a warehouse, grain elevator, terminal, or other storage facility is required to report, by the filing date, all tangible personal property stored in such facilities that it holds, possesses, or controls but does not own, on Form 103-N.

(c) Inventory consigned for sale is to be assessed to the owner (consignor) of the property where a tax situs exists on the assessment date. The consignor is required to file a complete return, including a list of such property on Form 103-O. The consigned inventory must be reported as not-owned property by the consignee and clearly designated as such. This property must be reported on Form 103-N.

(d) All whole grain that is owned, controlled, or possessed by any taxpayer with a tax situs within the state on the assessment date is required to be reported for assessment.

(e) In order to provide for a uniform method of assess-

ment of grain in storage, the state board has made the following determinations:

(1) Grain stored on the farm or where produced shall be assessed and taxable to the owner of said grain in the taxing district where stored.

(2) Grain stored in a warehouse or grain storage facility shall be assessed as follows:

(A) Grain stored in a warehouse or grain storage facility shall be assessed and taxable, in the taxing district where stored, to the persons in whose name the warehouse receipt is outstanding.

(B) Grain stored at an elevator or other grain storage facility under conditions whereby the owner of the grain may subsequently have the grain returned, or may sell such grain or exchange such stored grain for other commodities, and a grain receipt (including scale ticket or other depository paper) is given, shall be taxable in the taxing district where stored to the owner of such grain.

(C) All grain owned by an elevator or other storage facility must be reported on Form 103. Grain under a purchase contract and not in possession of the purchaser shall be taxed to the seller of such grain to the extent that such grain has not been paid for and shall be taxed to the purchaser to the extent that payment has been made for such grain.

(3) CCC Grain is grain used as collateral on a Commodity Credit Corporation loan with the Natural Resources Conservation Service (NRCS). The producer retains title and control of this grain and can choose where and when to sell the grain on the open market and pay off the loan. If the market price drops below a guaranteed price, the producer may choose to forfeit title to the grain to the federal government and repayment of the loan will be forgiven. This grain shall be assessed and taxable to the owner of said grain in the taxing district where stored.

(4) Grain delivered to an elevator or other storage facility under a "price later" or "deferred pricing" contract becomes the property of the elevator at the time of delivery and shall be assessed and taxed to the elevator if on hand on the assessment date. The seller is assessable for "price later" grain until delivery is made to the elevator at which time title, possession, and control is transferred to the elevator.

(5) Grain taken over or otherwise owned by the federal government shall be reported on the personal property assessment Form 103 by the elevator or grain storage facility as being in its possession. No assessment shall be made on such grain since a deduction may be taken as "exempt" on such property.

(State Board of Tax Commissioners; 50 IAC 4.3-5-2; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1506)

50 IAC 4.3-5-3 Valuation of inventory

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

Sec. 3. Except as otherwise provided in this article, the cost of inventory as recorded on the regular books and records of the taxpayer on the assessment date must be reported on the personal property return of the taxpayer. The use of "lower of cost or market" method for valuing inventory for book accounting purposes is allowable for Indiana property tax purposes. *(State Board of Tax Commissioners; 50 IAC 4.3-5-3; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1507)*

50 IAC 4.3-5-4 Mandatory adjustments

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

Sec. 4. If the cost per books of the inventory reported by the taxpayer does not include the following items, such cost must be adjusted for the following items before making any other valuation adjustments or exemptions:

(1) LIFO reserve (the last-in-first-out method of valuing inventories). No reduction for LIFO is allowed in the valuation of inventories pursuant to this article. If the dollar amount shown as the cost per books of the taxpayer's inventory has been reduced for a LIFO adjustment, the dollar amount of the adjustment must be added back.

(2) Manufacturing expenses (overhead or indirect cost). If the cost per books of inventory located at the manufacturing or processing plant excludes any or all manufacturing overhead, an adjustment increasing such cost for overhead must be made.

(3) Discounts and freight. The cost of the inventory shall be reduced for purchase, trade, and cash discounts providing the cost per books of the taxpayer's inventory includes these items. The cost of inventory shall be increased for freight-in to the extent that it is attributable to the inventory on hand, providing the cost per books of the taxpayer's inventory does not reflect this item.

(4) Adjustment for standard cost. If the inventory on the books is recorded at a standard cost, an adjustment is required to reflect the difference, if any, between such standard cost and actual cost.

(5) Royalties, editorial costs, or license or copyright fees. If the cost per books of inventory excludes any royalties, editorial costs, or license or copyright fees, an adjustment increasing such cost must be made. If the payment of such fees is contingent upon the sale of the inventory, it shall be deemed to be directly incurred, and therefore shall be added.

(6) Taxes and duties. If the cost per books of inventory excludes any taxes (other than state, local, and foreign income taxes) that have been paid or incurred, an adjustment increasing such cost must be made as follows:

(A) Federal taxes, except income taxes, are considered to be part of the cost of the product for inventory valuation purposes at all levels of trade.

(B) State taxes are considered to be part of the cost of the product at the retail level.

(C) Following is a summary of the assessability of state and federal taxes at the various levels of trade:

Distillers/ Manufacturers	Federal Taxes Assessable	State Taxes Not assessable
Wholesalers	Assessable	State taxes on beer, liquor, and wine are assessable. Tax stamps if affixed on cigarettes are assessable.
Retailers	Assessable	Assessable

(D) Goods held in bond on March 1 include products that are imported from foreign countries and placed in the custody of agents of the federal government until custom duties and federal excise taxes, imposed by the federal government, have been paid. These goods have arrived at their destination in the bonded warehouse and are assessable in the amount of the purchased cost of the merchandise, excluding custom duty and federal excise tax, plus freight in to the location of the bonded warehouse. Customs duty and federal excise taxes on "goods held in bond" are not due and payable until such time as the goods are withdrawn from bond; therefore these costs are not to be included in determining the cost of bonded inventories for property tax purposes.

(State Board of Tax Commissioners; 50 IAC 4.3-5-4; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1507)

50 IAC 4.3-5-5 Reporting of inventory not carried on books of taxpayer

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

Sec. 5. (a) All inventory as defined in 50 IAC 4.3-1-1(7) and section 2 of this rule is required to be reported for personal property tax assessment purposes even if a taxpayer may:

(1) expense such inventory in the period acquired for regular accounting or federal tax purposes; or

(2) have failed to properly reflect inventory on hand but not recorded on the taxpayers books or records.

This inventory includes, but is not limited to, supplies, repair parts, or expendable tools on hand on the assessment date.

(b) In general, when valuing inventory expensed on books, unless the taxpayer can otherwise substantiate, the value of the unrecorded inventory will be computed as follows:

(1) The total expenditures for the unrecorded inventory items during the twelve (12) months immediately preceding the assessment date shall be determined by reference to the regular books and records of the taxpayer.

(2) One-twelfth ($^1/_{12}$) of the total expenditures for the year for unrecorded inventory must be reported as the valuation of the unrecorded inventory.

(3) This computation must be made for each classification of unrecorded inventory that exists.

(c) Except as provided in subsection (b), the value of inventory not recorded on the books and records of the taxpayer on the assessment date is the actual cost of such inventory. *(State Board of Tax Commissioners; 50 IAC 4.3-5-5; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1508)*

50 IAC 4.3-5-6 Elective inventory valuation method

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

Sec. 6. (a) As an alternative method to valuing inventory, a taxpayer who is in possession of inventory may value finished goods and work in process inventory as follows:

(1) The cost of raw materials and supplies, which must include the total cost directly or indirectly incurred, including freight, to bring the property to the location where it will be utilized. Taxpayers acquiring manufactured products from related entities shall include in the accountability cost the sum of all costs directly or indirectly incurred in bringing the article to its existing condition and location on the assessment date. In addition, the cost of all direct production labor shall be added.

(2) Any adjustment taken from inventory valuation must be the same basis on which it was included in the tax return.

(3) This election must be applied to all locations within this state, except as noted in subdivision (4).

(4) This election is available only for a taxpayers finished goods or work in process inventories.

(b) Computations of the valuation method outlined in this section are required to be attached to the tax return and computed on Form 106. *(State Board of Tax Commissioners; 50 IAC 4.3-5-6; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1508)*

50 IAC 4.3-5-7 Average inventory election

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

Sec. 7. (a) A taxpayer may elect to value inventory on the prior calendar year average. This is applicable to all taxpayers, including manufacturers and processors, with respect to materials held for use and production, supplies of all types, and finished or partially finished goods.

(b) This election is made by notifying the assessor in the space provided on the return at the time of filing the return.

(c) The election, once made, is binding upon the taxpayer

for the tax year in which elected and for each year thereafter unless written permission to change for reasonable cause is granted by the state board prior to filing subsequent years' original personal property return.

(d) When a taxpayer has elected to use the average method, the taxpayer must use that method for reporting the value of its inventory at all locations in the state. When the taxpayer is a new taxpayer in a taxing district, between January 1 and March 1 of the assessment year, the election is not binding in such taxing district because the taxpayer did not have inventory in the taxing district during the preceding calendar year.

(e) The average inventory shall be determined by computing the cost (as provided in sections 3 through 5 of this rule or section 8 of this rule) of the inventory on hand at the end of each uniform accounting period in the prior calendar year, which shall not be less than twelve (12) periods, including the following requirements.

(1) The accounting periods used by the taxpayer to determine the base for computing average inventory must be the accounting period that represents a regular and ordinary practice of the taxpayer.

(2) If a taxpayer was engaged in business for only a portion of the preceding calendar year in a taxing district, the average method of valuation shall be based upon the average of the full calendar months during which the taxpayer was engaged in business in the prior calendar year.

(3) Adequate books and records showing the property on hand and the value thereof as of the last day of each accounting period in the prior calendar year must be maintained by the taxpayer electing to use the average method of inventory valuation.

(f) If a taxpayer becomes a new taxpayer in a taxing district between January 1 and the March 1 assessment date, the actual cost of the inventory on hand in the given taxing district on the assessment date must be reported. This is required even though the taxpayer has made a valid election to compute its inventory on the average method for the entire state and is applicable only for the first year that a taxpayer is a new taxpayer in a taxing district. *(State Board of Tax Commissioners; 50 IAC 4.3-5-7; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1508)*

50 IAC 4.3-5-8 Average inventory election for perishable horticultural processors

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

Sec. 8. (a) In lieu of all other methods specified in this section, a first processor of perishable horticultural products may list its inventory of such products that have passed the first process stage at one-twelfth ($^1/_{12}$) of the true tax value of such products processed in the twelve (12) month period ending on the assessment date. If such processor has not been in business for a continuous twelve (12) month period preceding the assessment date, such products may be listed at the true tax value of such products processed during the period the processor was in business divided by the number of whole months during such period.

(b) The following definitions apply throughout this section:

(1) "First process" means the first operation of preservation after harvest.

(2) "First processor" means the taxpayer that completed the first process.

(3) "Horticultural products" means the following fruits and vegetables suitable for human consumption:

(A) Cherries.
(B) Lima beans.
(C) Peas.
(D) Turnip greens.
(E) Spinach.
(F) Tomatoes.
(G) Asparagus.
(H) Green beans.
(I) Sweet corn.
(J) Grapes, in the form of wine.
(K) Pimentos.
(L) Plums.
(M) Red raspberries.
(N) Strawberries.
(O) Broccoli.
(P) Cauliflower.
(Q) Brussel sprouts.
(R) Peaches.
(S) Shellie beans.
(T) Waxed beans.
(U) Apricots.
(V) Cucumbers, in the form of pickles.

(4) "Perishable" means commodities that require, under ordinary circumstances, some affirmative and continuous step such as refrigeration or canning within forty-eight (48) hours of harvest to preserve them from decay or spoilage.

(c) The special valuation adjustment under subsection (a) shall be applied only to those products that qualify in subsection (b)(3) and is not applicable to the value of any other ingredients or additives, the container, label, or shipping case.

(d) The taxpayer shall report the actual March 1 booked inventory in the tax return being filed. An adjustment to the value computed using the average valuation shall be taken in the space provided on the return and clearly indicated as an adjustment for average inventory valuation.

(State Board of Tax Commissioners; 50 IAC 4.3-5-8; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1509)

50 IAC 4.3-5-9 Abnormal obsolescence adjustment
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31-7

Sec. 9. A taxpayer may not claim an adjustment for abnormal obsolescence as defined in 50 IAC 4.3-9-3 for inventory. Adjustments provided in this rule allow the taxpayer to account for all forms of obsolescence. *(State Board of Tax Commissioners; 50 IAC 4.3-5-9; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1510)*

50 IAC 4.3-5-10 Determination of true tax value of inventory
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31

Sec. 10. The true tax value of inventory is the cost per books of the inventory, as defined in sections 1 and 3 of this rule, increased or reduced as follows:

(1) The adjustments required to be made pursuant to section 4 (mandatory adjustments) of this rule.

(2) The value of the unrecorded inventory as determined in section 5 of this rule.

(3) Reductions for exempt inventory as provided in 50 IAC 4.3-12.

(4) The adjustments, if any, required as a result of the election of the elective inventory valuation method as provided in section 6 of this rule or the average inventory methods as provided in sections 7 and 8 of this rule.

(State Board of Tax Commissioners; 50 IAC 4.3-5-10; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1510)

Rule 6. Valuation of Other Tangible Personal Property

50 IAC 4.3-6-1 Tangible personal property not placed in service; reporting
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31

Sec. 1. (a) Tangible personal property, other than inventory as defined in 50 IAC 4.3-1-1(7), with a tax situs within the state on the assessment date that has not been placed into service must be reported for property assessment purposes.

(b) The following definitions apply throughout this section:

(1) "Construction in process" means tangible personal property not placed in service. The term does not include the inventory of a contractor that is not a part of the real or personal property under construction. A contractor's inventory must be valued and reported as provided in 50 IAC 4.3-5.

(2) "Tangible personal property not placed in service" means all property that has not been depreciated and is not eligible for federal income tax depreciation under 26 U.S.C. § 167 on the assessment date. Real property as defined by law and rules of the state board, inventory, leased property, returnable containers, and property normally assessed as inventory and held in abeyance or stored temporarily, and which possession may be transferred to another person to be attached to or become a part of an asset are not included in this category.

(c) The value of personal property not placed in service is the cost recorded on the taxpayer's books and records that is attributable to such personal property, including all expenses incurred in acquiring or producing the assets not yet placed in service, such as in the following cases:

(1) The cost as recorded on the regular books and records of the taxpayer does not reflect acquisitions and transfers since the end of the financial period immediately preceding the assessment date, such acquisitions and transfers are required to be included.

(2) The cost as recorded on the regular books and records of the taxpayer reflects advance payments or deposits, and, if such amounts were attributable to tangible personal property, these amounts shall be allowed as a deduction from book cost.

(d) The true tax value of tangible personal property not placed in service as defined in subsection (b)(2) is eighty-seven percent (87%) of the cost of such property. *(State Board of Tax Commissioners; 50 IAC 4.3-6-1; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1510)*

50 IAC 4.3-6-2 Improvement to leased real or personal property
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-1-11; IC 6-1.1-5-13; IC 6-1.1-31

Sec. 2. (a) Whenever a taxpayer makes any expenditure for an improvement to real or personal property not owned by such taxpayer, such expenditure shall be assessable as personal property to the extent it is not real property as defined in 50 IAC 4.3-1-1(11).

(b) Examples of such improvements that are personal property are as follows:

(1) Improvements to personal property, as defined in 50 IAC 4.3-1-1(11), are personal property. Such improvements include, but are not limited to, foundations and pilings related to the installation and use of personal property.

(2) Improvements to real property that are personal property include, but are not limited to, personal property attached to the real property to the extent such items are related to activities or processes conducted in the building if the personal property is an integral part of such activity. Such improvements to real property include, but are not limited to, the following:

(A) Shelving.
(B) Bins, counters, and related items.
(C) Nonpermanent partitions.
(D) Supplemental heating and air conditioning.
(E) Extraordinary lighting.
(F) Electrical and plumbing facilities.
(G) Carpeting and draperies.

(c) The taxpayer must report and value the property for personal property assessment purposes in the same manner as any other depreciable personal property, which the taxpayer may own in accordance with provisions of 50 IAC 4.3-4. *(State Board of Tax Commissioners; 50 IAC 4.3-6-2; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1510)*

50 IAC 4.3-6-3 Returnable containers; reporting
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31

Sec. 3. (a) As used in this section, "returnable containers" means those reusable items of tangible personal property that are used to package inventory or other property while in transit. Returnable containers include, but are not limited to, cooperage, skids, bottles, cases, and other reusable packaging devices.

(b) Returnable containers must be reported where located on the assessment date by the taxpayer owning the returnable containers. In addition, the owner is required to furnish a complete listing, on Form 103-O, of all the owner's personal property that is in possession of another person pursuant to 50 IAC 4.3-2-4. The person holding, possessing, or controlling returnable containers not owned is required to furnish a complete listing on Form 103-N.

(c) The value of returnable containers is computed by first calculating the cost of such property by:
(1) the amount of deposit required;
(2) the refund entitled when returned to the owner;
(3) the sales price; or
(4) the cost to the owner.
The resultant cost must then be valued in the same manner as other depreciable personal property. *(State Board of Tax Commissioners; 50 IAC 4.3-6-3; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1511)*

50 IAC 4.3-6-4 Special tools
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31

Sec. 4. (a) "Special tools", as used in this section, means depreciable tangible personal property acquired or made for the production of products or product models that are of such specialized nature that their utility generally ceases with the modification or discontinuance of such products or product models. Special tools include, but are not limited to, tools, dies, jigs, fixtures, gauges, molds, and patterns. Depreciable tangible personal property shall qualify as special tools only if assigned a special tools asset class from Appendix B of IRS Publication 946 and depreciated as special tools for federal tax purposes. Those items of special tools being manufactured or built for sale or lease to another person must be valued as inventory pursuant to 50 IAC 4.3-5.

(b) Special tools must be reported where located on the assessment date by the taxpayer owning the special tools on Form 103-T, as an attachment to Form 103. In addition, the owner is required to furnish a complete listing on Form 103-T of all their special tools in the possession of another person pursuant to 50 IAC 4.3-2-4. The person holding, possessing, or controlling special tools, not owned, is required to furnish a complete listing on Form 103-T, of all not owned personal property pursuant to 50 IAC 4.3-2-4.

(c) The cost and adjustments to cost of special tools is determined in the same manner as other depreciable tangible personal property under 50 IAC 4.3-4 and calculated on the Form 103-T; however, the depreciation of special tools is calculated using the following percentage good factors:

Table of Percentage Good Factors for Special Tools

Year of Acquisition (as detailed on the Form 103-T)	Special Tools Percent Good Factors
1	42 %
2	14 %
3	2 %
Over 3	2 %

(State Board of Tax Commissioners; 50 IAC 4.3-6-4; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1511)

Rule 7. Other

50 IAC 4.3-7-1 Lists of readily ascertainable values
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31

Sec. 1. (a) In the case of certain types of personal property that the state board determines have readily ascertainable values, the state board may determine the true tax value of such property. These types of personal property will be valued pursuant to 50 IAC 4.3-14, or the state board will issue instructional bulletins listing the unit values of such property. These bulletins will be published in the Indiana Register as nonrule policy statements.

(b) The types of personal property to be valued pursuant to this section include, but are not limited to:
(1) agricultural commodities,
(2) certain livestock;
(3) certain types of petroleum products;
(4) recreational vehicles;
(5) used vehicle inventory;

(6) used farm implement inventory; and

(7) any other tangible personal property that the state board determines has a readily ascertainable value.

(State Board of Tax Commissioners; 50 IAC 4.3-7-1; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1511)

50 IAC 4.3-7-2 Uniform lives of assets; publication

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

Sec. 2. The state board may prescribe and publish the lives of assets if it determines that such lives shall be used in order to obtain equalization of assessments. *(State Board of Tax Commissioners; 50 IAC 4.3-7-2; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1512)*

50 IAC 4.3-7-3 Assessment of farm commodities and livestock

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

Sec. 3. (a) The state board will prescribe the values to be used for the assessment of farm livestock and commodities in order to provide for a uniform method of assessment throughout the state.

(b) In determining the values to be used for the assessment of farm livestock, and commodities, the state board will consult with the Agriculture Department of Purdue University to determine the cost of production of fungible whole grain commodities and livestock as well as take into consideration the market value of said products as of the assessment date. After determining the values of the various fungible whole grain commodities, livestock, and poultry, the state board must meet with, and consider, the recommendations of a farm committee consisting of individuals engaged in the production of such products or representatives of groups representing persons engaged in the production of such products. The commissioners of the state board will determine the members of the farm committee and invite them to an annual meeting prior to adopting the values to be utilized for the particular assessment year involved. The state board must notify, in writing, the Commissioner of Agriculture and the farm committee of the final values adopted within ten (10) days of the annual meeting.

(c) In accordance with the Indiana court of appeals decision in Lyon and Greenleaf Co., Inc. v. State Board of Tax Commissioners, each fungible whole grain commodity must be assessed at the same value throughout the state of Indiana, regardless of ownership or effect of location on value, so long as the commodity is in its fungible raw condition. However, certain livestock, poultry, seed, or other commodities with substantially more value than reflected in the values adopted by the state board must be reported at its true tax value. Examples would be show horses, show livestock, prize race horses, and seeds.

(d) The values adopted by the state board will be issued on an annual basis. *(State Board of Tax Commissioners; 50 IAC 4.3-7-3; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1512)*

50 IAC 4.3-7-4 Assessment of refined petroleum products, marketing equipment, crude oil, and natural gas at wellhead

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

Sec. 4. (a) The procedures in this section will be utilized by the state board to determine the prices to be used for the assessment of certain petroleum products.

(b) The products covered by this section include the following:

(1) Crude oil.
(2) Natural gas.
(3) Grease.
(4) Gasoline (all grades).
(5) Motor oil (all grades).
(6) LP gas.
(7) Distillate fuel, including kerosene, fuel oil, tractor fuel, jet fuel, and diesel fuel.

(c) The price to be used for the valuation of crude oil and other petroleum products will be based upon commodity prices reported in the Oil Daily, Oil and Gas Journal, the Wall Street Journal, or other industry publications as of March 1 of the assessment year. Since these prices must be as of March 1 of each assessment year, the state board will issue the actual prices for each of these commodities after March 1 of the assessment year.

(d) Inventories of these commodities at the refinery will be valued at the total cost pursuant to 50 IAC 4.3-5, while inventories of these same items at the other levels of trade, namely the terminal, bulk plant, and retail stations will be valued to include the sum of the applicable expenditures and charges directly or indirectly incurred to bring these items to their existing condition and location as of the assessment date.

(e) All petroleum prices shall be listed in the return at the prices adopted by the state board.

(f) In order to provide for a uniform method of assessment, and to obtain equalization in the assessment of petroleum industry marketing facilities, the state board establishes the useful life of all tangible personal property used in the marketing of petroleum products as being twelve (12) years. *(State Board of Tax Commissioners; 50 IAC 4.3-7-4; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1512)*

Rule 8. Valuation of Leased Personal Property

50 IAC 4.3-8-1 "Leased personal property" defined
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-2-1; IC 6-1.1-2-4; IC 6-1.1-31

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

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

to the extent taxable as personal property that are loaned, leased, used, or otherwise held in the possession of a person other than the owner on the assessment date whether or not any fees are charged. *(State Board of Tax Commissioners; 50 IAC 4.3-8-1; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1513)*

50 IAC 4.3-8-2 Capital and operating leases
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31

Sec. 2. A lease is a contract, either written or oral, that transfers the right of possession from the owner (lessor) to another person (lessee) for a stated period of time. There are two (2) types of leases as follows:

(1) Capital leases are financing instruments and include sales-type leases, direct financing leases, and leveraged leases. These leases must meet one (1) or more of the following conditions to be so classified:

(A) Ownership of the property is transferred to the lessee at or before the end of the lease term.

(B) The lease permits the lessee to purchase the property or renew the lease at a price or rental that is substantially less than the estimated market value or fair rental of the leased property at the time the option to purchase or renew the lease is exercised.

(C) The lease term is equal to seventy-five percent (75%) or more of the estimated economic life of the leased property.

(D) The present value of the minimum lease payments equals or exceeds ninety percent (90%) of the fair market value of the leased property at the inception of the lease.

In addition, the leases are or should be capitalized by the lessee for federal income tax purposes.

(2) Operating leases include all other leases.

(State Board of Tax Commissioners; 50 IAC 4.3-8-2; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1513)

50 IAC 4.3-8-3 Operating leases
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-2-4; IC 6-1.1-31

Sec. 3. (a) Operating leases must be reported by the owner (lessor) of the personal property on Form 103, Schedule A, in the taxing district where the property was located on the assessment date. The value of the property must be computed in accordance with sections 7 through 9 of this rule, rather than 50 IAC 4.3-4.

(b) The owner (lessor) is also required to furnish a complete listing, on Form 103-O, of all the owner's personal property that was the subject of an operating lease on the assessment date. A separate Form 103-O must be filed in each taxing district where property is located showing the name and address of the person in possession, model, description, location, quantity, and date of installation.

(c) The person holding, possessing, or controlling (lessee) tangible personal property subject to the conditions of an operating lease shall file a complete listing, on Form 103-N, of all not owned (leased) personal property. The listing must include the following information about the property:

(1) The name and address of the owner (lessor).
(2) The model (if applicable).
(3) The description.
(4) The location.
(5) The quantity on hand.
(6) The date of installation.
(7) The value per this article.

The Form 103-N must be attached to the lessee's return filed in the taxing district where such property was located on the assessment date. *(State Board of Tax Commissioners; 50 IAC 4.3-8-3; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1513)*

50 IAC 4.3-8-4 Capital leases
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-2-4; IC 6-1.1-31

Sec. 4. (a) Capital leases must be reported for assessment and taxation by the person holding, possessing, or controlling (lessee) the personal property on Form 103, Schedule A, in the taxing district where the property was located on the assessment date. The value of the property must be computed in accordance with sections 7 through 9 of this rule, rather than 50 IAC 4.3-4.

(b) The lessee is also required to furnish a complete listing of all not owned personal property on Form 103-N, in each taxing district where the property is located on the assess-

ment date. This listing must include the following information about the property:

(1) The name and address of the owner (lessor).
(2) The model (if applicable).
(3) The description.
(4) The location.
(5) The quantity on hand.
(6) The date of installation.
(7) The value of the property per this article.

(c) The person owning (lessor) tangible personal property subject to the conditions of a capital lease shall file a complete listing, on Form 103-O, of all owned personal property. The listing must include the following information about the property:

(1) The name and address of the person in possession (lessee).
(2) The model (if applicable).
(3) The description.
(4) The location.
(5) The quantity on hand.
(6) The date of installation.
(7) The value per this article.

The Form 103-O must be attached to the lessor's return filed in the taxing district where such property was located on the assessment date. *(State Board of Tax Commissioners; 50 IAC 4.3-8-4; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1513)*

50 IAC 4.3-8-5 Liability for taxes
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-2-4; IC 6-1.1-31

Sec. 5. (a) The owner (lessor) of personal property covered by operating leases has the responsibility for reporting such property for assessment and taxation in the taxing district where the property was located on the assessment date. This section does not relieve the person holding, possessing, or controlling (lessee) personal property covered by operating leases of the responsibility to file a complete listing, on Form 103-N, of not owned personal property nor the responsibility to pay such taxes if not paid by the owner of the property.

(b) The person holding, possessing, or controlling (lessee) personal property covered by capital leases has the responsibility for reporting such property for assessment and taxation in the taxing district where the property was located on the assessment date. This section does not relieve the owner (lessor) of personal property covered by a capital lease of the responsibility to file a complete listing, on Form 103-O, of all owned personal property that was in the possession of another person nor the responsibility to pay such taxes if not paid by the lessee. *(State Board of Tax Commissioners; 50 IAC 4.3-8-5; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1514)*

50 IAC 4.3-8-6 Valuation; base year value defined
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31

Sec. 6. (a) The base year value of the leased property, plus freight and installation costs, must be used in determining the value of leased personal property subject to assessment.

(b) As used in this section, "base year value" means the dollar amount that a willing buyer would pay the owner in an arm's-length transaction to acquire the personal property encumbered by the lease at the beginning of the lease term.

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

(1) The alternative acquisition cost, which is the amount stated in the lease the lessee would have had to pay to purchase the leased property instead of leasing it. This will be deemed to be the base year value, provided that the local assessor or state board does not determine that such amount is not reflective of the market value of the leased property.
(2) The factory delivered price for the personal property subject to the lease plus freight, installation costs, and a profit factor.
(3) The present value of the lease payments at the inception of the lease computed in accordance with section 10 of this rule.
(4) The insurable value in the year the lease was first consummated.
(5) The capitalized value of the annual lease payments over the term of the lease.

(d) If the state board issues an instructional bulletin or administrative adjudication prescribing the base year value of certain property pursuant to this article, such prescribed value shall be the base year value of the property. *(State Board of Tax Commissioners; 50 IAC 4.3-8-6; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1514)*

50 IAC 4.3-8-7 Pools for base year values; summation by year placed in service
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31-7

Sec. 7. (a) The base year value of all leased personal property reported in a tax return is required to be segregated for Indiana property tax purposes into four (4) separate pools in accordance with 50 IAC 4.3-4-6. The depreciable life utilized for federal income tax purposes determines the pool to be utilized and are as follows:

(1) Pool No. 1: One (1) through four (4) year life.
(2) Pool No. 2: Five (5) through eight (8) year life.
(3) Pool No. 3: Nine (9) through twelve (12) year life.
(4) Pool No. 4: Thirteen (13) year or longer life.

(b) Sum the base year values of items of same pools and year placed in service and report the summed values in the appropriate pool. *(State Board of Tax Commissioners; 50 IAC 4.3-8-7; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1514)*

50 IAC 4.3-8-8 Determination of true tax value
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31-7

Sec. 8. The true tax value of leased personal property is computed by multiplying the summed base year values in the respective pools by the percentage factor provided on the Form 103, Schedule A-1. This percentage factor reflects all adjustments except for abnormal obsolescence. *(State Board of Tax Commissioners; 50 IAC 4.3-8-8; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1515)*

50 IAC 4.3-8-9 Abnormal obsolescence adjustment
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31-7

Sec. 9. The true tax value computed in section 8 of this rule may be adjusted for abnormal obsolescence pursuant to 50 IAC 4.3-9-3. *(State Board of Tax Commissioners; 50 IAC 4.3-8-9; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1515)*

50 IAC 4.3-8-10 Present value of personal property leases
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31-7

Sec. 10. Pursuant to section 6(c)(3) of this rule, the state board has prescribed the following for the computation of the present value of leased personal property:

(1) If ownership of the property is transferred to the lessee (or may transfer if one (1) of the parties exercises an option) at or before the end of the lease, the term of the lease shall be the term used for computation of the present value.

(2) If title to the property is not transferred to the lessee, the prescribed federal tax depreciable life of the asset at the inception of the lease shall be the term for computing the present value.

(3) If the length of the lease is not specific, the prescribed federal tax depreciable life of the asset at the inception of the lease shall be the term for computing the present value.

(4) If the lease contains a balloon payment, such payment must be included in the present value computation. A balloon payment is a lump-sum payment scheduled at the inception of, during, or at the conclusion of the lease.

(5) If the lease indicates the rate of interest included in the payments, such rate shall be used for computing the present value.

(6) If no interest rate is stated in the lease, the rate to be used in the computation shall be the Federal Reserve Bank prime commercial bank loan rate on the March 1 nearest to the inception of the lease. The state board shall publish such rates annually.

(7) If the amount of any payment (including balloon payments) is not known at the inception of the lease, the present value of the lease payments cannot be computed, and therefore may not be used for determining the base year value.

(8) If the present value computed in accordance with this section does not result in a reasonable valuation, at the discretion of the state board the computed present value may not be used as the base year value.

(State Board of Tax Commissioners; 50 IAC 4.3-8-10; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1515)

Rule 9. Obsolescence

50 IAC 4.3-9-1 "Obsolescence" defined
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31-7

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

(1) defects in:
(A) design;
(B) style;
(C) capacity; or
(2) a deficiency; or
(3) a superadequacy; or
(4) changes in the tastes of buyers in the marketplace.

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

(c) External obsolescence is a loss in value arising from forces outside the property itself. *(State Board of Tax Commissioners; 50 IAC 4.3-9-1; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1515)*

50 IAC 4.3-9-2 "Normal obsolescence" defined
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31-7

Sec. 2. "Normal obsolescence" means the anticipated or expected reduction in the value of business personal property that can be foreseen by a reasonable, prudent businessperson when property is acquired and placed into service. In general, it includes the expected gradual decline in value because of expected technological innovations and the general assumption that such property will have a minimum value at the end of its useful life. The depreciation allowed pursuant to 50 IAC 4.3-4 accounts for normal obsolescence as well as physical deterioration through the use of historical cost and short useful lives. *(State Board of Tax Commissioners; 50 IAC 4.3-9-2; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1515)*

50 IAC 4.3-9-3 "Abnormal obsolescence" defined
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31-7

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

(b) An example of unforeseen change in market value (external obsolescence) is a government ban on the sale of a drug or chemical that may cause that item or the production equipment used to produce it to be abnormally obsolete. In this case, the equipment used to produce it may be eligible for abnormal obsolescence, while the inventory should be valued at the lower of cost or market as provided in this article and will not be entitled to abnormal obsolescence.

(c) An example of exceptional technological innovation (functional obsolescence) would be compact disc (CD) technology. In this case, the equipment used to produce and play long play (LP) records may be eligible for abnormal obsolescence, while the inventory (LPs) should be valued at the lower of cost or market as provided in this article and will not be entitled to abnormal obsolescence. Abnormal obsolescence due to exceptional technological innovation should be recognized to the extent that it causes the subject property to be incapable of use for current production or adaptation to a different use. *(State Board of Tax Commissioners; 50 IAC 4.3-9-3; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1516)*

50 IAC 4.3-9-4 Allowance of abnormal obsolescence claim
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31-7

Sec. 4. (a) Abnormal obsolescence should be recognized to the extent that the taxpayer can demonstrate that the property qualifies for abnormal obsolescence and can quantify the amount. This must be done through a presentation of the facts, circumstances, and methodology used in calculating the amount of the abnormal obsolescence.

(b) The adjustment for abnormal obsolescence must be computed in accordance with this article for each respective item of personal property or portion of a production process.

(c) When the reporting requirements for an adjustment for abnormal obsolescence have been met (full disclosure), but the adjustment is not allowed or the amount of adjustment is changed, the amount not allowed is not subject to the undervaluation penalty set forth in this article. *(State Board of Tax Commissioners; 50 IAC 4.3-9-4; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1516)*

50 IAC 4.3-9-5 Limitation
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31-7

Sec. 5. The availability of abnormal obsolescence is limited to that which is not already reflected on the books and records of the taxpayer. *(State Board of Tax Commissioners; 50 IAC 4.3-9-5; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1516)*

50 IAC 4.3-9-6 Reporting of abnormal obsolescence
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31-7

Sec. 6. The taxpayer may claim an adjustment for abnormal obsolescence on the appropriate forms prescribed in this article when filing the tax return for the year in question. The adjustment, if requested, must specifically:
(1) identify all property for which an adjustment is requested;
(2) indicate the original cost of the property;
(3) indicate the true tax value of the property as if no adjustment would be allowed;
(4) indicate the true tax value of the property as a result of the requested adjustment; and
(5) provide sufficient detail in order to effectively qualify and quantify the claim.
(State Board of Tax Commissioners; 50 IAC 4.3-9-6; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1516)

Rule 10. Interstate Carriers

50 IAC 4.3-10-1 Valuation of carriers' property
Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-1-11

Sec. 1. Commercial airlines and buslines are required to compute the true tax value of their fleets in accordance with

the provisions of 50 IAC 4.3-4. However, if such property is leased, the true tax value is required to be computed in accordance with 50 IAC 4.3-8. The computed true tax value is further subject to allocation as provided in this rule. In either case, the taxpayer shall report the true tax value on the appropriate forms discussed in 50 IAC 4.3-2. *(State Board of Tax Commissioners; 50 IAC 4.3-10-1; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1516)*

50 IAC 4.3-10-2 Commercial airlines; allocation and true tax value

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31; IC 6-6-6.5

Sec. 2. (a) As used in this rule, "commercial airline" means an airline with regularly scheduled flights and routes authorized and approved by the federal aviation administration.

(b) The fleet of the commercial airline is aircraft that the taxpayer owns, holds, possesses, or controls that is used and operated in interstate commerce.

(c) Commercial airlines are required to report the total value and type of aircraft operating in this state.

(d) An allocation must be made for each type of aircraft operated. The allocation factor for each type of aircraft is computed by dividing the total ground time in the taxing district of each type of aircraft for the preceding twelve (12) months by the total ground time of each type of aircraft operated for the same period.

(e) The true tax value of each type of aircraft is determined by multiplying the percentages as computed in subsection (d) times the tentative true tax value of each type of aircraft computed in accordance with section 1 of this rule. *(State Board of Tax Commissioners; 50 IAC 4.3-10-2; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1517)*

50 IAC 4.3-10-3 Commercial busline; allocation and true tax value

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

Sec. 3. (a) As used in this rule, "commercial busline" means a company for hire that is principally engaged in the business of transporting persons by bus, and exclusively operates charter buses, which do not have scheduled routes.

(b) The fleet of the commercial busline includes the buses the taxpayer owns, holds, possesses, or controls that are used and operated in interstate commerce.

(c) Personal property required to be reported under this rule. The fleet of the commercial busline is required to be valued pursuant to section 1 of this rule.

(d) An allocation must be made for the fleet of buses operated. The allocation factor for the fleet is computed by dividing the total Indiana miles of the fleet for the preceding twelve (12) months by the total miles of the fleet for the same period.

(e) As an alternative to maintaining a mileage log of all trips, individual lessors, who do not maintain adequate records to compute their allocation factor, may use the same allocation factor as their lessee provided that the lessor's property is predominantly leased to that lessee. The lessor must meet the predominant use requirement in order to use the lessee's allocation factor. If the lessor does not meet the predominant use requirement, the lessor must use the actual allocation factor as determined in subsection (d). As used in this section, "predominant use" means:

(1) during the course of the year, more than fifty percent (50%) of the total mileage logged by the lessor's buses is logged by buses under lease to that lessee; or

(2) during the course of the year, the leased property is leased to that lessee for more than one-half (½) the number of days in that year.

(f) The total true tax value of the fleet subject to assessment under this section is determined by multiplying the true tax value as determined in section 1 of this rule, by the allocation factor determined in subsection (d) or (e). *(State Board of Tax Commissioners; 50 IAC 4.3-10-3; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1517)*

50 IAC 4.3-10-4 Scope of rule

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

Sec. 4. This section is applicable only to the aircraft of the commercial airlines and the buses of commercial buslines used and operated in interstate commerce. This section is not applicable to the other classes of personal property that the taxpayer may own, hold, possess, or control. The other classes of personal property must be reported and valued pursuant to the respective provisions of this article. *(State Board of Tax Commissioners; 50 IAC 4.3-10-4; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1517)*

Rule 11. Deductions and Exemptions for Tangible Personal Property Other than Inventory

50 IAC 4.3-11-1 Exemptions

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-10; IC 6-1.1-11; IC 6-1.1-31

Sec. 1. For information on exemptions, see IC 6-1.1-10 and IC 6-1.1-11. *(State Board of Tax Commissioners; 50 IAC 4.3-11-1; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1517)*

50 IAC 4.3-11-2 Deductions

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-1-11; IC 6-1.1-1-12; IC 6-1.1-31; IC 6-1.1-40; IC 6-1.1-42

Sec. 2. For information on deductions, see IC 6-1.1-12, IC

6-1.1-40, and IC 6-1.1-42. *(State Board of Tax Commissioners; 50 IAC 4.3-11-2; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1517)*

Rule 12. Deductions; Exemptions; Credits for Inventory

50 IAC 4.3-12-1 General inventory exemption provisions

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-10; IC 6-1.1-11-1; IC 6-1.1-12; IC 6-1.1-20.7; IC 6-1.1-20.8; IC 6-1.1-40; IC 26-1-1-201

Sec. 1. (a) In order for inventory to be exempt in Indiana, the property must first be reported and then claimed exempt annually on a timely filed business tangible personal property return. There are eight (8) sections within the statutes that contain the eligibility requirements for the exemption of goods considered to be in interstate commerce. These are summarized in the following table:

IC Site	Owned by	Origin of Goods	Stored in Warehouse	Additional Specific Requirements
IC 6-1.1-10-29(b)	Manufacturer or processor ***	In-state	Public or private	1. See specific explanation of manufacturer or processor; 2. Stored and remains in original package without further processing; or 3. Consists of books or other printed material stored at in-state commercial printers facility without further processing.
IC 6-1.1-10-29(b)	Manufacturer or processor ***	In-state	Public or private	1. Need not be stored in original package provided no additional manufacturing or processing except for packaging; and 2. Either the property will be damaged or have its value impaired if it is stored in its original package; or the final packaging of finished inventory items is not practical until receipt of final customer order because fulfillment or the order requires accumulation of a number of distinct finished inventory items into a single shipping order.
IC 6-1.1-10-29.3	Resident or nonresident	Out-of-state	Public or private	Owner of possessor is able to show by adequate records that the: 1. Goods are stored in an in-state warehouse for the purpose of transshipment to an out-of-state destination; and 2. The goods are ready for transshipment without additional manufacturing or processing, except repackaging.
IC 6-1.1-10-30(a)	Nonresident	Out-of-state	Public or private	The owner is able to show by adequate records that the property has been shipped into this state and placed in its original package for transshipment to an out-of-state destination. The property remains in its original package.
IC 6-1.1-10-30(b)	Resident or nonresident	In-state or out-of-state	Public or private	Property had been ordered prior to assessment date and is ready for shipment to a specific known out-of-state destination and is subsequently shipped. If property claimed exempt is not shipped to the specific known destination, the taxpayer shall file an amended personal property return for the year the exemption was claimed. Property is stored and remains in its original package.

IC 6-1.1-10-30(c)	Resident or nonresident	In-state	Public (only)	Property was shipped and remains in its original package in a public warehouse. Property was shipped to the warehouse by either a common, contract, or private carrier. Property being held for transshipment to out-of-state destination and labeled to show that purpose. Owner must be able to show by adequate records that the property meets the above criteria. Also, taxpayer who possesses the personal property of others may claim an exemption provided the taxpayer has reported the property and the taxpayer can show the owner would have qualified for the exemption.
IC 6-1.1-10-30.5	Resident or nonresident	Out-of-state	Foreign trade zone	Personal property is exempt provided the property is held, on the assessment date, in a foreign trade zone established under 19 U.S.C. 81, and the property was either imported into the foreign trade zone from a foreign country or was placed in the foreign trade zone exclusively for export to a foreign country.
IC 6-1.1-10-40	Resident or nonresident	In-state or out-of-state	Facility approved by contract Market and Commodity Exchange Act	All the requirements for this exemption explained in IC 6-1.1-10-40.

***The manufacturer or processor that possesses personal property owned by another person may claim the exemption if:
(1) the manufacturer or processor includes the property on the manufacturer's or processor's personal property return; and
(2) the manufacturer or processor is able to show that the owner of the personal property would otherwise have qualified for an exemption under this section.

In addition to these interstate exemptions, several other exemptions, deductions, and credits are described in IC 6-1.1-10, IC 6-1.1-11, IC 6-1.1-12, IC 6-1.1-20.7, IC 6-1.1-20.8, and IC 6-1.1-40.

(b) Form 103-W has been prescribed by the state board as the form on which to claim an interstate or foreign trade zone inventory exemption. Form EZ1 has been prescribed as the form on which to claim an enterprise zone inventory credit, Form IR-1 for claiming an industrial recovery site inventory credit, and Form MOD-1 for claiming a maritime opportunity district inventory deduction.

(c) These exemptions, deductions, and credits will be permitted to taxpayers who timely file and show the amount of their claim for exemption on the proper line of the prescribed return forms, provided the taxpayer is able to document all of the evidence required, when required to do so by any assessing official or the state board.

(d) An exemption is a privilege which may be waived by a person who owns tangible property that would qualify for the exemption. If the owner does not comply with the statutory procedures for obtaining an exemption, the owner waives the exemption. If the exemption is waived, the property is subject to taxation (IC 6-1.1-11-1). *(State Board of Tax Commissioners; 50 IAC 4.3-12-1; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1518)*

50 IAC 4.3-12-2 Definitions

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-10; IC 6-1.1-11-1; IC 26-1-1-201

Sec. 2. The following definitions apply throughout this rule:

(1) "Adequate records" means the following:
(A) As used in IC 6-1.1-10-29, IC 6-1.1-10-29.3, IC 6-1.1-10-30(a), and IC 6-1.1-10-30(c), includes:
(i) a designation on:
(AA) a bill of lading;
(BB) a freight bill;
(CC) a delivery receipt;
(DD) a manifest;
(EE) a packing slip; or
(FF) an equivalent document; or
(ii) a final entry;

in the records of the taxpayer indicating that property is held for shipment to an out-of-state destination. Such a designation for out-of-state shipment is sufficient for purposes of IC 6-1.1-10-29, IC 6-1.1-10-29.3, IC 6-1.1-10-30(a), and IC 6-1.1-10-30(c), even though the specific out-of-state destination of the property is not included in the designation and even though the destination of the property is unknown on the assessment date.

(B) For the purpose of substantiating the amount of personal property that is exempt from property taxation under IC 6-1.1-10-29, IC 6-1.1-10-29.3, IC 6-1.1-10-30(a), and IC 6-1.1-10-30(c), a taxpayer shall maintain records that reflect the specific type and amount of personal property claimed to be exempt so that the taxpayer's taxable personal property may be distinguished from its exempt personal property. In lieu of specific identification, the taxpayer may elect to establish the value of their exempt personal property by utilizing an allocation method whereby the exempt personal property is determined by dividing:

(i) the value of the taxpayer's property shipped from the in-state warehouse to out-of-state destinations during the twelve (12) month period ending with the assessment date; by

(ii) the total value of all shipments of the taxpayer's property from the in-state warehouse during the same period of time and applying this ratio to the taxpayer's total inventory of personal property that has been placed in the in-state warehouse, that is in the in-state warehouse as of the assessment date, and that meets the other requirements for an exemption under IC 6-1.1-10-29, IC 6-1.1-10-29.3, IC 6-1.1-10-30(a), or IC 6-1.1-10-30(c).

(C) If the taxpayer uses the allocation method, the taxpayer shall keep records which adequately establish the validity of the allocation.

(D) If the taxpayer elects to keep a specific inventory, the taxpayer shall maintain additional records that reflect:

(i) an accurate inventory of all personal property stored in an in-state warehouse, i.e., both inventory destined for points outside the state and inventory destined for points within the state;

(ii) the date of deposit of the inventory in the in-state warehouse;

(iii) the date of withdrawal of the inventory from the in-state warehouse; and

(iv) the point of ultimate destination of the shipments, if known.

For the purpose of this subdivision,"warehouse" means an area, enclosure, building, or public or private structure maintained for the storage of inventory or other tangible personal property. This includes a commercial printer's facility.

(2) "Average inventory-inventory exemption" means if a taxpayer elects to report the calendar year average inventory and claim an interstate commerce exemption, the exemption must be computed for each month under the same subsection. The allowable exemption claim would then be the average of the amounts that would qualify at the end of each month.

(3) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an air bill as defined in IC 26-1-1-201(6).

(4) "Manufacturer or processor" has the meaning as set forth in IC 6-1.1-10-29.

(5) "Nonresident" means a taxpayer who places property in the original package and into the stream of commerce from outside of Indiana. This relates to the location the property is placed into commerce and not to whether the company is based outside of Indiana. For example, if the goods are being shipped into Indiana from out-of-state, then the person would be considered a nonresident.

(6) "Original package" means the box, case, bale, skid, bundle, parcel, or aggregation thereof bound together and used by the seller, manufacturer, or packer for shipment.

(7) "Resident" means the opposite of a nonresident. If the goods are placed into the stream of commerce from within Indiana, the person would be considered a resident.

(State Board of Tax Commissioners; 50 IAC 4.3-12-2; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1519)

50 IAC 4.3-12-3 Government-owned inventory

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-10; IC 6-1.1-11-1; IC 26-1-1-201

Sec. 3. (a) Inventory that will qualify for exemption as government-owned property includes the following:

(1) Finished goods and work-in-process, title to which is held by the government, pursuant to the applicable contract or subcontract.

(2) Materials and supplies furnished by the government for use in performing the contract or subcontract.

(3) Raw materials and supplies allocated to a government contract or subcontract that vests title to the government.

(b) If the inventory is allocated to government contracts, the allocation must be substantiated by:

(1) purchase documents that assign the property to the government contract;

(2) transfer of the property from common or general stores to the specific contract by requisition, work order, or other accounting document; or

(3) any other method that indicates clearly and factually that the proper allocation to government contracts was made.

(c) In general, the following types of contracts and subcontracts have title clauses pursuant to which the

government acquires ownership of inventory prior to acceptance of the finished goods:

(1) Fixed price type contracts or subcontracts with progress payments.

(2) Cost reimbursement type contracts or subcontracts.

(d) In any event, passage of title is governed by the terms of each individual contract.

(e) It is a requirement that the taxpayer first report all inventory (including government-owned) on the proper lines of the Form 103. The inventory deemed to qualify as government-owned is then exempted by filing the Form 103-W and reporting the total exempt inventory on the required line on Form 103. *(State Board of Tax Commissioners; 50 IAC 4.3-12-3; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1520)*

Rule 13. Principal Business Activity Codes

50 IAC 4.3-13-1 Principal business activities and associated codes

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

Sec. 1. (a) This section establishes a list of the principal business activities and their associated codes. These six (6) digit codes are based upon the North American Industry Classification System (NAICS). Additional information about NAICS can be found at the following URL http://www.census.gov/epcd/www/naics.html or http://www.naics.com/search.htm.

(b) It is a requirement that each taxpayer determine the business activity and the associated six (6) digit activity code and enter it on the front page of the Form 102, Form 103 short form, and Form 103 long form in the box titled "principal business activity code".

(c) Example of use, do the following:

(1) First, determine the category that best describes your primary business activity, for example, Retail Trade/Motor Vehicle and Parts Dealer.

(2) Next, determine the type of business, for example, New Car Dealer.

(3) The six (6) digit NAICS code is #441110.

(4) Enter this code on the appropriate form in the box titled "principal business activity code".

(d) The following is the list of principal business activities and their associated codes:

Agriculture, Forestry, Fishing, and Hunting

Crop Production

111100 Oilseed & Grain Farming
111210 Vegetable & Melon Farming (including potatoes & yams)
111300 Fruit & Tree Nut Farming
111400 Greenhouse, Nursery, & Floriculture Production
111900 Other Crop Farming (including tobacco, cotton, sugarcane, hay, peanut, sugar beet & all other crop farming)

Animal Production

112111 Beef Cattle Ranching & Farming
112112 Cattle Feedlots
112120 Dairy Cattle & Milk Production
112210 Hog & Pig Farming
112300 Poultry & Egg Production
112400 Sheep & Goat Farming
112510 Animal Aquaculture (including shellfish & finfish farms & hatcheries)
112900 Other Animal Production

Forestry and Logging

113110 Timber Tract Operations
113210 Forest Nurseries & Gathering of Forest Products
113310 Logging

Fishing, Hunting, and Trapping

114110 Fishing
114210 Hunting & Trapping

Support Activities for Agriculture and Forestry

115110 Support Activities for Crop Production (including cotton ginning, soil preparation, planting, & cultivating)
115210 Support Activities for Animal Production
115310 Support Activities for Forestry

Mining

211110 Oil & Gas Extraction
212110 Coal Mining
212200 Metal Ore Mining
212310 Stone Mining & Quarrying
212320 Sand, Gravel, Clay, & Ceramic & Refractory Minerals Mining & Quarrying
212390 Other Nonmetallic Mineral Mining & Quarrying
213110 Support Activities for Mining

Utilities

221100 Electric Power Generation, Transmission & Distribution
221210 Natural Gas Distribution
221300 Water, Sewage, & Other Systems

Construction

Building, Developing, and General Contracting

233110 Land Subdivision & Land Development
233200 Residential Building Construction
233300 Nonresidential Building Construction

Heavy Construction
234100 Highway, Street, Bridge, & Tunnel Construction
234900 Other Heavy Construction
Special Trade Contractors
235110 Plumbing, Heating, & Air-Conditioning Contractors
235210 Painting & Wall Covering Contractors
235310 Electrical Contractors
235400 Masonry, Drywall, Insulation, & Tile Contractors
235500 Carpentry & Floor Contractors
235710 Concrete Contractors
235810 Water Well Drilling Contractors
235900 Other Special Trade Contractors
Manufacturing
Food Manufacturing
311110 Animal Food Mfg
311200 Grain & Oilseed Milling
311300 Sugar & Confectionery Product Mfg
311400 Fruit & Vegetable Preserving & Specialty Food Mfg
311500 Dairy Product Mfg
311610 Animal Slaughtering and Processing
311710 Seafood Product Preparation & Packaging
311800 Bakeries & Tortilla Mfg
311900 Other Food Mfg (including coffee, tea, flavorings, & seasonings)
Beverage and Tobacco Product Manufacturing
312110 Soft Drink & Ice Mfg
312120 Breweries
312130 Wineries
312140 Distilleries
312200 Tobacco Manufacturing
Textile Mills and Textile Product Mills
313000 Textile Mills
314000 Textile Product Mills
Apparel Manufacturing
315100 Apparel Knitting Mills
315210 Cut & Sew Apparel Contractors
315220 Men's & Boys' Cut & Sew Apparel Mfg
315230 Women's & Girls' Cut & Sew Apparel Mfg
315290 Other Cut & Sew Apparel Mfg
315990 Apparel Accessories & Other Apparel Mfg
Leather and Allied Product Manufacturing
316110 Leather & Hide Tanning & Finishing
316210 Footwear Mfg (including rubber & plastics)
316990 Other Leather & Allied Product Mfg
Wood Product Manufacturing
321110 Sawmills & Wood Preservation
321210 Veneer, Plywood, & Engineered Wood Product Mfg
321900 Other Wood Product Mfg
Paper Manufacturing
322100 Pulp, Paper, & Paperboard Mills
322200 Converted Paper Product Mfg
Printing and Related Support Activities
323100 Printing & Related Support Activities
Petroleum and Coal Products Manufacturing
324110 Petroleum Refineries (including integrated)
324120 Asphalt Paving, Roofing, & Saturated Materials Mfg
324190 Other Petroleum & Coal Products Mfg
Chemical Manufacturing
325100 Basic Chemical Mfg
325200 Resin, Synthetic Rubber, & Artificial & Synthetic Fibers & Filaments Mfg
325300 Pesticide, Fertilizer, & Other Agriculture Chemical Mfg
325410 Pharmaceutical & Medicine Mfg
325500 Paint, Coating, & Adhesive Mfg
325600 Soap, Cleaning, Compound, & Toilet Preparation Mfg
325900 Other Chemical Product & Preparation Mfg
Plastics and Rubber Products Manufacturing
326100 Plastics Product Mfg
326200 Rubber Product Mfg
Nonmetallic Mineral Product Manufacturing
327100 Clay Product & Refractory Mfg
327210 Glass & Glass Product Mfg
327300 Cement & Concrete Product Mfg
327400 Lime & Gypsum Product Mfg
327900 Other Nonmetallic Mineral Product Mfg
Primary Metal Manufacturing
331110 Iron & Steel Mills & Ferroalloy Mfg
331200 Steel Product Mfg from Purchased Steel
331310 Alumina & Aluminum Production & Processing
331400 Nonferrous Metal (except Aluminum) Production & Processing
331500 Foundries
Fabricated Metal Product Manufacturing
332110 Forging & Stamping
332210 Cutlery & Handtool Mfg
332300 Architectural & Structural Metals Mfg
332400 Boiler, Tank, & Shipping Container Mfg
332510 Hardware Mfg
332610 Spring & Wire Product Mfg
332700 Machine Shops: Turned Product: & Screw, Nut, & Bolt Mfg

332810 Coating, Engraving, Heat Treating, & Allied Activities
332900 Other Fabricated Metal Product Mfg
Machinery Manufacturing
333100 Agriculture, Construction, & Mining Machinery Mfg
333200 Industrial Machinery Mfg
333310 Commercial & Service Industry Machinery Mfg
333410 Ventilation, Heating, Air-Conditioning, & Commercial Refrigeration Equipment Mfg
333510 Metalworking Machinery Mfg
333610 Engine, Turbine, & Power Transmission Equipment Mfg
333900 Other General Purpose Machinery Mfg
Computer and Electronic Product Manufacturing
334110 Computer & Peripheral Equipment Mfg
334200 Communications Equipment Mfg
334310 Audio & Video Equipment Mfg
334410 Semiconductor & Other Electronical Component Mfg
334500 Navigational, Measuring, Electromedical, & Control Instruments Mfg
334610 Manufacturing & Reproducing Magnetic & Optical Media
Electrical Equipment, Appliance, and Component Manufacturing
335100 Electric Lighting Equipment Mfg
335200 Household Appliance Mfg
335310 Electrical Equipment Mfg
335900 Other Electrical Equipment & Component Mfg
Transportation Equipment Manufacturing
336100 Motor Vehicle Mfg
336210 Motor Vehicle Body & Trailer Mfg
336300 Motor Vehicle Parts Mfg
336410 Aerospace Product & Parts Mfg
336510 Railroad Rolling Stock Mfg
336610 Ship & Boat Building
336990 Other Transportation Equipment Mfg
Furniture and Related Product Manufacturing
337100 Furniture & Related Product Mfg
Miscellaneous Manufacturing
339110 Medical Equipment & Supplies Manufacturing
339900 Other Miscellaneous Mfg
Wholesale Trade
Wholesale Trade, Durable Goods
421100 Motor Vehicle & Motor Vehicle Parts & Supplies Wholesalers
421200 Furniture & Home Furnishing Wholesalers
421300 Lumber & Other Construction Materials Wholesalers
421400 Professional & Commercial Equipment & Supplies Wholesalers
421500 Metal & Mineral (except Petroleum) Wholesalers
421600 Electrical Goods Wholesalers
421700 Hardware, & Plumbing & Heating Equipment & Supplies Wholesalers
421800 Machinery, Equipment, & Supplies Wholesalers
421910 Sporting & Recreational Goods & Supplies Wholesalers
421920 Toy & Hobby Goods & Supplies Wholesalers
421930 Recyclable Material Wholesalers
421940 Jewelry, Watch, Precious Stone, & Precious Metal Wholesalers
421990 Other Miscellaneous Durable Goods Wholesalers
Wholesale Trade, Nondurable Goods
422100 Paper & Paper Product Wholesalers
422210 Drugs & Druggists' Sundries Wholesalers
422300 Apparel, Piece Goods, & Notions Wholesalers
422400 Grocery & Related Product Wholesalers
422500 Farm Product Raw Material Wholesalers
422600 Chemical & Allied Products Wholesalers
422700 Petroleum & Petroleum Products Wholesalers
422800 Beer, Wine, & Distilled Alcoholic Beverage Wholesalers
422910 Farm Supplies Wholesalers
422920 Book, Periodical, & Newspaper Wholesalers
422930 Flower, Nursery Stock, & Florists' Supplies Wholesalers
422940 Tobacco & Tobacco Product Wholesalers
422950 Paint, Varnish, & Supplies Wholesalers
422990 Other Miscellaneous Nondurable Goods Wholesalers
Retail Trade
Motor Vehicle and Parts Dealers
441110 New Car Dealers
441120 Used Car Dealers
Motor Vehicle and Parts Dealers
441210 Recreational Vehicle Dealers
441221 Motorcycle Dealers
441222 Boat Dealers
441229 All Other Motor Vehicle Dealers
441300 Automotive Parts, Accessories, & Tire Stores
Furniture and Home Furnishings Stores
442110 Furniture Stores
442210 Floor Covering Stores
442291 Window Treatment Stores
442299 All Other Home Furnishings
Electronics and Appliance Stores
443111 Household Appliance Stores
443112 Radio, Television, & Other Electronics Stores

443120 Computer & Software Stores
443130 Camera & Photographic Supplies Stores
Building Material and Garden Equipment and Supplies Dealers
444110 Home Centers
444120 Paint & Wallpaper Stores
444130 Hardware Stores
444190 Other Building Material Dealers
444200 Lawn & Garden Equipment & Supplies Stores
Food and Beverage Stores
445110 Supermarkets and Other Grocery (except Convenience) Stores
445120 Convenience Stores
445210 Meat Markets
445220 Fish & Seafood Markets
445230 Fruit & Vegetable Markets
445291 Baked Goods Stores
445292 Confectionery & Nut Stores
445299 All Other Specialty Food Stores
445310 Beer, Wine, & Liquor Stores
Health and Personal Care Stores
446110 Pharmacies & Drug Stores
446120 Cosmetics, Beauty Supplies & Perfume Stores
446130 Optical Goods Stores
446190 Other Health & Personal Care Stores
Gasoline Stations
447100 Gasoline Stations (including Convenience Stores with gas)
Clothing and Clothing Accessories Stores
448110 Men's Clothing Stores
448120 Women's Clothing Stores
448130 Children's & Infants' Clothing Stores
448140 Family Clothing Stores
448150 Clothing Accessories Stores
448190 Other Clothing Stores
448210 Shoe Stores
448310 Jewelry Stores
448320 Luggage & Leather Goods Stores
Sporting Goods, Hobby, Book, and Music Stores
451110 Sporting Goods Stores
451120 Hobby, Toy, & Game Stores
451130 Sewing, Needlework, & Piece Goods Stores
451140 Musical Instrument & Supplies Stores
451211 Book Stores
451212 News Dealers & Newsstands
451220 Prerecorded Tape, Compact Disc, & Record Stores
General Merchandise Stores
452110 Department Stores
452900 Other General Merchandise Stores
Miscellaneous Store Retailers
453110 Florists
453210 Office Supplies & Stationery Stores
453220 Gift, Novelty, & Souvenir Stores
453310 Used Merchandise Stores
453910 Pet & Pet Supplies Stores
453920 Art Dealers
453930 Manufactured (Mobile) Home Dealers
453990 All Other Miscellaneous Store Retailers (including tobacco, candle, & trophy shops)
Nonstore Retailers
454110 Electronic Shopping & Mail-Order Houses
454210 Vending Machine Operators
454311 Heating Oil Dealers
454312 Liquefied Petroleum Gas (Bottled Gas) Dealers
454319 Other Fuel Dealers
454390 Other Direct Selling Establishments (including door-to-door retailing, frozen food plan providers, party plan merchandisers, & coffee-break service providers)
Transportation and Warehousing
Air, Rail, and Water Transportation
481000 Air Transportation
482110 Rail Transportation
483000 Water Transportation
Truck Transportation
484110 General Freight Trucking, Local
484120 General Freight Trucking, Long-Distance
484200 Specialized Freight Trucking
Transit and Ground Passenger Transportation
485110 Urban Transit Systems
485210 Interurban & Rural Bus Transportation
485310 Taxi Service
485320 Limousine Service
485410 School & Employee Bus Transportation
485510 Charter Bus Industry
485990 Other Transit & Ground Passenger Transportation
Pipeline Transportation
486000 Pipeline Transportation
Scenic & Sightseeing Transportation
487000 Scenic & Sightseeing Transportation
Support Activities for Transportation
488100 Support Activities for Air Transportation
488210 Support Activities for Rail Transportation
488300 Support Activities for Water Transportation
488410 Motor Vehicle Towing
488490 Other Support Activities for Road Transportation

488510 Freight Transportation Arrangement
488990 Other Support Activities for Transportation
Couriers and Messengers
492110 Couriers
492210 Local Messengers & Local Delivery
Warehousing and Storage
493100 Warehousing & Storage (except lessors of miniwarehouses and self-storage units)
Information
Publishing Industries
511110 Newspaper Publishers
511120 Periodical Publishers
511130 Book Publishers
511140 Database & Directory Publishers
511190 Other Publishers
511210 Software Publishers
Motion Picture and Sound Recording Industries
512100 Motion Picture & Video Industries (except video rental)
512200 Sound Recording Industries
Broadcasting and Telecommunications
513100 Radio & Television Broadcasting
513200 Cable Networks & Program Distribution
513300 Telecommunications (including paging, cellular, satellite, & other telecommunications)
Information Services and Data Processing Services
514100 Information Services (including news syndicates, libraries, & on-line information services)
514210 Data Processing Services
Finance and Insurance
Depository Credit Intermediation
522110 Commercial Banking
522120 Savings Institutions
522130 Credit Unions
522190 Other Depository Credit Intermediation
Nondepository Credit Intermediation
522210 Credit Card Issuing
522220 Sales Financing
522291 Consumer Lending
522292 Real Estate Credit (including mortgage bankers & originators)
522293 International Trade Financing
522294 Secondary Market Financing
522298 All Other Nondepository Credit Intermediation
Activities Related to Credit Intermediation
522300 Activities Related to Credit Intermediation (including loan brokers)
Securities, Commodity Contracts, and Other Financial Investments and Related Activities
523110 Investment Banking & Securities Dealing
523120 Securities Brokerage
523130 Commodity Contracts Dealing
523140 Commodity Contracts Brokerage
523210 Securities & Commodity Exchanges
523900 Other Financial Investment Activities (including portfolio management & investment advice)
Insurance Carriers and Related Activities
524140 Direct Life, Health, & Medical Insurance & Reinsurance Carriers
524150 Direct Insurance & Reinsurance (except Life, Health, & Medical) Carriers
524210 Insurance Agencies & Brokerage
524290 Other Insurance Related Activities
Funds, Trusts, and Other Financial Vehicles
525100 Insurance & Employee Benefit Funds
525910 Open-End Investment Funds (Form 1120-RIC)
525920 Trusts, Estates, & Agency Accounts
525930 Real Estate Investment Trusts (Form 1120-REIT)
525990 Other Financial Vehicles
Real Estate and Rental and Leasing
Real Estate
531110 Lessors of Residential Buildings & Dwellings
531120 Lessors of Nonresidential Building (except Miniwarehouses)
531130 Lessors of Miniwarehouses & Self-Storage Units
531190 Lessors of Other Real Estate Property
531210 Offices of Real Estate Agents/Brokers
531310 Real Estate Property Managers
531320 Offices of Real Estate Appraisers
531390 Other Activities Related to Real Estate
Rental and Leasing Services
532100 Automotive Equipment Rental & Leasing
532210 Consumer Electronics & Appliances Rental
532220 Formal Wear & Costume Rental
532230 Video Tape & Disc Rental
532290 Other Consumer Goods Rental
532310 General Rental Centers
532400 Commercial & Industrial Machinery & Equipment Rental & Leasing
Lessors of Nonfinancial Intangible Assets (except copyrighted works)
533110 Lessors of Nonfinancial Intangible Assets (except copyrighted works)
Professional, Scientific, and Technical Services
Legal Services
541110 Offices of Lawyers
541190 Other Legal Services
Accounting, Tax Preparation, Bookkeeping, and Payroll Services
541211 Offices of Certified Public Accountants

541213 Tax Preparation Services
541214 Payroll Services
541219 Other Accounting Services
Architectural, Engineering, and Related Services
541310 Architectural Services
541320 Landscape Architecture Services
541330 Engineering Services
541340 Drafting Services
541350 Building Inspection Services
541360 Geophysical Surveying & Mapping Services
541370 Surveying & Mapping (except Geophysical) Services
541380 Testing Laboratories
Specialized Design Services
541400 Specialized Design Services (including interior, industrial, graphic, & fashion design)
Computer Systems Design and Related Services
541511 Custom Computer Programming Services
541512 Computer Systems Design Services
541513 Computer Facilities Management Services
541519 Other Computer Related Services
Other Professional, Scientific, and Technical Services
541600 Management, Scientific, & Technical Consulting Services
541700 Scientific Research & Development Services
541800 Advertising & Related Services
541910 Marketing Res. & Pub Opinion Polling
541920 Photographic Services
541930 Translation & Interpretation Services
541940 Veterinary Services
541990 All Other Professional, Scientific, & Technical Services
Management of Companies (Holding Companies)
551111 Offices of Bank Holding Companies
551112 Offices of Other Holding Companies
Administrative and Support and Waste Management and Remediation Services
Administrative and Support Services
561110 Office Administrative Services
561210 Facilities Support Services
561300 Employment Services
561410 Document Preparation Services
561420 Telephone Call Centers
561430 Business Service Centers (including private mail centers & copy shops)
561440 Collection Agencies
561450 Credit Bureaus
561490 Other Business Support Services (including repossession services, court reporting, & stenotype services)
561500 Travel Arrangement & Reservation Services
561600 Investigation & Security Services
561710 Exterminating & Pest Control Services
561720 Janitorial Services
561730 Landscaping Services
561740 Carpet & Upholstery Cleaning Services
561790 Other Services to Buildings & Dwellings
561900 Other Support Services (including packaging & labeling services, & convention & trade show organizers)
Waste Management and Remediation Services
562100 Waste Management & Remediation Services
Educational Services
611000 Educational Services (including schools, colleges, & universities)
Health Care and Social Assistance
Offices of Physicians and Dentists
621110 Offices of Physicians (except mental health specialists)
621112 Offices of Physicians, Mental Health Specialists
621210 Offices of Dentists
Offices of Other Health Practitioners
621310 Offices of Chiropractors
621320 Offices of Optometrists
621330 Offices of Mental Health Practitioners (except Physicians)
621340 Offices of Physical, Occupational & Speech Therapists, & Audiologists
621391 Offices of Podiatrists
621399 Offices of All Other Miscellaneous Health Practitioners
Outpatient Care Centers
621410 Family Planning Centers
621420 Outpatient Mental Health & Substance Abuse Centers
621491 HMO Medical Centers
621492 Kidney Dialysis Centers
621493 Freestanding Ambulatory Surgical & Emergency Centers
621498 All Other Outpatient Care Centers
Medical and Diagnostic Laboratories
621510 Medical & Diagnostic Laboratories
Home Health Care Services
621610 Home Health Care Services
Other Ambulatory Health Care Services
621900 Other Ambulatory Health Care Services (including ambulance services & blood & organ banks)
Hospitals
622000 Hospitals

Nursing and Residential Care Facilities
623000 Nursing & Residential Care Facilities
Social Assistance
624100 Individual & Family Services
624200 Community Food & Housing, & Emergency & Other Relief Services
624310 Vocational Rehabilitation Services
624410 Child Day Care Services
Arts, Entertainment, and Recreation
Performing Arts, Spectator Sports, and Related Industries
711100 Performing Arts Companies
711210 Spectator Sports (including sports clubs & racetracks)
711300 Promoters of Performing Arts, Sports, & Similar Events
711410 Agents & Managers for Artists, Athletes, Entertainers, & Other Public Figures
711510 Independent Artists, Writers, & Performers
Museums, Historical Sites, and Similar Institutions
712100 Museums, Historical Sites, & Similar Institutions
Amusement, Gambling, and Recreation Industries
713100 Amusement Parks & Arcades
713200 Gambling Industries
713900 Other Amusement & Recreation Industries (including golf courses, skiing facilities, marinas, fitness centers, & bowling centers)
Accommodation and Food Services
Accommodation
721110 Hotels (except casino hotels) & Motels
721120 Casino Hotels
721191 Bed & Breakfast Inns
721199 All Other Traveler Accommodations
721210 RV (Recreational Vehicle) Parks & Recreational Camps
721310 Rooming & Boarding Houses
Food Services and Drinking Places
722110 Full-Service Restaurants
722210 Limited-Service Eating Places
722300 Special Food Services (including food service contractors & caterers)
722410 Drinking Places (Alcoholic Beverages)
Other Services
Repair and Maintenance
811110 Automotive Mechanical & Electrical Repair & Maintenance
811120 Automotive Body, Paint, Interior, & Glass Repair
811190 Other Automotive Repair & Maintenance (including oil change & lubrication shops & car washes)
811210 Electronic & Precision Equipment Repair & Maintenance
811310 Commercial & Industrial Machinery & Equipment (except Automotive & Electronical) Repair & Maintenance
811410 Home & Garden Equipment & Appliance Repair & Maintenance
811420 Reupholstery & Furniture Repair
811430 Footwear & Leather Goods Repair
811490 Other Personal & Household Goods Repair & Maintenance
Personal and Laundry Services
812111 Barber Shops
812112 Beauty Salons
812113 Nail Salons
812190 Other Personal Care Services (including diet & weight reducing centers)
812210 Funeral Homes & Funeral Services
812220 Cemeteries & Crematories
812310 Coin-Operated Laundries & Dry-Cleaners
812320 Dry-Cleaning & Laundry Services (except Coin-Operated)
812330 Linen & Uniform Supply
812910 Pet Care (except Veterinary) Services
812920 Photofinishing
812930 Parking Lots & Garages
812990 All Other Personal Services
Religious, Grantmaking, Civic, Professional, and Similar Organizations
813000 Religious, Grantmaking, Civic, Professional, & Similar Organizations

(State Board of Tax Commissioners; 50 IAC 4.3-13-1; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1521)

Rule 14. Prescribed Methods of Valuation; Specific Types of Property

50 IAC 4.3-14-1 Assessment of nonmotorized boats, recreational vehicles, pickup truck campers, snowmobiles, off-road vehicles, self-propelled motor homes, nonfactory produced units (homemade)

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-31; IC 8-2-261; IC 14-16-1-3

Sec. 1. (a) Pursuant to 50 IAC 4.3-7, this rule is promulgated to instruct assessing officials and affected taxpayers in the proper procedure for determining the true tax value of types of personal property not used in business and nondepreciable (not allowable) for federal income tax purposes.

(b) The types of property to be valued under this rule will usually be owned by an individual not engaged in business and are reportable on Form 101. The assessor is required to

verify the true tax value of such property as reported by the taxpayer.

(c) A taxpayer may report applicable values established by such nationally recognized publications as the "Recreational Vehicle & Van Conversion Blue Book", published by National Marketing Reports, for valuing these types of property. Applicable values consistent with, or supported by, the data reflected in the edition of such a nationally recognized publication, that is in effect on March 1 of the year in which the assessment is made, will be deemed appropriate.

(d) The "As is" value as listed in such a publication shall be the basis for valuations. If no "As is" value is listed, the retail or market value shall be used.

(e) In the event a particular make or model is not included in any such nationally recognized publication, or on a list of unit valuations issued by the state board, such personal property shall be valued at its true tax value. The true tax value shall be the cost less a reasonable allowance for depreciation.

(f) All units that are owned, held, possessed, or controlled by a manufacturer or dealer of the type of personal property described in this section shall be valued as inventory pursuant 50 IAC 4.3-5.

(g) This section shall not be used for the valuation of units used in the ordinary operation of a trade or business. In such cases, units shall be valued under 50 IAC 4.3-4 and reported in the pools of Schedule A on Form 102 or Form 103.

(h) The only boats assessable on Form 101 are human powered boats. This includes rowboats, canoes, and other nonmotorized boats, excluding sailboats.

(i) Pertaining to the definitions set forth under IC 8-2-261 and IC 14-16-1-3, snowmobiles and off-road vehicles are subject to assessment as personal property on Form 101. The lack of a registration certificate does not render this type of personal property nonassessable. *(State Board of Tax Commissioners; 50 IAC 4.3-14-1; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1527)*

Rule 15. Severability

50 IAC 4.3-15-1 Severability
Authority: IC 6-1.1-31-1
Affected: IC 1-1-1-8

Sec. 1. If any part of this article, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other parts of this article or the application thereof which can be given effect without the invalid part, and to this end the provisions of this article are severable. *(State Board of Tax Commissioners; 50 IAC 4.3-15-1; filed Dec 26, 2001, 2:52 p.m.: 25 IR 1528)*

SECTION 2. THE FOLLOWING ARE REPEALED: 50 IAC 4.2-1; 50 IAC 4.2-2; 50 IAC 4.2-3-1; 50 IAC 4.2-3-2; 50 IAC 4.2-3-3; 50 IAC 4.2-4; 50 IAC 4.2-5; 50 IAC 4.2-6; 50 IAC 4.2-8; 50 IAC 4.2-9; 50 IAC 4.2-10; 50 IAC 4.2-11; 50 IAC 4.2-12; 50 IAC 4.2-14; 50 IAC 4.2-15; 50 IAC 4.2-16.

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

LSA Document #00-284(F)
Notice of Intent Published: 24 IR 1045
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TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #01-102(F)

DIGEST

Amends 312 IAC 9 that governs hunting deer by firearms, hunting deer by bow and arrows, hunting of deer in confined areas, turkey, brown trout, largemouth bass, walleye, channel catfish, fish sorting and a prohibition on waste, charter fishing, yellow perch, ice fishing, whooping cranes, sandhill cranes, aquaculture permit, and the meaning of "sale" as it applies to native reptiles and amphibians. Makes numerous technical corrections. Effective 30 days after filing with the secretary of state.

312 IAC 9-3-2
312 IAC 9-3-3
312 IAC 9-3-4
312 IAC 9-3-5
312 IAC 9-3-7
312 IAC 9-3-8
312 IAC 9-4-11
312 IAC 9-4-14
312 IAC 9-5-7
312 IAC 9-6-3
312 IAC 9-6-6
312 IAC 9-7-2
312 IAC 9-7-3
312 IAC 9-7-6
312 IAC 9-7-12
312 IAC 9-7-13
312 IAC 9-7-17
312 IAC 9-7-18
312 IAC 9-10-17

SECTION 1. 312 IAC 9-3-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-2 General requirements for deer; exemptions; tagging; tree blinds; maximum taking of antlered deer in a calendar year
Authority: IC 14-22-2-6
Affected: IC 14-22-11-1; IC 14-22-11-11

Sec. 2. (a) This section and sections 3 through 10 of this rule govern the hunting, transportation, and disposal of deer.

(b) Species of deer other than white-tailed deer (Odocoileus virginianus) are exempted from this section and sections 3 through 9 of this rule. A person who claims the exemption provided under this subsection must prove the deer is other than a white-tailed deer.

(c) The licenses identified by sections 3 through 8 of this rule are nonexclusive. An individual may apply for one (1) or more of these licenses.

(d) Before September 1, 2007, a person must not take more than one (1) antlered deer during the seasons for an annual deer license.

~~(d)~~ **(e)** The use or aid of a food product that is transported and placed for consumption, salt, mineral blocks, prepared solid or liquid intended for ingestion (herein called bait), snares, dogs, or other domesticated animals to take deer is prohibited. A person must not hunt by the aid of bait or on or over a baited area. An area is considered baited for ten (10) days after the removal of the bait or the baited soil. Hunting an orchard or another area which may be attractive to deer as the result of normal agricultural activity is not prohibited. The use of manufactured scents and lures or similar chemical or natural attractants is not prohibited.

~~(e)~~ **(f)** Except as provided under IC 14-22-11-1 and IC 14-22-11-11, a person must not hunt deer unless the person possesses a completed and signed license bearing the person's name. The license must be accompanied by a temporary transportation tag bearing the license number and the year of issuance. A person must not hunt with a deer license or tag issued to another person.

~~(f)~~ **(g)** The temporary transportation tag described in subsection ~~(e)~~ **(f)** must, immediately upon taking a deer, be notched as to the sex of the deer and the month and day of the kill. A tag which is notched other than three (3) times is void. A person must not tag a deer other than with a tag issued to the person who took the deer. A deer leg must be tagged before leaving the field. A deer which is in the field is not required to be tagged if the person who kills the deer maintains immediate custody of, and constant visual contact with, the deer carcass.

~~(g)~~ **(h)** A person who takes a deer must deliver the deer carcass to an official checking station for registration on the occurrence of the earlier of one (1) of the following:

(1) Within twenty-four (24) hours of taking of the deer.

(2) Before the deer is removed from this state.

~~(h)~~ **(i)** After the checking station operator records the permanent seal number on the log and collects the upper portion of the license, where applicable, along with the temporary transportation tag, the hunter is provided with that seal. The seal must be affixed by the hunter and ~~locked between a tendon and bone~~ **sealed** to prevent its removal (without ~~severing a tendon and must remain affixed until~~ **cutting the seal or the body part to which it is affixed), before** processing of the deer begins, **by affixing the seal:**

(1) between a tendon and bone;

(2) through a section of skin or flesh; or

(3) around a branched antler.

(j) The checking station operator ~~shall~~ **must** accurately and legibly complete all forms provided by the department and must make those forms available to department personnel upon request.

~~(i)~~ **(k)** An individual authorized to act under this subsection must attach a paper to a deer carcass which states the name and address of the individual and the date and sex of the deer taken. The requirements of subsections ~~(e)~~ **(f)** through ~~(f)~~ **(g)** also apply except to the extent those subsections identify the physical characteristics of a tag. The individuals authorized to act under this subsection are as follows:

(1) A lifetime license holder.

(2) A youth license holder.

(3) For a deer taken on a landowner's land, each of the following:

(A) The resident landowner.

(B) The spouse of the resident landowner.

(C) A child of the resident landowner who is living with the landowner.

(4) For a deer taken on farmland leased from another person, each of the following:

(A) The resident lessee who farms the land.

(B) The spouse of the resident lessee.

(C) A child of the resident lessee who is living with the lessee.

(5) An Indiana serviceman or servicewoman who is hunting under IC 14-22-11-11.

~~(j)~~ **(l)** A person must not erect, place, or hunt from a permanent tree blind on state-owned lands. A tree blind placed on state-owned or state-leased lands, U.S. Forest Service lands, ~~or lands of~~ the Muscatatuck National Wildlife Refuge, **or the Big Oaks National Wildlife Refuge** must be portable and may be left overnight only between September 1 and January 10. A fastener used in conjunction with a tree blind and a tree or pole climber which penetrates a tree more than one-half (½) inch is prohibited. Each portable tree blind must be legibly marked with the name, address, and telephone number of the owner of the tree blind.

~~(k)~~ **(m)** The head of a deer must remain attached to the carcass until the ~~metal~~ tag is attached and locked at the deer checking station.

~~(l)~~ **(n)** The use of infrared sensors to locate or take deer is prohibited. It is unlawful to hunt or to retrieve deer with the aid of an infrared detector.

~~(m)~~ **(o)** Notwithstanding subsection ~~(d),~~ **(e),** dogs may be used only while on a leash to track or trail wounded deer.

~~(n)~~ **(p)** Notwithstanding subsection ~~(d),~~ **(e),** donkeys, mules, and horses may be used for transportation to and from a hunt but may not be used while hunting. *(Natural Resources Commission; 312 IAC 9-3-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2702; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1528)*

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

312 IAC 9-3-3 Hunting deer by firearms
Authority: IC 14-22-2-6
Affected: IC 14-22-11-1; IC 14-22-12-1; IC 35-47-2

Sec. 3. (a) This section is supplemental to section 2 of this rule and governs the activities of an individual who is either:
(1) issued a license to hunt deer by firearms under IC 14-22-12-1(12), IC 14-22-12-1(13), IC 14-22-12-1(15), or IC 14-22-12-1(16); or
(2) hunting by the use of firearms under IC 14-22-11-1.

(b) The season for hunting deer with firearms is as follows:
(1) The firearms season using shotgun, shotgun with rifled barrel, handgun, muzzle loading gun, or muzzle loading handgun is from the first Saturday after November 11 and continuing for an additional fifteen (15) days.
(2) The seasonal limit for hunting deer under this subsection is one (1) antlered deer.

(c) In addition to the season established under subsection (b), the season for using a muzzle loading gun or muzzle loading handgun only extends from the first Saturday after the firearms season established under subsection (b) and continues for fifteen (15) additional days. The seasonal limit for hunting deer under this extended season is one (1) deer of either sex. ~~However, if an individual has taken an antlered deer in the same year during the season established under subsection (b), the individual must not take an antlered deer under this subsection.~~

(d) A person must not hunt deer except from one-half (½) hour before sunrise to one-half (½) hour after sunset.

(e) A person must not hunt deer unless that person wears hunter orange.

(f) Bow and arrows must not be possessed by a person while hunting under this section.

(g) The following requirements apply to the use of firearms under this section:
(1) A shotgun must have a gauge 10, 12, 16, ~~or~~ 20, **or .410 bore** loaded with a single projectile. A shotgun may be possessed in the field outside lawful shooting hours only if there are no shells in the chamber or magazine.
(2) A handgun must:
(A) conform to the requirements of IC 35-47-2;
(B) have a barrel at least four (4) inches long; and
(C) fire a bullet of .243 inch diameter or larger.
All 38 special ammunition is prohibited. The handgun cartridge case, without bullet, must be at least one and sixteen-hundredths (1.16) inches long. A handgun must not be concealed. Full metal jacketed bullets are unlawful. A handgun may be possessed in the field outside lawful shooting hours only if there are no shells in the chamber or magazine. All 25/20, 32/20, 30 carbine, and 38 special ammunition is prohibited.
(3) A muzzle loading gun must be .44 caliber or larger, loaded with a single ball-shaped or elongated bullet of at least .44 caliber. A muzzle loading handgun must be single shot, .50 caliber or larger, loaded with bullets at least .44 caliber and have a barrel at least twelve (12) inches long. The length of a muzzle loading handgun barrel is determined by measuring from the base of the breech plug, excluding tangs and other projections, to the end of the barrel, including the muzzle crown. A muzzle loading firearm must be loaded from the muzzle. A muzzle loading firearm may be possessed in the field outside lawful shooting hours only if:
(A) for percussion firearms, the cap or primer is removed from the nipple or primer adapter; or
(B) for flintlock firearms, the pan is not primed.
(4) Over-and-under combination rifle-shotguns are prohibited.
(Natural Resources Commission; 312 IAC 9-3-3; filed May 12, 1997, 10:00 a.m.: 20 IR 2703; filed Nov 13, 1997, 12:09 p.m.: 21 IR 1272; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1530)

SECTION 3. 312 IAC 9-3-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-4 Hunting deer by bow and arrows
Authority: IC 14-22-2-6
Affected: IC 14-22-11-1; IC 14-22-12-1

Sec. 4. (a) This section is supplemental to section 2 of this rule and governs the activities of an individual who is either:
(1) issued a license to hunt deer with bow and arrows under IC 14-22-12-1(14) or IC 14-22-12-1(17) and is supplemental to section 2 of this rule; or
(2) hunting by the use of bow and arrows under IC 14-22-11-1.

(b) The season for hunting deer with bow and arrows during the early bow season is from October 1 through the firearms season (set forth in section 3(b) of this rule) and during the late bow season from the first Saturday after the firearms season through the first Sunday in January.

(c) The urban deer season is from September 15 through the firearms season (set forth in section 3(b) of this rule) and during the late bow season from the first Saturday after the firearms season through the first Sunday in January.

~~(c)~~ **(d)** The seasonal limit for hunting under this section is one (1) deer of either sex. ~~In addition, the following restrictions apply:~~

~~(1) A person who has taken an antlered deer under section 5 of this rule must not take an antlered deer under this section.~~

~~(2)~~ A person must not take an antlered deer by means of a crossbow.

~~(d)~~ **(e)** A person must not hunt deer under this section except from one-half (½) hour before sunrise to one-half (½) hour after sunset.

~~(e)~~ **(f)** A person must not hunt deer under this section unless that person wears hunter orange. However, this subsection does not apply before the commencement of the firearms season set forth in section 3(b) of this rule and after the muzzle loading gun season set forth in section 3(c) of this rule.

~~(f)~~ **(g)** A person must not hunt under this section unless that person possesses only one (1) bow. A firearm must not be possessed by ~~a~~ **the** person hunting under this section.

~~(g)~~ **(h)** The following requirements apply to the use of archery equipment under this section:

(1) No person shall use a long bow or compound bow of less than thirty-five (35) pounds pull.

(2) Arrows must be equipped with metal or metal-edged (or flint, chert, **or** obsidian napped) broadheads.

(3) Poisoned or explosive arrows are unlawful.

(4) Bows drawn, held, or released other than by hand or hand-held releases are unlawful.

(5) A long bow or compound bow may be possessed in the field before and after lawful shooting hours only if the nock of the arrow is not placed on the bow string.

(6) No portion of the bow's riser (handle) or any track, trough, channel, arrow rest, or other device that attaches to the bow's riser shall contact, support, or guide the arrow from a point rearward of the bow's brace height.

~~(h)~~ **(i)** Notwithstanding subsection ~~(g),~~ **(h),** a person may use a crossbow to take antlerless deer during the late bow season from the first Saturday after the firearms season through the first Sunday in January if the following restrictions are met:

(1) No person shall use a crossbow of less than one hundred twenty-five (125) pounds pull.

(2) No person shall use a crossbow that does not have a mechanical safety.

(3) A crossbow may be possessed in the field before and after lawful shooting hours only if the nock of the arrow is not placed on the bow string.

~~(i)~~ **(j)** As used in this rule, "crossbow" means a device for propelling an arrow by means of traverse limbs mounted on a stock and a string and having a working safety. The crossbow may be drawn, held, and released by a mechanical device.

(Natural Resources Commission; 312 IAC 9-3-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2703; filed Nov 5, 1997, 3:25 p.m.: 21 IR 930; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1530)

SECTION 4. 312 IAC 9-3-5 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-5 Hunting deer with bow and arrows by authority of an extra deer license

Authority: IC 14-22-2-6
Affected: IC 14-22-11-1; IC 14-22-12-1

Sec. 5. (a) This section is supplemental to section 2 of this rule and governs the activities of an individual who is either:

(1) issued a license to take an extra deer under IC 14-22-12-1(18) or IC 14-22-12-1(19) by means of bow and arrows; or

(2) hunting under IC 14-22-11-1 with an extra deer license by means of bow and arrows.

(b) Except as specified in subsection (d), the statewide seasonal limit for hunting under this section is one (1) deer of either sex. ~~In addition, the following restrictions apply:~~

~~(1) A person who has taken an antlered deer under section 4 of this rule must not take an antlered deer under this section.~~

~~(2)~~ A person must not take an antlered deer by means of a crossbow.

(c) The restrictions contained in section 4(b) and ~~4(d)~~ **4(e)** through ~~4(h)~~ **4(i)** of this rule also apply to a license issued under this section.

(d) The seasonal limit for hunting deer in an urban deer zone is ~~one (1) antlerless deer for each of two (2) extra deer licenses in addition to the statewide extra deer limit.~~ **four (4) deer of which only one (1) may be antlered. A person must possess a valid extra deer license for each deer taken. A deer taken under this subsection does not count against a bag limit for deer set elsewhere in this rule.**

(e) The following areas have been designated as urban deer zones:

(1) The Indianapolis urban deer zone includes all of Marion County, that portion of Hendricks County east of State Highway 267, the southeast portion of Boone County as bounded by State Highway 267, Interstate Highway 65, State Highway 32, and that portion of Hamilton County south of State Highway 32.

(2) The Fort Wayne urban deer zone includes that portion of Allen County lying within the bounds of Interstate Highway 69 and State Highway 469.

(3) The Evansville urban deer zone includes all of Vanderburgh County.

(4) The Lafayette urban deer zone includes the portion of Tippecanoe County north of State Highway 28.

(5) The Gary urban deer zone includes that portion of Lake County north of U.S. Highway 30.

(6) The Crown Point urban deer zone includes that portion of Lake County within the corporate limits of Crown Point.
(7) The Chesterton urban deer zone includes the portion of Porter County north of U.S. Highway 94.
(8) The Michigan City urban deer zone includes that portion of LaPorte County north of U.S. Highway 94.
(9) The Madison urban deer zone includes that portion of Jefferson County bounded on the east by U.S. Highway 421 as well as bounded on the north and west by State Highway 62 and on the south by State Highway 56.

(Natural Resources Commission; 312 IAC 9-3-5; filed May 12, 1997, 10:00 a.m.: 20 IR 2704; filed Nov 5, 1997, 3:25 p.m.: 21 IR 931; filed May 28, 1998, 5:14 p.m.: 21 IR 3713; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1531)

SECTION 5. 312 IAC 9-3-7 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-7 Hunting deer in a designated county by authority of an extra deer license

Authority: IC 14-22-2-6
Affected: IC 14-22-11-1; IC 14-22-12-1

Sec. 7. ~~(a) This section is supplemental to section 2 of this rule and governs the activities of an individual who is either:~~
~~(1) issued a license to take an extra deer under IC 14-22-12-1(18) or IC 14-22-12-1(19); or~~
~~(2) hunting under IC 14-22-11-1 with the use of an extra deer license under IC 14-22-12-1(18) or IC 14-22-12-1(19).~~

~~(b) No person may take an antlerless deer under this section unless the person possesses an antlerless deer license issued by the division under this section.~~

~~(c) Except as provided in subsection (j), the season for hunting deer under this section is as follows:~~
~~(1) From the first Saturday after November 11 and continuing for an additional fifteen (15) days with bow and arrows or firearms.~~
~~(2) From the first Saturday after the day on which the period in subdivision (1) terminates and continuing for an additional fifteen (15) days with a muzzle loading gun.~~
~~(3) From the first Saturday after the day on which the period in subdivision (1) terminates and continuing through the first Sunday in January with bow and arrows.~~

~~(d) The seasonal limit for hunting under this section is one (1) antlerless deer for each license issued under this section.~~

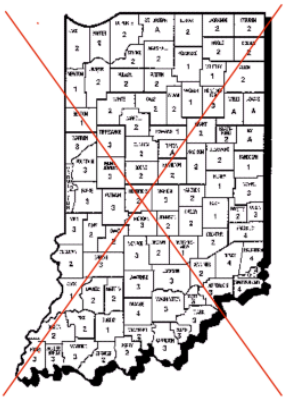
~~(e) A person who hunts by authority of this section must obtain an extra deer license for each deer. Section 2 of this rule, which governs the use of tags, applies to extra deer tags.~~

~~(f) A person who hunts under the authority of this section may use bow and arrows or any firearm which may otherwise be lawfully used to take deer under this rule.~~

~~(g) Sections 3(d) through 3(g) and 4(d) through 4(g) of this rule also apply to a license issued under this section.~~

~~(h) The seasonal bag limit for taking antlerless deer under this section is four (4) from Indiana.~~

~~(i) Except as provided in subsection (j), the county bag limit must not be exceeded from each county as set forth in the following map:~~



~~(j) For a county marked on the map in subsection (i) with the letter "A", the county bag limit is one (1) antlerless deer. The season for a county marked with the letter "A" is as follows:~~
~~(1) From the second Thursday after November 16 and continuing for an additional three (3) days with bow and arrows or with firearms.~~
~~(2) From the first Saturday after the day on which the period in subdivision (1) terminates and continuing for an additional fifteen (15) days with a muzzle loading gun.~~
~~(3) From the first Saturday after the day on which the period in subdivision (1) terminates and continuing through the first Sunday in January with bow and arrows.~~

Hunting deer in a designated county, by authority of an extra deer license, shall be addressed on an annual basis by an emergency rule approved by the director. *(Natural Resources Commission; 312 IAC 9-3-7; filed May 12, 1997, 10:00 a.m.: 20 IR 2705; filed Aug 15, 1997, 8:36 a.m.: 21 IR 29; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1532)*

SECTION 6. 312 IAC 9-3-8 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-8 Hunting deer on designated military reserves, Big Oaks National Wildlife Reserve, and Muscatatuck National Wildlife Refuge; regular and extra deer hunting licenses

Authority: IC 14-22-2-6
Affected: IC 14-22-12-1

Sec. 8. (a) This section governs the activities of an individual who is hunting deer on each of the following military reserves and wildlife refuges:

(1) Naval Weapons Support Center-Crane.
(2) ~~Jefferson Proving Ground.~~ **Big Oaks National Wildlife Refuge.**
(3) Atterbury Reserve Forces Training Area.
(4) Indiana Army Ammunition Plant (Charlestown).
(5) Newport Army Ammunition Plant.
(6) Muscatatuck National Wildlife Refuge.
(7) Leiber State Recreation Area (holders of handicap permits under 312 IAC 9-10-10 only).

(b) The season for hunting deer under this section by firearms is from November 1 through December 31.

(c) The season for hunting deer under this section by bow and arrows is from October 1 through December 31.

(d) Except as provided under subsections (b) through (c), a person who hunts by the authority of a firearms license issued under section 3 of this rule or bow and arrows license under section 4 or 5 of this rule is also subject to those sections.

(e) An individual may enter a drawing to hunt deer on the military reserves or on **Big Oaks National Wildlife Reserve or** Muscatatuck National Wildlife Refuge. If selected in the drawing, that individual may apply for:
(1) an extra firearms military or refuge deer license;
(2) an extra deer muzzle loader military or refuge license; or
(3) an extra deer archery military or refuge license;
to hunt during the seasons established under subsections (b) through (c).

(f) Except as provided in subsection (g), the seasonal bag limit for hunting under this section is one (1) deer of either sex for each license, whether that license is issued under subsection (d) or (e). An antlered deer taken under this section is exempted from the limitations placed on the taking of antlered deer set forth in this rule.

(g) In addition to the other licenses authorized by this section, the division may issue an extra deer license under this subsection. This extra deer license authorizes the taking by bow and arrows of a deer of either sex from a site listed in subsection (a). This subsection is governed by IC 14-22-12-1(18) and IC 14-22-12-1(19).

(h) Section 2 of this rule, which governs the use of tags, generally, also applies to extra deer tags under this section. *(Natural Resources Commission; 312 IAC 9-3-8; filed May 12, 1997, 10:00 a.m.: 20 IR 2705; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1532)*

SECTION 7. 312 IAC 9-4-11 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-4-11 Wild turkeys
Authority: IC 14-22-2-6
Affected: IC 14-22-11-1; IC 14-22-11-11

Sec. 11. (a) Except as provided in subsection (b), the season for hunting and possessing wild turkeys is from the first Wednesday after April 20 and continuing for an additional eighteen (18) consecutive days.

(b) The season for hunting and possessing wild turkeys on Camp Atterbury and the ~~Jefferson Proving Grounds~~ **Big Oaks National Wildlife Refuge** will be determined on an annual basis by the director.

(c) The limit for taking and possessing is one (1):
(1) bearded wild turkey; or
(2) male wild turkey.

(d) A person must not hunt wild turkeys except between one-half (½) hour before sunrise and ~~noon Eastern Standard Time (11 a.m. Central Standard Time). A turkey hunter must leave the field by 1 p.m. Eastern Standard Time (noon Central Standard Time).~~ **sunset.**

(e) A person must not take a wild turkey except with the use of one (1) of the following:
(1) A 10, 12, 16, or 20 gauge shotgun loaded only with shot of 4, 5, 6, **7,** or 7½.
(2) A muzzle loading shotgun loaded only with shot of 4, 5, 6, **7,** or 7½.
(3) Bow and arrows.

(f) A person must not hunt wild turkeys ~~except~~ in the following counties:
(1) ~~Benton~~. **Rush.**
(2) ~~Boone.~~ **Shelby.**
~~(3) Brown.~~
~~(4) Bartholomew.~~
~~(5) Carroll (either west of State Road 75 or north of State Road 18).~~
~~(6) Cass.~~
~~(7) Clark.~~
~~(8) Clay.~~
~~(9) Clinton.~~
~~(10) Crawford.~~
~~(11) Daviess.~~
~~(12) Dearborn.~~
~~(13) Decatur.~~
~~(14) Dekalb (North of U.S. 6).~~
~~(15) Dubois.~~
~~(16) Fayette.~~
~~(17) Floyd.~~
~~(18) Fountain.~~
~~(19) Franklin.~~
~~(20) Fulton.~~
~~(21) Gibson.~~
~~(22) Grant.~~
~~(23) Greene.~~
~~(24) Harrison.~~

~~(25) Hendricks.~~
~~(26) Huntington (either west of State Road 5 or south of State Road 124).~~
~~(27) Jackson.~~
~~(28) Jasper.~~
~~(29) Jefferson.~~
~~(30) Jennings.~~
~~(31) Johnson.~~
~~(32) Knox.~~
~~(33) Kosciusko (west of State Road 15).~~
~~(34) LaGrange (east of State Road 9).~~
~~(35) Lake.~~
~~(36) LaPorte (either south of U.S. 30 or east of State Road 39).~~
~~(37) Lawrence.~~
~~(38) Marshall.~~
~~(39) Martin.~~
~~(40) Miami.~~
~~(41) Monroe.~~
~~(42) Montgomery.~~
~~(43) Morgan.~~
~~(44) Newton.~~
~~(45) Noble (both east of State Road 9 and north of U.S. 6).~~
~~(46) Ohio.~~
~~(47) Orange.~~
~~(48) Owen.~~
~~(49) Parke.~~
~~(50) Perry.~~
~~(51) Pike.~~
~~(52) Porter (south of State Road 8).~~
~~(53) Posey.~~
~~(54) Pulaski.~~
~~(55) Putnam.~~
~~(56) Ripley.~~
~~(57) St. Joseph (either west of State Road 23 or south of U.S. 6).~~
~~(58) Scott.~~
~~(59) Spencer.~~
~~(60) Starke.~~
~~(61) Steuben.~~
~~(62) Sullivan.~~
~~(63) Switzerland.~~
~~(64) Tippecanoe.~~
~~(65) Union.~~
~~(66) Vanderburgh.~~
~~(67) Vermillion.~~
~~(68) Vigo.~~
~~(69) Wabash.~~
~~(70) Warren.~~
~~(71) Warrick.~~
~~(72) Washington.~~
~~(73) Wayne.~~
~~(74) White.~~

(g) The use of a dog, another domesticated animal, a live decoy, a recorded call, **an electronically powered or controlled decoy,** or bait to take a wild turkey is prohibited. An area is considered baited for ten (10) days after the removal of the bait, but an area is not considered to be baited which is attractive to wild turkeys resulting from:

(1) normal agricultural practices; or

(2) the use of a manufactured scent, a lure, or a chemical attractant.

(h) A person must not possess a handgun while hunting wild turkeys.

(i) Except as provided under IC 14-22-11-1 and IC 14-22-11-11, a person must not hunt wild turkeys unless that person possesses a completed and signed license bearing the person's name. The license must be accompanied by a temporary transportation tag bearing the license number and the year of issuance. A person must not hunt with a wild turkey license or tag issued to another person.

(j) The temporary transportation tag described in subsection (i) must, immediately after taking a wild turkey, be notched as to the month and day of the taking **and attached to a leg of the turkey directly above the spur.** A tag which is notched more than twice is void. The temporary transportation tag must be attached to a leg of the wild turkey directly above the spur. The turkey must be transported to an official turkey checking station within twenty-four (24) hours of taking for registration. After the checking station operator records the permanent seal number on the log, the hunter is provided with that seal. The hunter shall immediately and firmly affix the seal to the leg of the turkey directly above the temporary transportation tag. The seal must remain affixed until processing of the turkey begins. The official turkey checking station operator shall accurately and legibly complete all forms provided by the department and make those forms available to department personnel on request.

(k) Each of the following individuals must tag a turkey carcass **immediately after taking** with a paper ~~which~~ **that** states the name and address of the individual and the date the turkey was taken:

(1) A lifetime license holder.

(2) A youth license holder.

(3) For a wild turkey taken on a landowner's land, each of the following:

(A) The resident landowner.

(B) The spouse of the resident landowner.

(C) A child of the resident landowner who is living with the landowner.

(4) For a wild turkey taken on land leased from another person, each of the following:

(A) The resident lessee who farms the land.

(B) The spouse of the resident lessee.

(C) A child of the resident lessee who is living with the lessee.

(5) An Indiana serviceman or servicewoman hunting under IC 14-22-11-11.

(l) The feathers and beard of a wild turkey must remain attached while the wild turkey is in transit from the site where taken. *(Natural Resources Commission; 312 IAC 9-4-11; filed May 12, 1997, 10:00 a.m.: 20 IR 2710; filed May 28, 1998, 5:14 p.m.: 21 IR 3715; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1533)*

SECTION 8. 312 IAC 9-4-14 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-4-14 Endangered and threatened species; birds
Authority: IC 14-22-2-6; IC 14-22-34-17
Affected: IC 14-22

Sec. 14. The following species of birds are threatened or endangered and are subject to the protections provided under 312 IAC 9-2-7:

(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~~ **Whooping** crane (Grus ~~canadensis).~~ **americana).**
(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; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1535)

SECTION 9. 312 IAC 9-5-7 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-5-7 Sale and transport for sale of reptiles and amphibians native to Indiana
Authority: IC 14-22-2-6; IC 14-22-26-3; IC 14-22-34-17
Affected: IC 14-22; IC 20-1-1-6; IC 20-1-1.6-2

Sec. 7. (a) This section governs the sale, transport for sale, or offer for sale or transport for sale of any reptile or amphibian native to Indiana, regardless of place of origin.

(b) Except as otherwise provided in this section and in section 6(g) of this rule, the sale, transport for sale, or offer to sell or transport for sale, a reptile or amphibian native to Indiana is prohibited.

(c) As used in this rule, "reptile or amphibian native to Indiana" means those reptiles and amphibians with the following scientific names, including common names for public convenience, but the scientific names control:

(1) Hellbender (Cryptobranchus alleganiensis).
(2) Mudpuppy (Necturus maculosus).
(3) Streamside salamander (Ambystoma barbouri).
(4) Jefferson's salamander (Ambystoma jeffersonianum).
(5) Blue-spotted salamander (Ambystoma laterale).
(6) Spotted salamander (Ambystoma maculatum).
(7) Marbled salamander (Ambystoma opacum).
(8) Smallmouth salamander (Ambystoma texanum).
(9) Eastern tiger salamander (Ambystoma tigrinum tigrinum).
(10) Eastern newt (Notophthalmus viridescens).
(11) Green salamander (Aneides aeneus).
(12) Northern dusky salamander (Desmognathus fuscus).
(13) Two-lined salamander (Eurycea cirrigera).
(14) Longtailed salamander (Eurycea longicauda).
(15) Cave salamander (Eurycea lucifuga).
(16) Four-toed salamander (Hemidactylium scutatum).
(17) Redbacked salamander (Plethodon cinereus).
(18) Zigzag salamander (Plethodon dorsalis).
(19) Slimy salamander (Plethodon glutinosus).
(20) Ravine salamander (Plethodon richmondi).
(21) Red salamander (Pseudotriton ruber).
(22) Lesser siren (Siren intermedia).
(23) Eastern spadefoot toad (Scaphiopus holbrooki).
(24) American toad (Bufo americanus).
(25) Fowler's toad (Bufo fowleri).
(26) Cricket frog (Acris crepitans).
(27) Cope's gray tree frog (Hyla chrysoscelis).
(28) Eastern gray tree frog (Hyla versicolor).
(29) Spring peeper (Pseudacris crucifer).
(30) Striped chorus frog (Pseudacris triseriata).
(31) Crawfish frog (Rana areolata).
(32) Plains leopard frog (Rana blairi).
(33) Bullfrog (Rana catesbeiana).
(34) Green frog (Rana clamitans).
(35) Northern leopard frog (Rana pipiens).
(36) Pickerel frog (Rana palustris).
(37) Southern leopard frog (Rana utricularia).
(38) Wood frog (Rana sylvatica).
(39) Common snapping turtle (Chelydra serpentina serpentina).
(40) Smooth softshell turtle (Apalone mutica).
(41) Spiny softshell turtle (Apalone spinifera).

(42) Alligator snapping turtle (Macroclemys temmincki).
(43) Eastern mud turtle (Kinosternon subrubrum).
(44) Musk turtle (Sternotherus odoratus).
(45) Midland painted turtle (Chrysemys picta marginata).
(46) Western painted turtle (Chrysemys picta bellii).
(47) Spotted turtle (Clemmys guttata).
(48) Blanding's turtle (Emydoidea blandingii).
(49) Map turtle (Graptemys geographica).
(50) False map turtle (Graptemys pseudogeographica).
(51) Ouachita map turtle (Graptemys ouachitensis).
(52) Heiroglyphic river cooter (Pseudemys concinna).
(53) Eastern box turtle (Terrapene carolina).
(54) Ornate box turtle (Terrapene ornata).
(55) Red-eared slider (Trachemys scripta elegans).
(56) Eastern fence lizard (Sceloporus undulatus).
(57) Slender glass lizard (Ophisaurus attenuatus).
(58) Six-lined racerunner (Cnemidophorus sexlineatus).
(59) Five-lined skink (Eumeces fasciatus).
(60) Broad-headed skink (Eumeces laticeps).
(61) Ground skink (Scincella lateralis).
(62) Worm snake (Carphophis amoenus).
(63) Scarlet snake (Cemophora coccinea).
(64) Racer (Coluber constrictor).
(65) Kirtland's snake (Clonophis kirtlandii).
(66) Northern ringneck snake (Diadophis punctatus).
(67) Black rat snake (Elaphe obsoleta obsoleta).
(68) Gray rat snake (Elaphe obsoleta spiloides).
(69) Western fox snake (Elaphe vulpina vulpina).
(70) Mud snake (Farancia abacura).
(71) Eastern hognose snake (Heterodon platirhinos).
(72) Prairie king snake (Lampropeltis calligaster calligaster).
(73) Black king snake (Lampropeltis getula nigra).
(74) Eastern milk snake (Lampropeltis triangulum triangulum).
(75) Red milk snake (Lampropeltis triangulum syspila).
(76) Northern copperbelly (Nerodia erythrogaster).
(77) Diamondback water snake (Nerodia rhombifer).
(78) Northern banded water snake (Nerodia sipedon).
(79) Rough green snake (Opheodrys aestivus).
(80) Smooth green snake (Opheodrys vernalis).
(81) Bull snake (Pituophis melanoleucus sayi).
(82) Queen snake (Regina septemvittata).
(83) Brown snake (Storeria dekayi).
(84) Redbellied snake (Storeria occipitomaculata).
(85) Crowned snake (Tantilla coronata).
(86) Butler's garter snake (Thamnophis butleri).
(87) Western ribbon snake (Thamnophis proximus).
(88) Plains garter snake (Thamnophis radix).
(89) Eastern ribbon snake (Thamnophis sauritus).
(90) Common garter snake (Thamnophis sirtalis).
(91) Western earth snake (Virginia valeriae).
(92) Northern copperhead (Agkistrodon contortrix).
(93) Cottonmouth moccasin (Agkistrodon piscivorus).
(94) Timber rattlesnake (Crotalus horridus).
(95) Eastern massasauga (Sistrurus catenatus).

(d) As used in this section, "sale" ~~includes:~~ **means:**
(1) barter, purchase, trade, or offer to sell, barter, purchase, or trade; ~~and~~ **or**
(2) serving as part of a meal by a restaurant, a hotel, a boardinghouse, or an eating house keeper; however, a hotel, a boardinghouse, or an eating house keeper may prepare and serve during open season to:
(A) a guest, patron, or boarder; and
(B) the family of the guest, patron, or boarder;
a reptile or amphibian legally taken by the guest, patron, or boarder during the open season.

(e) As used in this section, "transport" means to move, carry, or ship a wild animal protected by law by any means and for any common or contract carrier knowingly to move, carry, or receive for shipment a wild animal protected by law.

(f) A reptile or amphibian that is not on a state or federal endangered or threatened species list and with a color morphology that is:
(1) albinistic (an animal lacking brown or black pigment);
(2) leucistic (a predominately white animal); or
(3) xanthic (a predominately yellow animal);
is exempted from this section if it was not collected from the wild.

(g) Exempted from this section is an institution governed by, and in compliance with, the Animal Welfare Act (7 U.S.C. 2131, et seq.) and 9 CFR 2.30 through 9 CFR 2.38 (January 1, 1998 edition). To qualify for the exemption, the institution must have an active Assurance of Compliance on file with the Office for the Protection of Risk, U.S. Department of Health and Human Services.

(h) Exempted from this section is a sale made under a reptile captive breeding license governed by section 9 of this rule.

(i) Exempted from this section is the sale to and purchase of reptiles or amphibians by a public school accredited under IC 20-1-1-6(8) or nonpublic school accredited under IC 20-1-1-6(11) and IC 20-1-1.6-2. This exemption does not authorize the sale of reptiles or amphibians by a public school or a nonpublic school.

(j) Exempted from this section is the sale and purchase of a bullfrog (Rana catesbeiana) tadpole or green frog (Rana clamitans) tadpole produced by a resident holder of a hauler and supplier permit or an aquaculture permit, if the tadpole is a byproduct of a fish production operation. As used in this subsection, a tadpole is the larval life stage of a frog for the period in which the tail portion of the body is at least one (1) inch long. *(Natural Resources Commission; 312 IAC 9-5-7; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3673; errata filed Oct 26, 1999, 2:40 p.m.: 23 IR 589; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1535)*

SECTION 10. 312 IAC 9-6-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-6-3 Fish sorting restrictions and the prohibition of waste

Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 3. ~~It is unlawful to~~ **(a) Except as provided in subsection (b), a person must not** sort and release a fish taken previously in the day in order to replace the fish with another where the same bag limit applies to both fish.

(b) A fish may be released without counting toward the daily bag limit only if the fish is as follows:

(1) Alive and in apparent good health.

(2) Capable of swimming away normally under its own power.

(3) Returned to the water from which it was taken before the end of the day.

(4) In a place where the immediate escape of the fish is not prevented.

(c) The intentional waste or destruction of any species of fish taken under this rule is prohibited unless the species is required by law to be killed. A person must not mutilate and return a fish to the water. This section does not, however, apply if a fish is required by law to be released or is lawfully used as bait.

(d) Offal or filth resulting from catching, curing, cleaning, or shipping fish in or near state waters must be burned, buried, or otherwise disposed in a sanitary manner that:

(1) does not pollute the water; and

(2) is not or does not become detrimental to public health or comfort.

(Natural Resources Commission; 312 IAC 9-6-3; filed May 12, 1997, 10:00 a.m.: 20 IR 2715; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1537)

SECTION 11. 312 IAC 9-6-6 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-6-6 Areas closed to fishing

Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 6. A person must not take or possess fish at any of the following locations:

(1) From April 1 through June 15 from:

(A) the east branch of the Little Calumet River in Porter County from U.S. 12 upstream to U.S. 20, excluding its tributaries; and

(B) Trail Creek in LaPorte County from the Franklin Street Bridge in Michigan City upstream to U.S. 35, excluding its tributaries.

(2) Within one hundred (100) feet above or below the Linde Dame (Prax Air) on the East Branch of the Little Calumet River within Porter County (Northeast Quarter of Section 32, Township 37 North, Range 6 West).

(3) From the East Race waterway in the city of South Bend in St. Joseph County.

(4) From the St. Joseph River in St. Joseph County:

(A) within one hundred (100) feet of the entrance or exit of the East Race waterway;

(B) from the fish ladders located at the South Bend dam in the city of South Bend or the ~~Uniroyal~~ **Downtown Mishawaka** dam in the city of Mishawaka;

(C) within one hundred (100) feet of the entrances and exits of those fish ladders located at the South Bend dam or the ~~Uniroyal~~ **Downtown Mishawaka** dam; and

(D) while fishing from a boat within two hundred (200) feet downstream of the South Bend dam or downstream of the ~~Uniroyal~~ **Downtown Mishawaka** dam to the ~~State Road 331~~ **Main Street** bridge **in the city of Mishawaka.**

(5) From April 20 to the last Saturday in April from:

(A) the Pigeon River (and Pigeon Creek) in LaGrange County from the Steuben County line to County Road 410 East (Troxel's bridge), but excluding the impoundment known as the Mongo Mill Pond;

(B) Harding Run, Curtis Creek, Bloody Run, and Graveyard Run (tributaries of the Pigeon River) in LaGrange County;

(C) Turkey Creek north of County Road 100 South in LaGrange County; and

(D) Rainbow Pit located in the Pigeon River Fish and Wildlife Area approximately one and one-tenth (1.1) miles east of Ontario in LaGrange County.

(Natural Resources Commission; 312 IAC 9-6-6; filed May 12, 1997, 10:00 a.m.: 20 IR 2715; filed May 28, 1998, 5:14 p.m.: 21 IR 3719; errata filed Aug 25, 1998, 3:02 p.m.: 22 IR 125; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1537)

SECTION 12. 312 IAC 9-7-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-7-2 Sport fishing methods, except on the Ohio River

Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 2. (a) Except as provided under section 13 of this rule with respect to the Ohio River, this section governs the lawful methods for fishing under this rule.

(b) An individual may take fish with the aid of illumination of a spotlight, search light, or artificial light.

(c) An individual may take fish with not more than three (3) poles, hand lines, or tip-ups at a time. Except as provided in subsection (g), affixed to each line shall be no more than (2) hooks or two (2) artificial baits or harnesses for use with live bait.

(d) ~~It is unlawful to~~ **A person must not** take fish from waters containing state-owned fish, waters of this state, or boundary waters by means of a hook dragged or jerked through the water with the intent to snag fish on contact.

(e) ~~It is unlawful to~~ **A person must not** take trout or salmon from a waterway unless the fish is hooked in the mouth.

(f) ~~It is unlawful to~~ **A person must not** fish with more than ten (10) limb lines or drop lines at a time. Each line shall have not more than one (1) hook affixed and must bear a legible tag with the name and address of the user. Each line shall be attended at least once every twenty-four (24) hours. A limb line or drop line shall not be used within three hundred (300) yards of a dam which wholly or partly crosses a waterway.

(g) ~~It is unlawful to~~ **A person must not** ice fish, except as provided ~~in this subsection.~~ **as follows:**

(1) A tip-up must be constantly in sight of the user and must have affixed a legible tag bearing the name and address of the user.

(2) An ice ~~shanty~~ **fishing enclosure that is placed on the waters of this state** must bear the name and address of the owner visibly in three (3) inch block letters on ~~the door.~~ **at least one (1) exterior vertical side.** At least one (1) red reflector, ~~shall~~ **or a three (3) inch by three (3) inch reflective material strip, must** be mounted on each exterior side of ~~a shanty.~~ **an ice fishing enclosure.**

(3) An ice ~~shanty~~ **fishing enclosure** must be removed from waters of this state before ice-out.

(4) If an ice ~~shanty~~ **fishing enclosure** is used after February 15 of a calendar year, the ~~shanty~~ **ice fishing enclosure** must be removed daily.

(5) As used in this subsection, "ice fishing enclosure" means an ice shanty or ice fishing tent.

(h) ~~It is unlawful to~~ **A person must not** take fish with more than one (1) trot line, set line, or throw line. A line must have no more than fifty (50) hooks affixed. A trot line must be anchored to the bottom or set not less than three (3) feet below the surface of the water. A legible tag with the name and address of the user must be affixed to each trot line. Each trot line must be attended at least once every twenty-four (24) hours. It is unlawful to take fish from Lake Michigan with a trot line, set line, or throw line.

(i) ~~It is unlawful to~~ **A person must not** take fish from a lake with free float lines or to fish from a waterway with more than five (5) free-float lines. Not more than one (1) hook shall be affixed to each line. A float shall bear the name and address of the user and must not be constructed of glass. Each free-float line must be in constant attendance by the person fishing.

(j) ~~It is unlawful to~~ **A person must not** possess a fish spear, gig, gaff, pitchfork, bowfishing equipment, crossbow, grab hook, spear gun, club, snag hook, or underwater spear in, on, or adjacent to:

(1) the Galena River (LaPorte County);
(2) Trail Creek (LaPorte County);
(3) the East Branch of the Little Calumet River (LaPorte and Porter Counties);
(4) Salt Creek (Porter County);
(5) the West Branch of the Little Calumet River (Lake and Porter Counties);
(6) Burns Ditch (Porter and Lake Counties);
(7) Deep River downstream from the dam at Camp 133 (Lake County); or
(8) the tributaries of these waterways.

(k) ~~It is unlawful to~~ **A person must not** fish the waterways described in subsection (j) or from the St. Joseph River and its tributary streams from the Twin Branch dam downstream to the Michigan state line (St. Joseph County) with more than one (1) single hook per line or one (1) artificial bait or harness for use with live bait. Single hooks, including those on artificial baits, shall not exceed one-half (½) inch from point to shank. Double and treble hooks on artificial baits shall not exceed three-eighths (⅜) inch from point to shank.

(l) ~~It is unlawful to~~ **A person must not** take smelt from other than Lake Michigan and Oliver Lake in LaGrange County by the use of dip nets, seines, or nets except from March 1 through May 30 with either of the following:

(1) One (1) dip net not to exceed twelve (12) feet in diameter.
(2) One (1) seine or net not to exceed twelve (12) feet long and six (6) feet deep and having a stretch mesh larger than one and one-half (1½) inches.

Each seine or net shall have affixed a legible tag with the name and address of the user.

(m) An individual may, by means of a fish spear, gig, speargun, or underwater spear, take only any sucker, carp, gar, bowfin, buffalo, or shad and only from the following waterways:

(1) West Fork of the White River from its junction with the East Fork upstream to the dam below the Harding Street generating plant of the Indianapolis Power and Light Company in Marion County.
(2) East Fork of the White River from its junction with the West Fork upstream to the dam at the south edge of the city of Columbus in Bartholomew County.
(3) White River from its junction with the West Fork of the White River and East Fork of the White River to its junction with the Wabash River in Gibson, Knox, and Pike Counties.
(4) Wabash River from its junction with the Ohio River upstream to State Road 13 at the south edge of the city of Wabash in Wabash County.
(5) Tippecanoe River upstream from its junction with the Wabash River to one-half (½) mile below its junction with Big Creek in Carroll County. (It is unlawful to possess a fish spear or fish gig in, on, or adjacent to the Tippecanoe River from one-half (½) mile below its junction with Big Creek in

Carroll County upstream to the Oakdale Dam which forms Lake Freeman.)
(6) Maumee River from the Ohio state line upstream to the Anthony Boulevard Bridge in the city of Fort Wayne.
(7) Kankakee River from the Illinois state line upstream to State Road 55 bridge south of the city of Shelby in Lake County.
(8) St. Joseph River in St. Joseph and Elkhart Counties.

(n) An individual may use a pitchfork or bow and arrow on a waterway only:
(1) to take any sucker, carp, gar, bowfin, buffalo, or shad; between
(2) sunrise and sunset.

(o) In addition to any other lawful method, an individual may take a sucker, carp, gar, bowfin, buffalo, or shad:
(1) by bow and arrows from Lake Michigan; or
(2) by spear, gig, spear gun, underwater spear, pitchfork, or bow and arrows from another lake.

(p) An individual may take a sucker, carp, gar, or bowfin with not more than one (1) snare only between sunrise and sunset. *(Natural Resources Commission; 312 IAC 9-7-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2716; filed May 28, 1998, 5:14 p.m.: 21 IR 3719; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1537)*

SECTION 13. 312 IAC 9-7-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-7-3 Catfish
Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 3. (a) ~~It is unlawful to~~ **A person must not** possess channel catfish, blue catfish, or flathead catfish taken from a waterway unless those catfish are at least ten (10) inches long.

(b) Except as otherwise provided in subsection (c), the daily bag limit is ten (10) for any combination of channel catfish, blue catfish, and flathead catfish taken from a lake.

(c) Channel catfish may be taken from Gibson Lake (Gibson County) **and Turtle Creek Reservoir (Sullivan County)** without regard to a bag limit. *(Natural Resources Commission; 312 IAC 9-7-3; filed May 12, 1997, 10:00 a.m.: 20 IR 2718; filed May 28, 1998, 5:14 p.m.: 21 IR 3721; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1539)*

SECTION 14. 312 IAC 9-7-6 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-7-6 Black bass
Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 6. (a) Except as otherwise provided in this section, the aggregate daily bag limit is five (5) black bass.

(b) The aggregate daily bag limit is three (3) for black bass taken from Lake Michigan. A person must not possess more than three (3) black bass while fishing in or on Lake Michigan.

(c) Except as otherwise provided in this section, the minimum size limit for black bass taken from a waterway is twelve (12) inches but is fourteen (14) inches for black bass taken from lakes (including Lake Michigan).

(d) No minimum length limit for largemouth bass applies for the lakes listed in this subsection as follows:
(1) Brownstown Pit in Jackson County.
(2) Burdette Park Lakes in Vanderburgh County.
(3) Chandler Town Lake in Warrick County.
(4) Cypress Lake in Jackson County.
(5) Deming Park Lakes in Vigo County.
(6) Garvin Park Lake in Vanderburgh County.
(7) Glen Miller Pond in Wayne County.
(8) Hayswood Lake in Harrison County.
(9) Henry County Memorial Park Lake in Henry County.
(10) Hovey Lake in Posey County.
(11) Krannert Lake in Marion County.
(12) Lake Sullivan in Marion County.
(13) Ruster Lake in Marion County.
(14) Schnebelt Pond in Dearborn County.

(e) A person must not take or possess a largemouth bass unless the largemouth bass is less than twelve (12) inches long or more than fifteen (15) inches long from the following designated waters:
(1) Buffalo Trace Lake in Harrison County.
(2) Celina Lake in Perry County.
(3) Delaney Park Lake in Washington County.
(4) Indian Lake in Perry County.
(5) Saddle Lake in Perry County.
(6) Scales Lake in Warrick County.
(7) Shakamak State Park Lakes in Clay County, Greene County, and Sullivan County.
(8) Tipsaw Lake in Perry County.
(9) ~~Westwood Run in Henry~~ **Ferdinand State Forest Lake in Dubois** County.

(f) The daily bag limit is one (1) largemouth bass from Turtle Creek Reservoir in Sullivan County. A person must not take or possess a largemouth bass from Turtle Creek Reservoir unless the largemouth bass is at least twenty (20) inches long.

(g) A person must not take or possess a largemouth bass from Patoka Lake (Orange, Crawford, and Dubois Counties) or Dogwood Lake (Daviess County) unless the largemouth bass is at least fifteen (15) inches long.

(h) A person must not take or possess a largemouth bass from Harden Lake (Parke County) unless the largemouth bass is at least sixteen (16) inches long.

(i) The daily bag limit is two (2) largemouth bass, and a person must not take or possess a largemouth bass unless the largemouth bass is at least eighteen (18) inches long, from the following designated waters:
(1) Tri-County State Fish and Wildlife Area.
(2) Robinson Lake in Whitley County and Kosciusko County.
(3) Ball Lake in Steuben County.
(4) Gibson Lake in Gibson County.

(j) A person must not take or possess a largemouth bass from Dove Hollow Lake at Glendale State Fish and Wildlife Area.

(k) If this section prohibits a person from taking or possessing a black bass from a specified lake or waterway, a person must not possess a bass of the prohibited class on or adjacent to the lake or waterway. *(Natural Resources Commission; 312 IAC 9-7-6; filed May 12, 1997, 10:00 a.m.: 20 IR 2718; filed May 28, 1998, 5:14 p.m.: 21 IR 3721; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1539)*

SECTION 15. 312 IAC 9-7-12 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-7-12 Walleye; sauger; saugeye
Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 12. (a) The daily bag limit is six (6) for any combination of walleye, sauger, or saugeye.

(b) Except on ~~Sullivan Lake and~~ the Ohio River, and as provided in subsection (c), a person must not possess a walleye or saugeye unless it is at least fourteen (14) inches long.

(c) A person must not possess a walleye from the St. Joseph River in St. Joseph County or Elkhart County unless it is at least fifteen (15) inches long. *(Natural Resources Commission; 312 IAC 9-7-12; filed May 12, 1997, 10:00 a.m.: 20 IR 2719; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1540)*

SECTION 16. 312 IAC 9-7-13 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-7-13 Trout and salmon
Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 13. (a) A person must not possess a brook trout, rainbow trout, or brown trout unless the trout is as follows:
(1) Except as provided in subsection (d), at least seven (7) inches long.
(2) Taken from the last Saturday of April after 5 a.m., local time, through December 31, if taken from other than a lake.

(b) Except as otherwise provided in this section, the daily bag limit is five (5) trout.

(c) Except as provided in subsection (d), the daily bag limit for lake trout is three (3).

(d) A person must not possess a brown trout from Oliver Lake, Olin Lake, or Martin Lake (LaGrange County) unless the trout is at least eighteen (18) inches long. The daily bag limit is five (5) trout of which no more than one (1) shall be brown trout.

~~(d)~~ **(e)** A person must not possess a trout or salmon taken from Lake Michigan or its tributaries unless the fish is at least fourteen (14) inches long. The daily bag limit is five (5) for any combination of trout and salmon taken under this subsection, of which no more than two (2) shall be lake trout. Exempted from this subsection, however, are trout taken from the St. Joseph River in St. Joseph and Elkhart Counties and its tributaries upstream from the Twin Branch Dam.

~~(e)~~ **(f)** A person must not possess more than a single day's bag limit identified in subsection (d) while fishing on Lake Michigan.

~~(f)~~ **(g)** The areas closed to trout and salmon fishing under this section are in addition to areas closed to all fishing under 312 IAC 9-6-6. *(Natural Resources Commission; 312 IAC 9-7-13; filed May 12, 1997, 10:00 a.m.: 20 IR 2720; filed May 28, 1998, 5:14 p.m.: 21 IR 3722; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1540)*

SECTION 17. 312 IAC 9-7-17 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-7-17 Charter fishing boat operator's license
Authority: IC 14-22-2-6; IC 14-22-15
Affected: IC 14-22-15-4

Sec. 17. (a) An individual may not take another individual sport fishing for hire on:
(1) Indiana waters;
(2) waters containing state-owned fish; or
(3) state boundary waters;
without a charter fishing boat operator's license issued by the director under IC 14-22-15-4 and this section.

(b) A license holder under this section shall, on a departmental form, keep legible and accurate daily fishing records of the:
(1) species;
(2) numbers, locations, and dates of fish taken; and
(3) number of fishermen and hours fished;
while engaged in charter fishing. These daily records shall be recorded before the licensed fishing person departs the boat at the conclusion of the fishing trip.

(c) A license holder under this section shall, on a departmental form, prepare a monthly report of the information maintained on the daily fishing records. The monthly report shall be submitted to the director or the director's representative before the fifteenth day of each month following the month covered. The report shall be submitted each month regardless of whether

charter fishing activity occurs in the month covered **unless the license holder has submitted an Inactive License Form to signify that no fishing activity will take place for the remainder of the calendar year. The Inactive License Form shall be submited to the director or the director's representative before the fifteenth day of the month following the month the license is deemed inactive.**

(d) The director or the director's representative may, at any reasonable time, inspect the daily fishing records required under subsection (b) or IC 14-22-15-4. *(Natural Resources Commission; 312 IAC 9-7-17; filed May 12, 1997, 10:00 a.m.: 20 IR 2721; filed May 28, 1998, 5:14 p.m.: 21 IR 3723; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1540)*

SECTION 18. 312 IAC 9-7-18 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-7-18 Yellow perch
Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 18. **(a)** The daily bag limit is fifteen (15) yellow perch on Lake Michigan.

(b) A person must not possess more than fifteen (15) yellow perch while fishing on Lake Michigan. *(Natural Resources Commission; 312 IAC 9-7-18; filed May 28, 1998, 5:14 p.m.: 21 IR 3723; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1541)*

SECTION 19. 312 IAC 9-10-17 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-10-17 Aquaculture permit
Authority: IC 14-22-2-6
Affected: IC 14-22-27

Sec. 17. (a) A person must not import, raise, sell, or transport fish into or within Indiana without an aquaculture permit issued under this section, except as provided in:
(1) sections 14 through 15 of this rule; or
(2) subsection (b).

(b) A permit is not required under this section by a person who possesses fish, other than those listed in 312 IAC 9-6-7, and who is engaged in either of the following:
(1) The production, importation, or sale of live fish exclusively for use in the aquarium pet trade.
(2) The importation of live fish exclusively for confinement and exhibition in a zoo or another public display.

(c) An application for an aquaculture permit shall be prepared on a department form. The director may attach any appropriate conditions to a permit. The permit expires on December 31 of the year of issuance.

(d) In addition to the requirements of subsection (c), an aquaculture permit to import, produce, raise, sell, or transport triploid grass carp is based on the following conditions:
(1) No stocking of triploid grass carp may take place in public waters except as provided in IC 14-22-27.
(2) The permit holder must deliver and stock the fish.
(3) A copy of each bill of sale and triploidy certification must be conveyed to each buyer and must be retained by the permit holder for two (2) years.
(4) A purchaser of triploid grass carp must retain the bill of sale and the triploidy certification for at least two (2) years.
(5) A permit holder must submit a quarterly report on a departmental form not later than the fifteenth day of the month following the end of a quarter, **regardless of whether fish have been stocked during the time period.**
(6) Fish holding facilities, stocking reports, stocking trucks, other documents required under this subsection, and live fish may be inspected at any reasonable time by the division or a conservation officer. Not more than six (6) fish from a lot or truck load may be removed by the department for verification of the chromosome number.
(7) As used in this subsection and subsection (e), "triploid grass carp" means grass carp certified to be triploid by the U.S. Fish and Wildlife Service.

(e) In addition to the requirements of subsection (c), an aquaculture permit to import, produce, raise, sell, or transport diploid grass carp is based on the following conditions:
(1) No stocking of diploid grass carp may take place in any public or private waters except as provided in this subsection and IC 14-22-27.
(2) A live diploid grass carp may be possessed only for the purpose of producing triploid grass carp or producing diploid grass carp capable of producing triploid grass carp.
(3) A diploid grass carp may be sold only to a person who holds a valid aquaculture permit.
(4) All diploid grass carp must be held in a closed aquaculture system.
(5) A permit holder who imports, produces, raises, sells, or transports diploid grass carp must submit an annual report to the division on a department form.
(6) A permit holder who imports, produces, raises, sells, or transports diploid grass carp must be capable of accurately determining the number of sets of chromosomes of the fish in the possession of the permit holder under certification procedures of the U.S. Fish and Wildlife Service.
(Natural Resources Commission; 312 IAC 9-10-17; filed May 12, 1997, 10:00 a.m.: 20 IR 2736; filed May 28, 1998, 5:14 p.m.: 21 IR 3730; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1541)

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TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #01-124(F)

DIGEST

Amends 312 IAC to make changes to conform rules to statutes, to conform with rule recodifications from 310 IAC to 312 IAC, to conform with agency restructuring, and to provide other technical corrections. Includes amendments to the definition of "public freshwater lake" and to standards for underwater beaches. Clarifies application of property use rules to the Indiana State Museum. Effective 30 days after filing with the secretary of state.

312 IAC 2-3-3	**312 IAC 10-5-8**
312 IAC 3-1-2	**312 IAC 11-2-17**
312 IAC 3-1-3	**312 IAC 11-4-4**
312 IAC 3-1-14	**312 IAC 26-1-13**
312 IAC 3-1-18	**312 IAC 26-2-3**
312 IAC 8-1-4	**312 IAC 26-3-4**
312 IAC 10-5-4	**312 IAC 26-4-5**

SECTION 1. 312 IAC 2-3-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 2-3-3 Notice of consideration of application for certain designated licenses; service by license applicant

Authority: IC 14-11-4-9
Affected: IC 4-21.5; IC 14-22-26-3; IC 14-26-2; IC 14-26-5; IC 14-28-1; IC 14-29-1; IC 14-29-3; IC 14-29-4

Sec. 3. (a) Notice must be given under this section before a new license or a license renewal is issued by the department under the following statutes and rules:

(1) IC 14-26-2 and ~~310 IAC 6-2~~ **312 IAC 11-1 through 312 IAC 11-5** (lake preservation).

(2) IC 14-26-5 (lowering of lakes).

(3) IC 14-29-4 (construction of channels).

(4) IC 14-28-1 and ~~310 IAC 6-1 (flood control).~~ **312 IAC 10 (flood plain management).**

(5) IC 14-22-26-3(2) **and 312 IAC 9-11** (possession of wild animals that may be harmful or dangerous to plants or animals).

(6) IC 14-29-3 and ~~310 IAC 21~~ **312 IAC 6-5** (removal of substances from navigable waters of the state), including under IC 14-29-1 where the removal of substances from navigable waters is an element of the license.

(b) The director or the department may not issue a license until thirty (30) days after the notice required under this section has been given. Notice may be given at any time after an application for a license is filed with the department.

(c) Service of a notice must be provided by the applicant at its expense as follows:

(1) If a license application affects real property, at least one (1) of the owners of each parcel of real property reasonably known to be adjacent to the affected real property.

(2) In addition to service of the notice as required in subdivision (1), the license applicant shall cause notice to be given by publication (with proof of service made by a publisher's affidavit) in any of the following circumstances:

(A) The current address of a person entitled to notice under this rule is not ascertainable.

(B) The identity or existence of a person entitled to notice is not ascertainable.

(C) The department directs the applicant to cause notice by publication because the license application is likely to evoke general public interest.

(d) Service of a notice must be provided by the department to those persons who have requested notification of a license application that:

(1) affects the specific real property to which the application relates; or

(2) is of the same type as the application.

(e) Proof of service of the notifications required under subsection (c)(1) shall be provided by the applicant to the department as follows:

(1) If service is made by certified mail with return receipt requested, by providing a mailing receipt showing successful return from the person notified.

(2) If service is made in person or by first class mail (with a certificate of mailing), by an affidavit or affirmation on a department form including the following:

(A) The names and addresses of each person served.

(B) The date of personal service or mailing.

(C) If service was made by mail, that a period of at least twenty-one (21) days has passed without the mailing being returned as undelivered or undeliverable.

(f) A notice under this section shall do the following:

(1) Provide the name and address of the applicant.

(2) Identify the statute and rule under which a permit is sought.

(3) Identify the specific real property to which the application relates (unless the license is not related to specific real property).

(4) Set forth any other information required by statute or rule relative to the particular type of permit sought.

(5) Include an explanation of the options available to the persons served. These options shall be as follows:

(A) File a petition with the director requesting an informal

hearing that is signed by at least twenty-five (25) individuals who are at least eighteen (18) years of age and who:

(i) reside in the county where the licensed activity would take place; or

(ii) own real property within one (1) mile of the site of the proposed or existing licensed activity.

(B) Request the department to notify the person in writing when an initial determination is made to issue or deny the permit. Following the receipt of notice under this clause, the person may request administrative review by the commission, under IC 4-21.5 and 312 IAC 3-1, of the initial determination by the director.

(Natural Resources Commission; 312 IAC 2-3-3; filed Aug 20, 1997, 3:16 p.m.: 21 IR 27; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1542)

SECTION 2. 312 IAC 3-1-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 3-1-2 Ultimate authority

Authority: IC 14-10-2-4
Affected: IC 4-21.5-4; IC 14-34-4-13; IC 14-34-15-7; IC 25-17.6

Sec. 2. (a) Except as provided in subsection (b), the commission is the ultimate authority for the department and any department board.

(b) An administrative law judge is the ultimate authority for an administrative review under the following:

(1) An order under IC 14-34, except for a proceeding:

(A) concerning the approval or disapproval of a permit application or permit renewal under IC 14-34-4-13; or

(B) a proceeding for suspension or revocation of a permit under IC 14-34-15-7.

(2) An order granting or denying temporary relief under IC 14-34 or an order voiding, terminating, modifying, staying, or continuing an emergency or temporary order under IC 4-21.5-4.

(3) An order designated as a final order in section 9 of this rule.

(c) An administrative law judge is also the ultimate authority for the board of ~~certification~~ **licensure** for professional geologists under IC 25-17.6. *(Natural Resources Commission; 312 IAC 3-1-2; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1317; filed Oct 19, 1998, 10:12 a.m.: 22 IR 749; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1543)*

SECTION 3. 312 IAC 3-1-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 3-1-3 Initiation of a proceeding for administrative review

Authority: IC 14-10-2-4
Affected: IC 4-21.5-3-7; IC 4-21.5-3-8; IC 4-21.5-4; IC 14-34; IC 14-37-9; IC 25

Sec. 3. (a) A proceeding before the commission, under IC 4-21.5, as well as administrative review of a determination of the board of ~~certification~~ **licensure** for professional geologists, is initiated when one (1) of the following is filed with the Division of Hearings, Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, Indiana:

(1) A petition for review under IC 4-21.5-3-7.

(2) A complaint under IC 4-21.5-3-8.

(3) A request for temporary relief under IC 14-34.

(4) A request to issue or for review of an issued emergency or other temporary order under IC 4-21.5-4.

(5) A request concerning an integration order under IC 14-37-9.

(6) An answer to an order to show cause under section 5 of this rule.

(7) A referral by the director of a petition for and challenge to litigation expenses under section 13(g) of this rule.

(b) As soon as practicable after the initiation of administrative review under subsection (a), the division director shall appoint an administrative law judge to conduct the proceeding. *(Natural Resources Commission; 312 IAC 3-1-3; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1317; filed Oct 19, 1998, 10:12 a.m.: 22 IR 749; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1543)*

SECTION 4. 312 IAC 3-1-14 IS AMENDED TO READ AS FOLLOWS:

312 IAC 3-1-14 Court reporter; transcripts

Authority: IC 14-10-2-4
Affected: IC 14; IC 25-17.6

Sec. 14. (a) The commission (or, for administrative review of orders under IC 25-17.6, the board of ~~certification~~ **licensure** for professional geologists) shall employ and engage the services of a stenographer or court reporter, either on a full-time or a part-time basis, to record evidence taken during a hearing.

(b) A party may obtain a transcript of the evidence upon a written request to the administrative law judge.

(c) The party who requests a transcript under subsection (b) shall pay the cost of the transcript:

(1) as billed by the court reporting service; or

(2) if the transcript is prepared by an employee of the commission, as determined from time to time by the commission on a per page basis after consideration of all expenses incurred in the preparation of the transcript.

(d) **For a proceeding in which the commission or its administrative law judge is the ultimate authority,** a court reporter who is not an employee of the commission will be engaged to record a hearing upon a written request by a party filed at least forty-eight (48) hours before a hearing. *(Natural Resources Commission; 312 IAC 3-1-14; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1322; filed Oct 19, 1998, 10:12 a.m.: 22 IR 750; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1543)*

SECTION 5. 312 IAC 3-1-18 IS AMENDED TO READ AS FOLLOWS:

312 IAC 3-1-18 Petitions for judicial review
Authority: IC 14-10-2-4
Affected: IC 4-21.5-5-8; IC 14; IC 25

Sec. 18. (a) A person who wishes to take judicial review of a final agency action entered under this rule shall serve copies of a petition for judicial review upon the persons described in IC 4-21.5-5-8.

(b) The copy of the petition required under IC 4-21.5-5-8(a)(1) to be served upon the ultimate authority shall be served at the following address:

Division of Hearings
Natural Resources Commission
Indiana Government Center-South
402 West Washington Street, Room W272
Indianapolis, Indiana 46204

This address applies whether the commission or an administrative law judge is the ultimate authority.

(c) Where the department or the state historic preservation review board is a party to a proceeding under this rule, a copy of the petition required under IC 4-21.5-5-8(a)(4) to be served upon each party shall be served at the following address:

Director
Department of Natural Resources
Indiana Government Center-South
402 West Washington Street, Room W256
Indianapolis, Indiana 46204

(d) Where the board of ~~certification~~ **licensure** for professional geologists is a party to a proceeding under this rule, a copy of the petition required under IC 4-21.5-5-8(a)(4) to be served upon each party shall be served at the following address:

Indiana State Geologist
Indiana University
611 North Walnut Grove
Bloomington, Indiana 47405-2208

(e) The commission and its administrative law judge provide the forum for administrative review under this rule. Neither the commission nor the administrative law judge is a party. *(Natural Resources Commission; 312 IAC 3-1-18; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1323; filed Oct 19, 1998, 10:12 a.m.: 22 IR 750; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1544)*

SECTION 6. 312 IAC 8-1-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 8-1-4 Definitions
Authority: IC 14-10-2-4; IC 14-11-2-1
Affected: IC 14-22-11-1; IC 14-31-1

Sec. 4. The following definitions are supplemental to those set forth at 312 IAC 1 and apply throughout this article:

(1) "Authorized representative" means the director or another person designated by the director.
(2) "Berry" means the fruiting body of:
(A) a blackberry;
(B) a blueberry;
(C) a dewberry;
(D) an elderberry;
(E) a gooseberry;
(F) a huckleberry;
(G) a mulberry;
(H) a raspberry;
(I) a serviceberry; and
(J) a strawberry.
(3) "DNR property" means land and water owned, licensed, leased, or dedicated under IC 14-31-1, or under easement to the state or managed by the department. The following areas are, however, exempted from the term:
(A) Public freshwater lakes.
(B) Navigable waterways.
(C) Buildings and grounds **(other than those of the Indiana state museum)** not located at recreational, natural, or historic sites.
(4) "Fallen cone" means the fruiting body of a coniferous tree that is no longer attached to a living tree.
(5) "Firearm or bow and arrows" means:
(A) a firearm;
(B) an air gun;
(C) a CO_2 gun;
(D) a spear gun;
(E) a bow and arrows;
(F) a crossbow; or
(G) another mechanical device;
that can be discharged and is capable of causing injury or death to an animal or damage to property.
(6) "Fishing tournament" means an activity involving fifteen (15) or more watercraft used for taking fish where:
(A) persons compete for a trophy, citation, cash, or prize; or
(B) a fee is charged to participants.
(7) "Fruit" means the fruiting body of:
(A) cherries;
(B) grapes;
(C) apples;
(D) hawthorns;
(E) persimmons;
(F) plums;
(G) pears;
(H) pawpaws; and
(I) roses.
(8) "Green" means the aboveground shoots or leaves of:
(A) asparagus;
(B) dandelion;
(C) mustard;
(D) plantain; and
(E) poke.

(9) "Group boat dock" means an artificial basin or enclosure for the reception of watercraft that is owned and maintained by adjacent landowners for their private usage.

(10) "Leaf" means the leaf of a woody plant for use in a leaf collection or similar academic project.

(11) "License" means:

(A) a license;

(B) a permit;

(C) an agreement;

(D) a contract;

(E) a lease;

(F) a certificate; or

(G) other form of approval;

issued by the department. A license may authorize an activity otherwise prohibited by this rule.

(12) "Mushroom" means edible fungi.

(13) "Nut" means the seeds of:

(A) hazelnuts;

(B) hickories;

(C) oaks;

(D) pecans; and

(E) walnuts.

(14) "Recreation area" means an area that is managed by the department for specific recreation activities.

(15) "Vehicle" means a motorized conveyance.

(Natural Resources Commission; 312 IAC 8-1-4; filed Oct 28, 1998, 3:32 p.m.: 22 IR 738, eff Jan 1, 1999; filed Nov 5, 1999, 10:14 a.m.: 23 IR 552, eff Jan 1, 2000; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1544)

SECTION 7. 312 IAC 10-5-4, AS ADDED AT 24 IR 3394, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 10-5-4 Exemption from licensing requirements for qualified utility line crossings

Authority: IC 14-10-2-4; IC 14-28-2-24
Affected: IC 13-11-2-260; IC 14-27-7; IC 14-28-1-29; IC 14-33; IC 36-9-27

Sec. 4. (a) This section establishes an exemption for the placement of a qualified utility line crossing in a floodway.

(b) This section does not authorize the placement of a qualified utility line crossing in the following locations:

(1) Within a river or stream listed in the Indiana Register at 16 IR 1677 in the Outstanding Rivers List for Indiana.

(2) Within a salmonid stream designated under ~~327 IAC 2-1-6(c)(1).~~ **327 IAC 2-1.5-5(a)(3).**

(3) Below the ordinary high watermark of a navigable waterway listed in the Indiana Register at 20 IR 2920 (1997) ~~of~~ **in** the Roster of Indiana Waterways Declared Navigable or Nonnavigable unless the utility line is placed beneath the bed of waterway under subsection (c)(8).

(4) Where the project requires an individual permit from the United States Army Corps of Engineers under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

(c) A person who wishes to place a utility line crossing under this section must conform to the following conditions:

(1) Tree removal and brush clearing shall be contained and minimized within the utility line crossing area. No more than one (1) acre of trees shall be removed within the floodway.

(2) Construction activities within the waterway from April 1 through June 30 shall not exceed a total of two (2) calendar days.

(3) Best management practices shall be used during and after construction to minimize erosion and sedimentation.

(4) Following the completion of construction, disturbed areas shall be reclaimed and revegetated. Disturbed areas shall be mulched with straw, wood fiber, biodegradable erosion blanket, or other suitable material. To prevent erosion until revegetated species are established, loose mulch shall be anchored by crimping, tackifiers, or netting. To the extent practicable, revegetation must restore species native to the site. If revegetation with native species is not practicable, revegetation shall be performed by the planting of a mixture of red clover, orchard grass, timothy, perennial rye grass, or another species that is approved by the department as being suitable to site and climate conditions. In no case shall tall fescue be used to revegetate disturbed areas.

(5) Disturbed areas with slopes of three to one (3:1) or steeper, or areas where run-off is conveyed through a channel or swale, shall be stabilized with erosion control blankets or suitable structural armament.

(6) No pesticide will be used on the banks.

(7) If a utility line transports a substance that may cause "water pollution" as defined in IC 13-11-2-260, the utility line will be equipped with an emergency closure system.

(8) If a utility line is placed beneath the bed of a river or stream, the following conditions are met:

(A) Cover of at least three (3) feet measured perpendicularly to the utility line is provided between the utility line and the banks.

(B) If the placement of a utility line is not subject to regulation under IC 14-28-1-29, IC 14-33, or IC 36-9-27, cover is provided as follows:

(i) At least three (3) feet, measured perpendicularly to the utility line, between the lowest point of the bed and the top of the utility line or its encasement, whichever is higher, if the bed is composed of unconsolidated materials.

(ii) At least one (1) foot, measured perpendicularly to the line, between the lowest point of the bed and the top of the utility line or its encasement, which is higher, if the bed is composed of consolidated materials.

(C) If the placement of the utility line is subject to regulation under IC 14-28-1-29, IC 14-33, or IC 36-9-27, cover is provided as follows:

(i) At least three (3) feet, measured perpendicularly to the utility line, between the design bed and the top of the line or its encasement, whichever is higher, if the bed is composed of unconsolidated materials.

(ii) At least one (1) foot, measured perpendicularly to the line, between the design bed and the top of the line or its encasement, whichever is higher, if the bed is composed of consolidated materials.

(D) Negative buoyancy compensation is provided where the utility line has a nominal diameter of at least eight (8) inches and transports a substance having a specific gravity of less than one (1).

(9) If a utility line is placed above the bed of a river or stream, the following conditions are met:

(A) Except as provided in clauses (B) and (C), minimum clearance is provided from the lowest point of the utility line (determined at the temperature, load, wind, length of span, and type of supports that produce the greatest sag) calculated as the higher of the following:

(i) Twelve and one-half (12½) feet above the ordinary high watermark.

(ii) Three (3) feet above the regulatory flood elevation.

(B) If the river or stream is a navigable waterway that is subject to IC 14-28-1, the utility line that crosses over the waterway must be placed to provide the greater of the following:

(i) The minimum clearance required under clause (A).

(ii) The minimum clearance required for the largest watercraft that is capable of using the waterway. The utility must consult in advance with the department to determine the minimum clearance for watercraft at the crossing.

(C) If a utility line is attached to or contained in the embankment of an existing bridge or culvert, no portion of the utility line or its support mechanism may project below the low structure elevation or otherwise reduce the effective waterway area.

(10) A utility line placed in a dam or levee regulated under IC 14-27-7 does not qualify for an exemption under this subsection.

(d) A person who elects to act under this section must comply with the general conditions under subsection (c). Failure to comply with these terms and conditions may result in the revocation of the general authorization, a civil penalty, a commission charge, and any other sanction provided by law for the violation of a permit issued under IC 14-28-1, and, if the waterway is navigable, the violation of a license issued under IC 14-29-1. *(Natural Resources Commission; 312 IAC 10-5-4; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3394, eff Jan 1, 2002; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1545)*

SECTION 8. 312 IAC 10-5-8, AS ADDED AT 24 IR 3398, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 10-5-8 Exemption from licensing requirements for qualified outfall projects

Authority: IC 14-10-2-4; IC 14-28-1-5
Affected: IC 14-28-1; IC 14-29-1

Sec. 8. (a) This section establishes an exemption for the placement of a qualified outfall project in a floodway.

(b) This section does not authorize the placement of an outfall project:

(1) within a river or stream listed in the Indiana Register at 16 IR 1677 in the Outstanding Rivers List for Indiana;

(2) within a salmonid stream designated under ~~327 IAC 2-1-6(c)(1)~~; **327 IAC 2-1.5-5(a)(3);**

(3) below the ordinary high watermark of a navigable waterway listed in the Indiana Register at 15 IR 2385 in the Roster of Indiana Waterways Declared Navigable; or

(4) where the project requires an individual permit from the United States Army Corps of Engineers under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

(c) A person who wishes to place an outfall project under this section must conform to the following conditions:

(1) Tree removal and brush clearing shall be contained and minimized within the outfall project area. No more than one (1) acre of trees shall be removed within the floodway.

(2) Construction activities within the waterway from April 1 through June 30 shall not exceed a total of two (2) calendar days.

(3) Best management practices shall be used during and after construction to minimize erosion and sedimentation.

(4) Following the completion of construction, disturbed areas shall be reclaimed and revegetated. Disturbed areas shall be mulched with straw, wood fiber, biodegradable erosion blanket, or other suitable material. To prevent erosion until revegetated species are established, loose mulch shall be anchored by crimping, tackifiers, or netting. To the extent practicable, revegetation must restore species native to the site. If revegetation with native species is not practicable, revegetation shall be performed by the planting of a mixture of red clover, orchard grass, timothy, perennial rye grass, or another species that is approved by the department as being suitable to site and climate conditions. In no case shall tall fescue be used to revegetate disturbed areas.

(5) Disturbed areas with slopes of three to one (3:1) or steeper, or areas where run-off is conveyed through a channel or swale, shall be stabilized with erosion control blankets or suitable structural armament.

(6) Areas in the vicinity of concentrated discharge points shall be protected with structural armament to the normal water level of the waterway. Any riprap must have an average minimum diameter of six (6) inches and extend below the normal water level.

(7) The size of the outfall project shall not exceed any of the following dimensions:

(A) Ten (10) square feet in cross sectional flow area as determined by the summation of cross sectional area of conduits within the outfall project area for an outfall structure.

(B) Five (5) feet deep as determined by the difference in elevation between the lowest bank elevation and the bottom of the swale for an outfall structure.

(C) An area of disturbance thirty (30) feet wide.

(8) Adequate cover shall be provided to ensure the structural integrity of the outfall conduit and to allow suitable vegetative growth.
(9) Within the project area, the postconstruction ground surface elevation shall be less than six (6) inches above the preconstruction elevation.
(10) The outlet structure shall:
(A) be supported by a headwall, slopewall, or anchored end section; and
(B) conform to the bank of the waterway.
(11) If flow passing through the outfall project in a reverse direction would induce flood damages during a regulatory flood, the outfall project shall be equipped with a closure mechanism.
(12) Construction debris and material not used as backfill shall be removed from the floodway.

(d) A person who elects to act under this section must comply with the general conditions under subsection (c). Failure to comply with these terms and conditions may result in the revocation of the general authorization, a civil penalty, a commission charge, and any other sanction provided by law for the violation of a permit issued under IC 14-28-1, and, if the waterway is navigable, the violation of a license issued under IC 14-29-1. *(Natural Resources Commission 312 IAC 10-5-8; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3398, eff Jan 1, 2002; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1546)*

SECTION 9. 312 IAC 11-2-17 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-2-17 "Public freshwater lake" defined
Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23
Affected: IC 14-26-2

Sec. 17. "Public freshwater lake" means a lake that has been used by the public with the acquiescence of a riparian owner. The term does not include any of the following:
(1) Lake Michigan.
(2) A lake lying wholly or in part within the city of **East Chicago, Gary, or** Hammond.
(3) A privately owned body of water used for the purpose of, or created as a result of, surface coal mining.
(Natural Resources Commission; 312 IAC 11-2-17; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2221; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1547)

SECTION 10. 312 IAC 11-4-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-4-4 Underwater beaches
Authority: IC 14-10-2-4; IC 14-15-7-3
Affected: IC 14-26-2

Sec. 4. (a) A written license under IC 14-26-2 and this rule is required to place material for an underwater beach within a public freshwater lake.

(b) The director or a delegate shall not issue a license for the placement of filter cloth or an impermeable material beneath or in an underwater beach.

(c) The director or a delegate shall not issue a license for the placement of an underwater beach in a significant wetland.

(d) To qualify for a license to place an underwater beach in an area of special concern, the underwater beach must:
(1) not exceed six hundred twenty-five (625) square feet;
(2) not extend more than thirty (30) feet lakeward of the normal waterline or shoreline or to a depth of six (6) feet, whichever occurs earlier;
(3) be placed on no more than one-half (½) the length of the waterline or shoreline of the riparian owner;
(4) be comprised of clean, nontoxic pea gravel;
(5) not exceed six (6) inches thick; and
(6) be thin enough or be tapered so the waterline or shoreline will not be extended lakeward when the public freshwater lake is at its average normal water level.

(e) To qualify for a license to place an underwater beach in a developed area, the underwater beach must:
(1) be comprised of clean, nontoxic pea gravel;
(2) not exceed six (6) inches thick;
(3) be placed on no more than one-half (½) the length of the waterline or shoreline of the riparian owner;
(4) extend no more than fifty (50) feet lakeward from the waterline or shoreline or beyond a depth of six (6) feet, whichever occurs earlier; and
(5) be thin enough or be tapered so the waterline or shoreline will not be extended lakeward when the public freshwater lake is at its normal water level.

(f) If beach material has been placed previously under this section, the additional material must not:
(1) extend beyond the limits of the previous beach material; and
(2) exceed the size restrictions specified in ~~subsection~~ **subsections (d) and** (e).

(g) Erosion from disturbed areas landward of the waterline or shoreline must be controlled to prevent its transport into the lake. *(Natural Resources Commission; 312 IAC 11-4-4; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2226; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1547)*

SECTION 11. 312 IAC 26-1-13 IS AMENDED TO READ AS FOLLOWS:

312 IAC 26-1-13 "SCORP" defined
Authority: IC 14-12-3-12; IC 14-12-3-13
Affected: IC 14-12-3-8

Sec. 13. "SCORP" means ~~the Indiana Statewide Comprehensive Outdoor Recreation Plan (1994-1999).~~ **"SCORP 2000-2004: A New Millennium, A New Tradition".** *(Natural*

Resources Commission; 312 IAC 26-1-13; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1276; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1547)

SECTION 12. 312 IAC 26-2-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 26-2-3 Project assurances
Authority: IC 14-12-3-13
Affected: IC 14-12-3-8

Sec. 3. (a) An applicant for a grant must provide project proposal assurances as set forth in this section.

(b) A project assurance must include the following:
(1) A definition of abbreviated terms used in the provision assurances.
(2) Assurances that the acquisition, development, and maintenance of projects will be performed under lawful departmental standards. These assurances must set forth:
(A) accommodation for handicapped persons as otherwise provided by law;
(B) conformance with state bidding and contract requirements, including a nondiscrimination clause;
(C) project processing;
(D) record maintenance, including a financial management system;
(E) terms for maintenance of a site after the completion of a project;
~~(F) if a project includes land acquisition, a demonstration of compliance with 310 IAC 18; and~~
~~(G)~~ **(F)** a demonstration the project is compatible with existing site conditions, including sewers and utility facilities.

(Natural Resources Commission; 312 IAC 26-2-3; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1276; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1548)

SECTION 13. 312 IAC 26-3-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 26-3-4 Grant application for a community park or recreation area
Authority: IC 14-12-3-13
Affected: IC 14-12-3-8

Sec. 4. A municipal corporation that seeks a grant under this rule must complete a written application in a narrative form that includes the following:
(1) An application completed on a department form.
(2) A project description that specifies:
(A) how the property will be acquired;
(B) the type of development proposed;
(C) the type of park, for example, neighborhood, community, or block; and
(D) the users expected, for example, inner city, weekend, youth, family, or senior citizens.
(3) A cost breakdown of the amount of the proposed project and assurances that at least fifty percent (50%) of the cost of the proposed project will be satisfied through public or private funds, labor, or property provided by the project sponsor.
(4) Identification of expenses and donations of property incurred before the date of the application. The responsibility established by this subdivision is a continuing responsibility that requires the applicant to update the following information submitted to the department to include expenses incurred after the date of an application but before the application is approved:
(A) The name, address, and telephone number of the person performing the work.
(B) The expenses paid or incurred by the applicant.
(C) For property donations, evidence of the donor's gift, the date given, and the value of the contribution.
(5) A description of grant assistance received from a source other than a grant under this article that has been received or is anticipated for use at the property.
(6) A description of how the project will be adapted for use by handicapped persons. ~~and conforms with 675 IAC 2.2.~~
(7) A description of how the applicant will remove or otherwise address overhead wires and other environmental intrusions on the property.
(8) A description of how the applicant provided for public participation on the proposed project. Public participation must include a public meeting that was advertised and conducted for the purpose of considering the proposed project. Where negative comments were received with respect to the proposed project, the application must specify how the subject of those comments was mitigated or why mitigation was impracticable.
(9) A summary of the natural, historical, archaeological, architectural, cultural, economic, community development, or other significance of the site. The archaeological review process must comply with ~~310 IAC 19.~~ **312 IAC 21 and 312 IAC 22.**
(10) An environmental assessment checklist.
(11) An analysis of each item set forth in section 5 of this rule with respect to the ratings of applications.
(12) An authenticated copy of a resolution by the applicant that authorizes the filing of the application and designates an individual to act on behalf of the applicant relative to the application.
(13) Maps that identify the following:
(A) The location and exterior boundaries of the property.
(B) All:
(i) leases;
(ii) permanent or temporary easements for access;
(iii) streets;
(iv) utility rights-of-way;
(v) scenic preservation easements; or
(vi) other encumbrances on the property.
Documentation to evidence the encumbrance should also be included.

(C) Any area to be acquired or developed. A development project must be properly labeled, color coded, or keyed to a legend. A deed, lease, or contract to evidence the acquisition or development should also be included, as well as any escrow agreement.

(14) Photographs of existing buildings, recreational facilities, and natural site features.

(15) A preliminary design and floor plan for each building, shelter, and other structure. The plan must be drawn to scale and show how the facility will be constructed to accommodate handicapped persons.

(16) A copy of any deed, lease, or easement for the parcels to be acquired or developed.

(17) A copy of any construction permit required by a governmental agency to implement the plans.

(Natural Resources Commission; 312 IAC 26-3-4; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1278; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1548)

SECTION 14. 312 IAC 26-4-5 IS AMENDED TO READ AS FOLLOWS:

312 IAC 26-4-5 Professional standards for historic preservation projects involving acquisitions

Authority: IC 14-12-3-13
Affected: IC 14-12-3-8; IC 14-21-1

Sec. 5. The following standards apply if a project under this rule involves land acquisition:

~~(1) The project must demonstrate compliance with 310 IAC 18.~~

~~(2)~~ **(1)** Careful consideration shall be given to the type and extent of property rights that are required to assure the preservation of the historic resource. The preservation objective shall determine the exact property rights to be acquired.

~~(3)~~ **(2)** A property shall be acquired in fee simple when absolute ownership is required to ensure its preservation.

~~(4)~~ **(3)** Every reasonable effort shall be made to acquire sufficient property with the historic resource to protect its historical, archaeological, architectural, or cultural significance.

(Natural Resources Commission; 312 IAC 26-4-5; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1281; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1549)

LSA Document #01-124(F)
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Incorporated Documents Filed with Secretary of State: None

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #00-267(F)

DIGEST

Amends 326 IAC 2 concerning amendments necessary to obtain U.S. EPA approval of the prevention of significant deterioration (PSD) rules as part of the state implementation plan and federal approval of the Title V permit program. Adds 326 IAC 2-2.5 concerning pollution control projects. Amends 326 IAC 3-5-1, 326 IAC 4-2-1, 326 IAC 5-1-1, 326 IAC 6-1-1, 326 IAC 6-2-1, 326 IAC 6-5-1, 326 IAC 6-6-1, 326 IAC 7-1.1-1, 326 IAC 7-1.1-2, 326 IAC 7-3-1, 326 IAC 8-1-1, 326 IAC 9-1-2, 326 IAC 10-1-1, 326 IAC 11-1-1, 326 IAC 11-2-1, 326 IAC 11-3-1, 326 IAC 11-4-1, 326 IAC 11-5-1, 326 IAC 12-1-1, 326 IAC 14-1-3, and 326 IAC 15-1-1 to maintain consistency. Repeals 326 IAC 2-7-25. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: December 1, 2000, Indiana Register (24 IR 765).

Second Notice of Comment Period and Notice of First Hearing: April 1, 2001, Indiana Register (24 IR 2211).

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

Date of First Hearing: June 6, 2001.

Proposed Rule and Notice of Second Hearing: July 1, 2001, Indiana Register (24 IR 3103).

Change of Notice of Public Hearing: October 1, 2001

Date of Second Hearing: October 3, 2001.

326 IAC 2-1.1-3	**326 IAC 2-7-24**
326 IAC 2-1.1-9.5	**326 IAC 2-7-25**
326 IAC 2-2-1	**326 IAC 3-5-1**
326 IAC 2-2-2	**326 IAC 4-2-1**
326 IAC 2-2-3	**326 IAC 5-1-1**
326 IAC 2-2-4	**326 IAC 6-1-1**
326 IAC 2-2-5	**326 IAC 6-2-1**
326 IAC 2-2-6	**326 IAC 6-5-1**
326 IAC 2-2-7	**326 IAC 6-6-1**
326 IAC 2-2-9	**326 IAC 7-1.1-1**
326 IAC 2-2-12	**326 IAC 7-1.1-2**
326 IAC 2-2-14	**326 IAC 7-3-1**
326 IAC 2-2.5	**326 IAC 8-1-1**
326 IAC 2-6.1-2	**326 IAC 9-1-2**
326 IAC 2-6.1-5	**326 IAC 10-1-1**
326 IAC 2-7-1	**326 IAC 11-1-1**
326 IAC 2-7-2	**326 IAC 11-2-1**
326 IAC 2-7-4	**326 IAC 11-3-1**
326 IAC 2-7-5	**326 IAC 11-4-1**
326 IAC 2-7-11	**326 IAC 11-5-1**
326 IAC 2-7-12	**326 IAC 12-1-1**
326 IAC 2-7-16	**326 IAC 14-1-3**
326 IAC 2-7-20	**326 IAC 15-1-1**

SECTION 1. 326 IAC 2-1.1-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-1.1-3 Exemptions

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

Sec. 3. (a) Operation of a source that consists solely of emission units, operations, or processes identified in this section is exempt from the registration and permitting requirements of this article unless the potential to emit any regulated pollutant from the entire source exceeds an emission threshold establishing the requirement to have a registration or permit under this article.

(b) *(Voided by P.L.112-2000, SECTION 7, effective March 16, 2000.)*

(c) Construction or modification of any emission unit, operation, or process identified in this section is exempt from the new source requirements in 326 IAC 2-5.1-2 for registrations, new source requirements in 326 IAC 2-5.1-3 for permits, modification approval requirements in 326 IAC 2-7-10.5, and permit revision requirements in 326 IAC 2-6.1-6 and 326 IAC 2-8-11.1, unless the construction or modification:

(1) is subject to federal prevention of significant deterioration (PSD) requirements as set out in 326 IAC 2-2 and 40 CFR 52.21*;

(2) is subject to nonattainment new source review requirements as set out in 326 IAC 2-3;

(3) is located at a source that has an operating permit issued under 326 IAC 2-7, where the construction or modification would be considered a Title I modification under 40 CFR Part 70*; or

(4) would result in the source needing to make a transition to an operating permit issued under 326 IAC 2-6.1, 326 IAC 2-7, or 326 IAC 2-8.

~~(c)~~ **(d)** The new source requirements of 326 IAC 2-5.1-2 for registrations and 326 IAC 2-5.1-3 for permits, including the requirement to submit an application, do not apply to new sources as follows:

(1) New sources that obtain and comply with one (1) of the following enforceable operating agreements under 326 IAC 2-9:

(A) 326 IAC 2-9-2.5 or 326 IAC 2-9-3 for surface coating operations.

(B) 326 IAC 2-9-4(b) through 326 IAC 2-9-4(d) and 326 IAC 2-9-4(f) for woodworking operations.

(C) 326 IAC 2-9-5 for abrasive cleaning operations.

(D) 326 IAC 2-9-7(b)(1) for sand and gravel operations.

(E) 326 IAC 2-9-8(b)(1) for crushed stone processing plants.

(F) 326 IAC 2-9-9 for concrete batch operations.

(G) 326 IAC 2-9-10 for coal mines and coal preparation plants that have provided public notice under 310 IAC 12-3-106 and included a reference of the application for an operating agreement in such notice.

(H) 326 IAC 2-9-11 for automobile refinishing operations.

(I) 326 IAC 2-9-12 for degreasing operations.

(2) New sources that comply with the limitations set forth in 326 IAC 2-11.

(3) New sources eligible for and obtaining a general permit that includes emissions limits that are less than the applicability thresholds in 326 IAC 2-5.1-2 and 326 IAC 2-5.1-3.

(4) New sources with the potential to emit less than ten (10) tons per year of a single hazardous air pollutant (HAP), as defined under Section 112(b) of the Clean Air Act, or twenty-five (25) tons per year of any combination of HAPs, and not otherwise required to apply for and obtain a registration or permit.

The exclusion from the new source requirements of 326 IAC 2-5.1-2 for registrations and 326 IAC 2-5.1-3 for permits under subdivisions (1) through (3) shall only apply to those rules and rule sections that have been approved by the U.S. EPA as part of the state implementation plan (SIP).

~~(d)~~ **(e)** Except for modifications subject to 326 IAC 2-3, the new source requirements of 326 IAC 2-5.1-2 for registrations and 326 IAC 2-5.1-3 for permits, the modification approval requirements under 326 IAC 2-7-10.5, and the permit revision requirements under 326 IAC 2-6.1-6 ~~326 IAC 2-7-12,~~ and 326 IAC 2-8-11.1, including the requirement to submit an application, do not apply to the following:

(1) New sources or modifications to existing sources that are proposed to be operated or constructed, that have the potential to emit less than the following amounts:

(A) Five (5) tons per year of either particulate matter (PM) or particulate matter with an aerodynamic diameter less than ten (10) micrometers (PM_{10}).

(B) Ten (10) tons per year of sulfur dioxide (SO_2).

(C) Ten (10) tons per year of nitrogen oxides (NO_x).

(D) Ten (10) tons per year of volatile organic compounds (VOC) for sources or modifications that are not described by clause (E).

(E) Five (5) tons per year of volatile organic compounds (VOC) for sources or modifications that require the use of air pollution control equipment to comply with the applicable provisions of 326 IAC 8.

(F) Twenty-five (25) tons per year of carbon monoxide (CO).

(G) Two-tenths (0.2) ton per year of lead (Pb).

(H) One (1) ton per year of a single hazardous air pollutant (HAP) or two and one-half (2.5) tons per year of any combination of HAPs listed pursuant to Section 112(b) of the CAA.

(I) Five (5) tons per year of the following regulated air pollutants:

(i) Hydrogen sulfide (H_2S).

(ii) Total reduced sulfur (TRS).

(iii) Reduced sulfur compounds.

(iv) Fluorides.

(2) Modifications of existing sources that consist of only an emissions unit or units or process or processes whose primary purpose is to conduct research and development into new processes and products, provided the modification:

(A) is operated under the close supervision of technically trained personnel;

(B) is conducted for the primary purpose of theoretical research or research and development into new or improved processes and products;

(C) does not manufacture more than de minimis amounts of commercial products;

(D) does not contribute to the manufacture of commercial products by collocated sources in more than a de minimis manner; and

(E) is not subject to 326 IAC 2-2 or 326 IAC 2-3.

(3) New sources or modifications of existing sources that consist of only a laboratory as defined in this subdivision. As used in this subdivision, "laboratory" means a place or activity, such as a medical, analytical, or veterinary laboratory, devoted to experimental study or teaching or to the testing and analysis of drugs, chemicals, chemical compounds or other substances, or similar activities, provided that the activities described in this subdivision are conducted on a laboratory scale. Activities are conducted on a laboratory scale if the containers used for reactions, transfers, and other handling of substances are designed to be easily and safely manipulated by one (1) person. If a laboratory manufactures or produces products for profit in more than a de minimis manner, it shall not be considered to be a laboratory under this subdivision. Support activities necessary to the operation of the laboratory are considered to be part of the laboratory. Support activities do not include the provision of power to the laboratory from emission units that provide power to multiple projects or from emission units that would otherwise require permitting, such as boilers that provide power to a source or solid waste disposal units, such as incinerators.

(4) New sources or modifications of existing sources that consist of only educational and teaching activities as defined in this subdivision. As used in this subdivision, "educational and teaching activities" means activities conducted at public and nonpublic schools and postsecondary educational institutions for educational, vocational, agricultural, occupational, employment, or technical training purposes provided the activities do not include the production of an intermediate or final product for sale or exchange for commercial profit or distribution. Support activities necessary to the educational and teaching activities are considered to be part of the educational and teaching activities. Support activities do not include the provision of power to the educational and teaching activities from emission units that provide power to multiple projects or from emission units that would otherwise require permitting, such as boilers that provide power to a source or solid waste disposal units, such as incinerators.

(5) New sources or modifications of existing sources that consist of only combustion related activities, including the following:

(A) Space heaters, process heaters, heat treat furnaces, or boilers described as follows:

(i) Natural gas-fired combustion sources with heat input equal to or less than ten million (10,000,000) British thermal units per hour.

(ii) Propane or liquified petroleum gas or butane-fired combustion sources with heat input equal to or less than six million (6,000,000) British thermal units per hour.

(iii) Fuel oil-fired combustion sources with heat input equal to or less than two million (2,000,000) British thermal units per hour and firing fuel containing equal to or less than five-tenths percent (0.5%) sulfur by weight.

(iv) Wood-fired combustion sources with heat input equal to or less than one million (1,000,000) British thermal units per hour and not burning treated wood or chemically contaminated wood.

(B) Equipment powered by **diesel fuel fired or natural gas fired** internal combustion engines of capacity equal to or less than five hundred thousand (500,000) British thermal units per hour, except where total capacity of equipment operated by one (1) stationary source exceeds two million (2,000,000) British thermal units per hour.

(C) Combustion source flame safety purging on startup.

(D) Portable electrical generators that can be moved by hand from one (1) location to another. As used in this clause, "moved by hand" means that it can be moved without the assistance of any motorized or nonmotorized vehicle, conveyance, or device.

(E) Combustion emissions from propulsion of mobile sources.

(F) Fuel use related to food preparation for on-site consumption.

(G) Tobacco smoking rooms and areas.

(H) Blacksmith forges.

(I) Indoor and outdoor kerosene heaters.

(6) New sources or modifications of existing sources that consist of only activities that dispense fuel, including the following:

(A) A gasoline dispensing operation having a storage tank capacity equal to or less than ten thousand five hundred (10,500) gallons and dispensing less than or equal to one thousand three hundred (1,300) gallons per day. Such storage tanks may be in a fixed location or on mobile equipment.

(B) A petroleum fuel other than a gasoline dispensing facility, having a storage tank capacity less than or equal to ten thousand five hundred (10,500) gallons, and dispensing three thousand five hundred (3,500) gallons per day or less.

(7) New sources or modifications of existing sources that consist of only the following VOC and HAP storage containers:

(A) Storage tanks with capacity less than or equal to one thousand (1,000) gallons and annual throughputs equal to or less than twelve thousand (12,000) gallons.

(B) Vessels storing the following:

(i) Lubricating oils.

(ii) Hydraulic oils.

(iii) Machining oils.

(iv) Machining fluids.

(8) New sources or modifications of existing sources that consist of only refractory storage not requiring air pollution control equipment.
(9) New sources or modifications of existing sources that consist of only equipment used exclusively for the following:
(A) Packaging of the following:
(i) Lubricants.
(ii) Greases.
(B) Filling drums, pails, or other packaging containers with the following:
(i) Lubricating oils.
(ii) Waxes.
(iii) Greases.
(10) New sources or modifications of existing sources that consist of only the following:
(A) Application of:
(i) oils;
(ii) greases;
(iii) lubricants; and
(iv) nonvolatile material;
as temporary protective coatings.
(B) Machining where an aqueous cutting coolant continuously floods the machining interface.
(C) Degreasing operations that do not exceed one hundred forty-five (145) gallons per twelve (12) months except if subject to 326 IAC 20-6.
(D) Cleaners and solvents characterized as:
(i) having a vapor pressure equal to or less than two (2) kilo Pascals (fifteen (15) millimeters of mercury or three-tenths (0.3) pound per square inch) measured at thirty-eight ~~(38)~~ degrees Centigrade **(38EC)** (one hundred (100) degrees Fahrenheit); or
(ii) having a vapor pressure equal to or less than seven-tenths (0.7) kilo Pascal (five (5) millimeters of mercury or one-tenth (0.1) pound per square inch) measured at twenty ~~(20)~~ degrees Centigrade **(20EC)** (sixty-eight (68) degrees Fahrenheit);
the use of which, for all cleaners and solvents combined, does not exceed one hundred forty-five (145) gallons per twelve (12) months.
(E) The following equipment related to manufacturing activities not resulting in the emission of HAPs as defined under Section 112(b) of the Clean Air Act:
(i) Brazing.
(ii) Cutting torches.
(iii) Soldering.
(iv) Welding.
(F) Closed loop heating and cooling systems.
(G) Infrared cure equipment.
(H) Exposure chambers (towers or columns), for curing of ultraviolet inks and ultraviolet coatings where heat is the intended discharge.
(I) Any of the following structural steel and bridge fabrication activities:
(i) Cutting two hundred thousand (200,000) linear feet or less of one (1) inch plate or equivalent.
(ii) Using eighty (80) tons or less of welding consumables.
(11) New sources or modifications of existing sources that consist of only activities associated with the following recovery systems:
(A) Rolling oil recovery systems.
(B) Ground water oil recovery wells.
(12) New sources or modifications of existing sources that consist of only solvent recycling systems with batch capacity less than or equal to one hundred (100) gallons.
(13) New sources or modifications of existing sources that consist of only the following water based activities:
(A) Activities associated with the treatment of wastewater streams with an oil and grease content less than or equal to one percent (1%) by volume.
(B) Water run-off ponds for petroleum coke-cutting and coke storage piles.
(C) Activities associated with the transportation and treatment of sanitary sewage, provided discharge to the treatment plant is under the control of the owner or operator, that is, an on-site sewage treatment facility.
(D) Any operation using aqueous solutions containing less than or equal to one percent (1%) by weight of VOCs excluding HAPs as defined under Section 112(b) of the Clean Air Act.
(E) Water-based adhesives that are less than or equal to five percent (5%) by volume of VOCs excluding HAPs as defined under Section 112(b) of the Clean Air Act.
(F) Noncontact cooling tower systems with either of the following:
(i) Natural draft cooling towers not regulated under a NESHAP.
(ii) Forced and induced draft cooling tower systems not regulated under a NESHAP.
(G) Quenching operations used with heat treating processes.
Oil, grease, or VOC content shall be determined by a test method acceptable to the commissioner and the U.S. EPA.
(14) New sources or modifications of existing sources that consist of only trimmers that do not produce fugitive emissions and that are equipped with a dust collection or trim material recovery device, such as a bag filter or cyclone.
(15) New sources or modifications of existing sources that consist of only stockpiled soils from soil remediation activities that are covered and waiting transport for disposal.
(16) New sources or modifications of existing sources that consist of only paved and unpaved roads and parking lots with public access.
(17) New sources or modifications of existing sources that consist of only general construction activities not related to the construction of an emissions unit.
(18) New sources or modifications of existing sources that consist of only conveyors as follows:
(A) Covered conveyors for solid raw material, including:
(i) coal or coke conveying less than or equal to three hundred sixty (360) tons per day; or

(ii) limestone conveying less than or equal to seven thousand two hundred (7,200) tons per day for sources other than mineral processing plants constructed after August 31, 1983.

(B) Uncovered coal or coke conveying less than or equal to one hundred twenty (120) tons per day.

(C) Underground conveyors.

(D) Enclosed systems for conveying plastic raw material and plastic finished goods.

(19) New sources or modifications of existing sources that consist of only coal bunker and coal scale exhausts and associated dust collector vents.

(20) New sources or modifications of existing sources that consist of only asbestos abatement projects regulated by 326 IAC 14-10.

(21) New sources or modifications of existing sources that consist of only routine maintenance and repair of buildings, structures, or vehicles at the source where air emissions from those activities would not be associated with any production process, including the following:

(A) Purging of gas lines.

(B) Purging of vessels.

(22) New sources or modifications of existing sources that consist of only flue gas conditioning systems and associated chemicals, such as the following:

(A) Sodium sulfate.

(B) Ammonia.

(C) Sulfur trioxide.

(23) New sources or modifications of existing sources that consist of only equipment used to collect any material that might be released during a malfunction, process upset, or spill cleanup, including the following:

(A) Catch tanks.

(B) Temporary liquid separators.

(C) Tanks.

(D) Fluid handling equipment.

(24) New sources or modifications of existing sources that consist of only furnaces used for melting metals other than beryllium with a brim full capacity equal to or less than four hundred fifty (450) cubic inches by volume.

(25) New sources or modifications of existing sources that consist of only activities associated with emergencies, including the following:

(A) On-site fire training approved by the commissioner.

(B) Emergency generators as follows:

(i) Gasoline generators not exceeding one hundred ten (110) horsepower.

(ii) Diesel generators not exceeding one thousand six hundred (1,600) horsepower.

(iii) Natural gas turbines or reciprocating engines not exceeding sixteen thousand (16,000) horsepower.

(C) Stationary fire pump engines.

(26) New sources or modifications of existing sources that consist of only grinding and machining operations controlled with fabric filters, scrubbers, mist collectors, wet collectors, and electrostatic precipitators with a design grain loading of less than or equal to three-hundredths (0.03) grain per actual cubic foot and a gas flow rate less than or equal to four thousand (4,000) actual cubic feet per minute, including the following:

(A) Deburring.

(B) Buffing.

(C) Polishing.

(D) Abrasive blasting.

(E) Pneumatic conveying.

(F) Woodworking operations.

(27) New sources or modifications of existing sources that consist of only purge double block and bleed valves.

(28) New sources or modifications of existing sources that consist of only filter or coalescer media changeout.

(29) New sources or modifications of existing sources that consist of only vents from ash transport systems not operated at positive pressure.

(30) New sources or modifications of existing sources that consist of only mold release agents using low volatile products (vapor pressure less than or equal to two (2.0) kilo Pascals measured at thirty-eight (38) degrees Centigrade).

(31) New sources or modifications of existing sources that consist of only farm operations.

(32) New sources or modifications of existing sources that consist of only water-related activities, including the following:

(A) Production of hot water for on-site personal use not related to any industrial or production process.

(B) Water treatment activities used to provide potable and process water for the plant, excluding any activities associated with wastewater treatment.

(C) Steam traps, vents, leaks, and safety relief valves.

(D) Cooling ponds.

(E) Laundry operations using only water solutions of bleach or detergents.

(F) Demineralized water tanks and demineralizer vents.

(G) Boiler water treatment operations, not including cooling towers.

(H) Oxygen scavenging (deaeration) of water.

(I) Steam cleaning operations and steam sterilizers.

(J) Pressure washing of equipment.

(K) Water jet cutting operations.

(33) New sources or modifications of existing sources that consist of only ventilation, venting equipment, and refrigeration, including the following:

(A) Ventilation exhaust, central chiller water systems, refrigeration, and air conditioning equipment not related to any industrial or production process, including natural draft hoods or ventilating systems that do not remove air pollutants.

(B) Stack and vents from plumbing traps used to prevent the discharge of sewer gases, handling domestic sewage only, excluding those at wastewater treatment plants or those handling any industrial waste.

(C) Vents from continuous emissions monitors and other analyzers.

(D) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.
(E) Air vents from air compressors.
(F) Vents for air cooling of electric motors provided the air does not commingle with regulated air pollutants.
(G) Vents from equipment used to air blow water from cooled plastics strands or sheets.

(34) New sources or modifications of existing sources that consist of only activities related to routine fabrication, maintenance, and repair of buildings, structures, equipment, or vehicles at the source where air emissions from those activities would not be associated with any commercial production process, including the following:
(A) Activities associated with the repair and maintenance of paved and unpaved roads, including paving or sealing, or both, of parking lots and roadways.
(B) Painting, including interior and exterior painting of buildings, and solvent use excluding degreasing operations utilizing halogenated organic solvents.
(C) Brazing, soldering, or welding operations and associated equipment.
(D) Portable blast-cleaning equipment with enclosures.
(E) Blast-cleaning equipment using water as the suspension agent and associated equipment.
(F) Batteries and battery charging stations, except at battery manufacturing plants.
(G) Lubrication, including:
(i) hand-held spray can lubrication;
(ii) dipping metal parts into lubricating oil; or
(iii) manual or automated addition of cutting oil in machining operations.
(H) Nonasbestos insulation installation or removal.
(I) Tarring, retarring, and repair of building roofs.
(J) Bead blasting of heater tubes.
(K) Instrument air dryer and filter maintenance.
(L) Manual tank gauging.
(M) Open tumblers associated with deburring operations in maintenance shops.

(35) New sources or modifications of existing sources that consist of only activities performed using hand-held equipment, including the following:
(A) Application of hot melt adhesives with no VOC in the adhesive formulation.
(B) Buffing.
(C) Carving.
(D) Cutting, excluding cutting torches.
(E) Drilling.
(F) Grinding.
(G) Machining wood, metal, or plastic.
(H) Polishing.
(I) Routing.
(J) Sanding.
(K) Sawing.
(L) Surface grinding.
(M) Turning wood, metal, or plastic.

(36) New sources or modifications of existing sources that consist of only housekeeping and janitorial activities and supplies, including the following:
(A) Vacuum cleaning systems used exclusively for housekeeping or custodial activities, or both.
(B) Steam cleaning activities.
(C) Rest rooms and associated clean-up operations and supplies.
(D) Alkaline or phosphate cleaners and associated equipment.
(E) Mobile floor sweepers and floor scrubbers.
(F) Pest control fumigation.

(37) New sources or modifications of existing sources that consist of only office-related activities, including the following:
(A) Office supplies and equipment.
(B) Photocopying equipment and associated supplies.
(C) Paper shredding.
(D) Blueprint machines, photographic equipment, and associated supplies.

(38) New sources or modifications of existing sources that consist of only lawn care and landscape maintenance activities and equipment, including the storage, spraying, or application of insecticides, pesticides, and herbicides.

(39) New sources or modifications of existing sources that consist of only storage equipment and activities, including the following:
(A) Pressurized storage tanks and associated piping for the following:
(i) Acetylene.
(ii) Anhydrous ammonia.
(iii) Carbon monoxide.
(iv) Chlorine.
(v) Inorganic compounds.
(vi) Liquid petroleum gas (LPG).
(vii) Liquid natural gas (LNG) (propane).
(viii) Natural gas.
(ix) Nitrogen dioxide.
(x) Sulfur dioxide.
(B) Storage tanks, vessels, and containers holding or storing liquid substances that do not contain any VOC or HAP as defined under Section 112(b) of the Clean Air Act.
(C) Storage tanks, reservoirs, and pumping and handling equipment of any size containing soap, vegetable oil, grease, wax, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized.
(D) Storage of drums containing maintenance raw materials.
(E) Storage of:
(i) castings;
(ii) lance rods; or
(iii) any non-HAP containing material in solid form stored in a sealed or covered container.
(F) Portable containers used for the collection, storage, or disposal of materials provided the container capacity is equal to or less than forty-six hundredths (0.46) cubic meter and the container is closed, except when the material is added or removed.

(40) New sources or modifications of existing sources that consist of only emergency and standby equipment, including the following:

(A) Emergency (backup) electrical generators at residential locations, such as dormitories, prisons, and hospitals.

(B) Safety and emergency equipment except engine driven fire pumps, including fire suppression systems and emergency road flares.

(C) Process safety relief devices installed solely for the purpose of minimizing injury to persons or damage to equipment that could result from abnormal process operating conditions, including the following:

(i) Explosion relief vents, diaphragms, or panels.

(ii) Rupture discs.

(iii) Safety relief valves.

(D) Activities and equipment associated with on-site medical care not otherwise specifically regulated.

(E) Vacuum producing devices for the purpose of removing potential accidental releases.

(41) New sources or modifications of existing sources that consist of only sampling and testing equipment and activities, including the following:

(A) Equipment used for quality control/assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis.

(B) Hydraulic and hydrostatic testing equipment.

(C) Ground water monitoring wells and associated sample collection equipment.

(D) Environmental chambers not using HAP gases.

(E) Shock chambers.

(F) Humidity chambers.

(G) Solar simulators.

(H) Sampling activities, including:

(i) sampling of waste; or

(ii) glove box sampling, charging, and packaging.

(I) Instrument air dryers and distribution.

(J) VOC sampling activities associated with soil remediation projects.

(42) New sources or modifications of existing sources that consist of only use of consumer products and equipment where the product or equipment is used at a source in the same manner as normal consumer use and is not associated with any production process.

(43) New sources or modifications of existing sources that consist of only equipment and activities related to the handling, treating, and processing of animals, including the following:

(A) Equipment used exclusively to slaughter animals, but not including the following:

(i) Rendering cookers.

(ii) Boilers.

(iii) Heating plants.

(iv) Incinerators.

(v) Electrical power generating equipment.

(B) Veterinary operating rooms and laboratories.

(44) New sources or modifications of existing sources that consist of only activities generating limited amounts of fugitive dust, including the following:

(A) Fugitive emissions related to movement of passenger vehicles, provided the emissions are not counted for applicability purposes as a major source under 326 IAC 2-7-1(22)(B), and any required fugitive dust control plan or its equivalent is submitted.

(B) Soil boring.

(C) Road salting and sanding.

(45) New sources or modifications of existing sources that consist of only activities associated with production, including the following:

(A) Closed, nonvented tumblers used for cleaning or deburring metal products without abrasive blasting.

(B) Electrical resistance welding.

(C) Carbon dioxide (CO_2) lasers, used only on metals and other materials that do not emit HAPs as defined under Section 112(b) of the Clean Air Act in the process.

(D) Laser trimmers that do not produce fugitive emissions and are equipped with a dust collection device such as a bag filter, cyclone, or equivalent device.

(E) Application equipment for hot melt adhesives with no VOC in the adhesive formulation.

(F) Drop hammers or hydraulic presses for forging or metalworking.

(G) Air compressors and pneumatically operated equipment, including hand tools.

(H) Compressor or pump lubrication and seal oil systems.

(I) Equipment used to mix and package soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized.

(J) Equipment for washing or drying fabricated glass or metal products, if no VOCs or HAPs as defined under Section 112(b) of the Clean Air Act are used in the process, and no gas, oil, or solid fuel is burned.

(K) Handling of solid steel, including coils and slabs, excluding scrap burning, scarfing, and charging into steel making furnaces and vessels.

(46) The following types of miscellaneous equipment and activities:

(A) Equipment used for surface coating, painting, dipping, or spraying operation, except those that will emit VOCs or HAPs as defined under Section 112(b) of the Clean Air Act.

(B) Condensate drains for natural gas and landfill gas.

(C) Electric or steam heated drying ovens and autoclaves, including only the heating emissions and not any associated process emissions.

(D) Salt baths using nonvolatile salts, including caustic solutions that do not result in emissions of any regulated air pollutants.

(E) Ozone generators.

(F) Portable dust collectors.

(G) Scrubber systems circulating water based solutions of inorganic salts or bases that are installed to be available for response to emergency situations.

(H) Soil borrow pits.

(I) Manual loading and unloading operations.
(J) Purging of refrigeration devices using a combination of nitrogen and CFC-22 (R-22) as pressure test media.
(K) Construction and demolition operations.
(L) Mechanical equipment gear boxes and vents that are isolated from process materials.
(M) Nonvolatile mold release waxes and agents.

This subdivision is not meant to describe emission units or activities associated with the miscellaneous equipment and activities that would otherwise require approval under this article.

~~(e)~~ **(f)** 326 IAC 2-7, 326 IAC 2-8, and 326 IAC 2-9 shall not apply to a source operating in compliance with the requirements of 326 IAC 2-10 or 326 IAC 2-11.

~~(f)~~ **(g)** 326 IAC 2-6.1 shall not apply to a source operating pursuant to one (1) of the following:
(1) A Part 70 permit under 326 IAC 2-7.
(2) A federally enforceable state operating permit (FESOP) under 326 IAC 2-8.
(3) An operating agreement under 326 IAC 2-9.
(4) A permit-by-rule under one (1) of the following rules:
(A) 326 IAC 2-10.
(B) 326 IAC 2-11.

~~(g)~~ **(h)** The requirements for an operating permit revision under 326 IAC 2-6.1-6 ~~326 IAC 2-7-12,~~ or 326 IAC 2-8-11.1, modification approval under 326 IAC 2-7-10.5, or an administrative amendment under ~~326 IAC 2-7-11 or~~ 326 IAC 2-8-10 shall not apply to the following modifications:
(1) A modification that has the potential to emit less than one (1) ton per year of a single hazardous air pollutant (HAP) as defined under Section 112(b) of the CAA or two and five-tenths (2.5) tons per year of any combination of HAPs.
(2) A modification at an existing source that consists only of changes in a method of operation, a reconfiguration of existing equipment or other minor physical changes, or a combination thereof, and that does not result in an increase in the potential to emit that:
(A) exceeds the significance levels established in 326 IAC 2-2-1 when subject only to specific emission limits contained in this title;
(B) exceeds the significance levels established in 326 IAC 2-3-1 when subject only to specific emission limits contained in this title;
(C) is subject to 326 IAC 2-4.1 concerning new source toxics control;
(D) is greater than or equal to fifteen (15) pounds per day of VOCs from an existing source in Lake or Porter County that has the potential to emit, as defined by 326 IAC 2-3-1(v), or actual emissions of twenty-five (25) tons per year;
(E) is greater than or equal to twenty-five (25) pounds per day of NO_x from an existing source in Lake or Porter County that has the potential to emit, as defined by 326 IAC 2-3-1(v), or actual emissions of twenty-five (25) tons per year;
(F) is greater than or equal to one (1) ton or more per year of lead or lead compounds measured as elemental lead and the source is:
(i) a primary lead smelter;
(ii) a secondary lead smelter;
(iii) a primary copper smelter;
(iv) a lead gasoline additive plant; or
(v) a lead-acid storage battery manufacturing plant that produces two thousand (2,000) or more batteries per day;
(G) is greater than or equal to five (5) tons or more per year of lead or lead compounds measured as elemental lead and the source is not listed in clause (F);
(H) is greater than or equal to six-tenths (0.6) ton per year, for a source of lead emissions with a potential to emit greater than or equal to five (5) tons per year;
(I) is an emissions increase of VOC or NO_x subject to 326 IAC 2-3-2(b)(2) or 326 IAC 2-3-2(b)(3) at an existing source in Lake or Porter County that emits or has the potential to emit twenty-five (25) tons per year of VOC or NO_x;
(J) is greater than or equal to fifteen (15) tons per year particulate matter with an aerodynamic diameter less than or equal to ten (10) micrometers (PM_{10}); or
(K) is subject to the provisions of 326 IAC 8-1-6 that has not previously been subject to review in accordance with 326 IAC 8-1-6.
(3) Temporary operations and experimental trials that involve construction, reconstruction, or modification and that meet the following criteria:
(A) The potential emissions from the construction or reconstruction of a facility or source or the potential emissions increase from the modification are less than twenty-five (25) tons for the duration of the operation.
(B) The construction, reconstruction, or modification is not a major source or modification as defined by 326 IAC 2-2, 326 IAC 2-3, or 326 IAC 2-7.
(C) The purpose of the construction, reconstruction, or modification is to:
(i) collect data for experimental purposes, including, but not limited to, process improvements, new product development, and pollution prevention; or
(ii) temporarily conduct an operation not considered part of the normal operation or production of the facility or source.
(D) The duration of the temporary operation or experimental trial is less than thirty (30) days of total operating time.
(E) If the construction, reconstruction, or modification is part of a soil or water remediation project, the duration of the project is less than twenty-four (24) hours or a greater period, not to exceed seventy-two (72) hours, as determined to be necessary by the department considering the nature of the project or the manner of testing, and the purpose of the project is to identify parameters necessary to design the remediation effort.

(F) If the construction, reconstruction, or modification would otherwise require a modification approval or operating permit revision, the owner or operator shall provide the department written notice of the proposed construction, reconstruction, or modification at least seven (7) days before beginning the construction, reconstruction, or modification. The notice shall contain the following information:

(i) A description of the purpose of the construction, reconstruction, or modification.

(ii) A description of how the construction, reconstruction, or modification is experimental or not part of the normal operation or production of the facility or source.

(iii) The dates the owner or operator anticipates the construction, reconstruction, or modification to begin, operations to begin, and operations to cease.

(iv) An estimate of the potential emissions and actual emissions increase resulting from the construction or reconstruction.

(v) The equipment involved in the construction, reconstruction, or modification.

(G) If the construction, reconstruction, or modification would otherwise require a modification approval or operating permit revision, the owner or operator shall provide the department written notice of the proposed construction, reconstruction, or modification at most seven (7) days after concluding the temporary operation or experimental trial. The notice shall contain the following information:

(i) The actual start date of the construction, reconstruction, or modification.

(ii) The duration of the temporary operation or experimental trial.

(iii) The actual emissions occurring during the temporary operation or experimental trial.

(H) The exemption provided by this subdivision shall not apply to facilities or sources whose operations are experimental in nature, part of pilot plants, or characterized by frequent product changes.

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 2-1.1-3; filed Nov 25, 1998, 12:13 p.m.: 22 IR 982; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1550)*

SECTION 2. 326 IAC 2-1.1-9.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 2-1.1-9.5 General provisions; term of permit

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-11-2; IC 13-15-3-6; IC 13-17

Sec. 9.5. (a) Except as provided in IC 13-15-3-6(a), the following are effective for a term not to exceed five (5) years:

(1) A permit to construct.

(2) A permit to operate.

(3) A permit modification.

(b) Notwithstanding the permit term in subsection (a), any condition established in a permit issued pursuant to a permitting program approved into the state implementation plan shall remain in effect until:

(1) the condition is modified in a subsequent permit action; or

(2) the emission unit to which the condition pertains permanently ceases operation.

(Air Pollution Control Board; 326 IAC 2-1.1-9.5; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1557)

SECTION 3. 326 IAC 2-2-1, AS AMENDED AT 24 IR 2412, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-1 Definitions

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

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

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

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

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

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

(4) For an electric utility steam generating unit, other than a new unit or the replacement of an existing unit, actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the department on an annual basis for a period of five (5) years from the date the unit resumes regular operation, information demonstrating that the physical or

operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the department if the department determines such a period to be more representative of normal source post-change operations.

(c) "Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the federal Class I area, as defined in section 13 of this rule. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with:

(1) times of visitor use of the federal Class I area; and

(2) the frequency and timing of natural conditions that reduce visibility.

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

(1) the applicable standards as set forth in 40 CFR 60* and 40 CFR 61*;

(2) the state implementation plan emissions limitation, including those with a future compliance date; or

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

(e) "Baseline area" means the following:

(1) Any intrastate area (and every part thereof) designated as attainment or unclassifiable in accordance with 326 IAC 1-4 in which the major stationary source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) microgram per cubic meter ($\mu g/m^3$) (annual average) of the pollutant for which the minor source baseline date is established.

(2) Area redesignations under 326 IAC 1-4 and Section 107(d)(1) (D) or 107(d)(1)(E) of the Clean Air Act (CAA)~~*~~ cannot intersect or be smaller than the area of impact of any major stationary source or major modification that:

(A) establishes a minor source baseline date; or

(B) is subject to 40 CFR 52.21* and this rule and would be constructed in the same state as the state proposing the redesignation.

(3) Any baseline area established originally for the total suspended particulate (TSP) increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if U.S. EPA rescinds the corresponding minor source baseline date in accordance with 40 CFR 52.21(b)(14)(iv)*.

(f) "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date. The baseline concentration is determined for each pollutant for which a baseline date is established and shall include the following:

(1) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in subdivision (3).

(2) The allowable emissions of major stationary sources which commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(3) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(A) Actual emissions from any major stationary source on which the construction commenced after the major source baseline date.

(B) Actual emissions increases and decreases at any **stationary** source occurring after the minor source baseline date.

(g) "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework, and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(h) "Best available control technology" or "BACT" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each pollutant subject to regulation under the provisions of the ~~Clean Air Act,~~ **CAA,** which would be emitted from any proposed major stationary source or major modification, which the commissioner, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR **Part** 60* and 40 CFR **Part** 61*. If the commissioner determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard not feasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirements for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by

implementation of such design, equipment, work practice, or operation and shall provide for compliance by means which achieve equivalent results.

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

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

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

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

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

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

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

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

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

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

(q) "Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

(r) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(s) "High terrain" means any area having an elevation nine hundred (900) feet or more above the base of the stack of a source.

(t) "Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

(u) "Indian reservation" means any federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

~~(t)~~ **(v)** "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

~~(u)~~ **(w)** "Low terrain" means any area other than high terrain.

~~(v)~~ **(x)** "Major modification" means any physical change in, or change in the method of operation of, a major stationary source that would result in a significant net emissions increase of any pollutant that is being regulated under the ~~Clean Air Act.~~ **CAA.** The following shall apply:

(1) Any net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone.

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

(A) Routine maintenance, repair, and replacement.

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

(C) Use of an alternative fuel by reason of an order under Section 125 of the ~~Clean Air Act.~~ **CAA.**

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

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

(i) the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any ~~federally~~ enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21* or under this rule or 326 IAC 2-3; or

(ii) the source is approved to use under any permit issued under 40 CFR 52.21* or under this rule.

(F) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any ~~federally~~ enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21* or under this rule or 326 IAC 2-3.

(G) Any change in ownership at a source.

(H) The addition, replacement, or use of a pollution control project as defined in subsection ~~(bb) and 326 IAC 2-1.1-1(13)~~ **(dd)** at an existing ~~source~~ **electric steam generating unit** unless: ~~the department determines that~~:

(i) **the commissioner and U.S. EPA determine that** such addition, replacement, or use ~~is not~~ **renders the unit less** environmentally beneficial; or

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

A pollution control project that is exempt under this clause shall be considered a significant source modification under 326 IAC 2-7-10.5(f)(8) **or 326 IAC 2-7-10.5(f)(9).**

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

(i) the state implementation plan; and

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

(J) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(K) The reactivation of a very clean coal-fired electric utility steam generating unit.

~~(w)~~ **(y)** "Major stationary source" means the following:

(1) Any of the following stationary sources of air pollutants which are located or ~~may~~ **proposed to** be located in an attainment or unclassifiable area as designated in 326 IAC 1-4 and which emit or have the potential to emit one hundred (100) tons per year or more of any pollutant subject to regulation under the ~~Clean Air Act.~~ **CAA:**

(A) Fossil fuel-fired steam electric plants of more than two hundred fifty million (250,000,000) British thermal units per hour heat input.

(B) Coal cleaning plants (with thermal driers).

(C) Kraft pulp mills.

(D) Portland cement plants.

(E) Primary zinc smelters.

(F) Iron and steel mill plants.

(G) Primary aluminum ore reduction plants.

(H) Primary copper smelters.

(I) Municipal incinerators capable of charging more than fifty (50) tons of refuse per day.

(J) Hydrofluoric, sulfuric, and nitric acid plants.

(K) Petroleum refineries.

(L) Lime plants.

(M) Phosphate rock processing plants.

(N) Coke oven batteries.

(O) Sulfur recovery plants.

(P) Carbon black plants (furnace process).

(Q) Primary lead smelters.

(R) Fuel conversion plants.

(S) Sintering plants.

(T) Secondary metal production plants.

(U) Chemical process plants.

(V) Fossil fuel boilers (or combinations thereof) totaling more than two hundred fifty million (250,000,000) British thermal units per hour heat input.

(W) Taconite ore processing plants.

(X) Glass fiber processing plants.

(Y) Charcoal production plants.

(Z) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand (300,000) barrels.

(2) Any stationary source with the potential to emit two hundred fifty (250) tons per year or more of any air pollutant subject to regulation under the ~~Clean Air Act.~~ **CAA.**

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

(A) Primary lead smelters.

(B) Secondary lead smelters.

(C) Primary copper smelters.

(D) Lead gasoline additive plants.

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

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

(5) Any physical change occurring at a stationary source not qualifying under subdivisions (1) through (4) and this subdivision, if the change would by itself qualify as a major stationary source under subdivisions (1) through (4).

(6) Notwithstanding subdivisions (1) through (5), ~~the following sources~~ **a source or modification of a source** shall not be considered a major stationary source

~~(A) A source or modification of a source where~~ **if** it would qualify under subdivisions (1) through (5) only if fugitive emissions, to the extent quantifiable, are considered in calculating potential to emit of the stationary source or modification and such source does not belong to any of the categories listed in subdivision (1) or any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the ~~Clean Air Act~~ **CAA** (42 U.S.C. 7411 or 42 U.S.C. 7412).

~~(B) A source or modification of a source which is a portable stationary source which has previously received a permit complying with 326 IAC 2-5.1-3 or 326 IAC 2-7 and section 3 of this rule if:~~

~~(i) the source proposes to relocate and emissions of the source at the new location would be temporary;~~

~~(ii) the emissions from the source would not exceed its allowable emissions;~~

~~(iii) emissions from the source would impact no area where an applicable increment is known to be violated; and~~

~~(iv) ten (10) days advance notice is given to the department prior to the relocation identifying the proposed new location and probable duration of the operation at the new location.~~

(7) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

~~(x)~~ **(z)** "Major source baseline date" means the following:

(1) In the case of particulate matter and sulfur dioxide, January 6, 1975.

(2) In the case of nitrogen dioxide, February 8, 1988.

~~(y)~~ **(aa)** "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or major modification subject to the requirements of this rule or to 40 CFR 52.21* submits a complete application under the relevant regulations, including the following:

(1) The trigger date is the following:

(A) In the case of particulate matter and sulfur dioxide, August 7, 1977.

(B) In the case of nitrogen dioxide, February 8, 1988.

(2) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(A) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under 326 IAC 1-4 for the pollutant on the date of its complete application under this rule; and

(B) in the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(3) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that ~~U.S. EPA will~~ **the commissioner may** rescind a minor source baseline date where it can be shown, to the satisfaction of ~~U.S. EPA,~~ **the commissioner,** that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

~~(z)~~ **(bb)** "Necessary preconstruction approvals or permits" means those permits or approvals required under ~~those~~ **federal air quality control laws and regulations and** air quality control laws and regulations ~~which~~ **that** are part of the state implementation plan.

~~(aa)~~ **(cc)** "Net emissions increase", with reference to a significant net emissions increase, means the tons per year amount by which the sum of the following exceeds zero (0):

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

(2) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable as follows:

(A) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(i) the date five (5) years before construction on the particular change commences; and

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

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

(C) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable **minor source** baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM_{10} emissions shall be used to evaluate the net emissions increase for PM_{10}.

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

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

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

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

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

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

~~(bb)~~ **(dd)** "Pollution control project" means, ~~the following:~~

~~(1)~~ for ~~an electric utility steam generating unit,~~ **purposes of this rule,** any activity or project undertaken at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to the following:

~~(A)~~ **(1)** The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators.

~~(B)~~ **(2)** An activity or project to accommodate switching to a fuel that is less polluting than the fuel in use prior to the activity or project, including, but not limited to:

~~(i)~~ **(A)** natural gas or coal reburning; or

~~(ii)~~ **(B)** the cofiring of natural gas and other fuels for the purpose of controlling emissions.

~~(C)~~ **(3)** A permanent clean coal technology demonstration project conducted under Title II, Section 101(d) of the Further Continuing Appropriations Act of 1985 42 U.S.C. 5903(d)*), or subsequent appropriations, up to a total amount of two billion five hundred million dollars ($2,500,000,000), for commercial demonstration of clean coal technology, or similar projects funded through appropriations for U.S. EPA.

~~(D)~~ **(4)** A permanent clean coal technology demonstration project that constitutes a repowering project.

~~(2) For any unit other than an electric utility steam generating unit, pollution control project is defined at 326 IAC 2-1.1-1(13).~~

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

~~(dd)~~ **(ff)** "Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) has not been in operation for the two (2) year period prior to the enactment of the ~~Clean Air Act~~ **CAA** Amendments of 1990, and the emissions from such unit continue to be carried in the department's emissions inventory at the time of enactment;

(2) was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than eighty-five percent (85%) and a removal efficiency for particulates of no less than ninety-eight percent (98%);

(3) is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(4) is otherwise in compliance with the requirements of the CAA.

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

(1) Atmospheric or pressurized fluidized bed combustion.

(2) Integrated gasification combined cycle.

(3) Magnetohydrodynamics.

(4) Direct and indirect coal-fired turbines.

(5) Integrated gasification fuel cells.

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

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

~~(ff)~~ **(hh)** "Representative actual annual emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two (2) year period after a physical change or change in the method of operation of a unit, (or a different consecutive two (2) year period within ten (10) years after that change, where the department determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing

or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions, the department shall do the following:

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

(A) Historical operational data.

(B) The company's own representations.

(C) Filings with Indiana or federal regulatory authorities.

(D) Compliance plans under Title IV of the CAA.

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

~~(gg)~~ **(ii)** "Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. The term includes emissions from any off-site support facility that would not be constructed or increase its emissions, except as a result of the construction or operation of the major stationary source or major modification. For the purpose of this rule, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from:

(1) the tailpipe of a motor vehicle;

(2) a train; or

(3) a vessel.

~~(hh)~~ **(jj)** "Significant" means **the following:**

(1) In reference to a net emissions increase or the potential of the source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

~~(1)~~ **(A)** Carbon monoxide: one hundred (100) tons per year.

~~(2)~~ **(B)** Nitrogen oxides: forty (40) tons per year.

~~(3)~~ **(C)** Sulfur dioxide: forty (40) tons per year.

~~(4)~~ **(D)** Particulate matter: twenty-five (25) tons per year.

~~(5)~~ **(E)** PM_{10}: fifteen (15) tons per year.

~~(6)~~ **(F)** Ozone: forty (40) tons per year of volatile organic compounds.

~~(7)~~ **(G)** Lead: six-tenths (0.6) ton per year.

~~(8)~~ **(H)** Asbestos: seven one-thousandths (0.007) ton per year.

~~(9)~~ **(I)** Beryllium: four ten-thousandths (0.0004) ton per year.

~~(10)~~ **(J)** Mercury: one-tenth (0.1) ton per year.

~~(11)~~ **(K)** Vinyl chloride: one (1) ton per year.

~~(12)~~ **(L)** Fluorides: three (3) tons per year.

~~(13)~~ **(M)** Sulfuric acid mist: seven (7) tons per year.

~~(14)~~ **(N)** Hydrogen sulfide (H_2S): ten (10) tons per year.

~~(15)~~ **(O)** Total reduced sulfur (including H_2S): ten (10) tons per year.

~~(16)~~ **(P)** Reduced sulfur compounds (including H_2S): ten (10) tons per year.

~~(17)~~ **(Q)** Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): thirty-five ten-millionths (0.0000035) or 3.5×10^{-6} ton per year.

~~(18)~~ **(R)** Municipal waste combustor metals (measured as particulate matter): fifteen (15) tons per year.

~~(19)~~ **(S)** Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): forty (40) tons per year.

~~(20)~~ **(T)** Municipal solid waste landfills emissions (measured as nonmethane organic compounds): fifty (50) tons per year.

~~(21)~~ **(U)** Ozone-depleting substances (ODS): one hundred (100) tons per year.

~~(22)~~ **(V)** Any pollutant subject to regulation under the CAA, other than the pollutants listed in this subsection or under Section 112(b) of the CAA*: any emission rate.

(2) Any emissions rate or any net emissions increase associated with a major stationary source or major modification that would be constructed within ten (10) kilometers of a Class I area and has an impact on such area equal to or greater than one (1) microgram per cubic meter (24-hour average).

~~(ii)~~ **(kk)** "Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under the CAA. A stationary source does not include emissions resulting from an internal combustion engine used for transportation purposes, or from a nonroad engine or nonroad vehicle.

~~(jj)~~ **(ll)** "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that:

(1) is operated for a period of five (5) years or less; and

(2) complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.

~~*Copies of the Code of Federal Regulations (CFR), the United States Code, and the Clean Air Act referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204-2220.~~ ***These documents are incorporated by reference. Copies may be**

obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2391; filed Apr 13, 1988, 3:35 p.m.: 11 IR 3022; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1102; filed Jun 14, 1989, 5:00 p.m.: 12 IR 2020; filed Nov 25, 1998, 12:13 p.m.: 22 IR 997; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed Oct 23, 2000, 9:47 a.m.: 24 IR 668; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2412; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1557)*

SECTION 4. 326 IAC 2-2-2, AS AMENDED AT 24 IR 2419, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-2 Applicability
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-11; IC 13-15; IC 13-17

Sec. 2. (a) The requirements of this rule shall apply to any major stationary source **or major modification,** as defined in section 1 of this rule, ~~which~~ **that** is being constructed or will be constructed in ~~any attainment or unclassifiable~~ **an** area ~~as~~ designated, ~~in 326 IAC 1-4,~~ as of the submittal date of a complete application in accordance with 326 IAC 2-5.1, **as attainment or unclassifiable in 326 IAC 1-4.**

(b) The owner or operator of a major stationary source or major modification shall not begin actual construction unless the requirements in sections 3 through 8, 10, and 14 through 16 of this rule have been met and a permit has been issued under this rule.

(c) Sources that are located in or proposed to be located in an area designated as nonattainment pursuant to 326 IAC 1-4 for a pollutant shall be exempt from the requirements of this rule for that particular pollutant.

(d) A source or modification of a source that would be a nonprofit health or nonprofit educational institution shall be exempt from the requirements of sections 3, 4, and 7 of this rule.

(e) The requirements of sections 3, 4, 5, 7, 8, 10, 14, and 15 of this rule shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the CAA that it would emit, except as otherwise provided in this rule.

(f) The requirements of sections 3, 4, 5, 7, 8, 10, 14, and 15 of this rule do not apply to a particular major stationary source or major modification if the source or modification is a portable stationary source that has previously received a permit under 326 IAC 2-5.1-3 or 326 IAC 2-7 and the permit contains conditions from 40 CFR Part 52.21* or this rule if:

(1) the source proposes to relocate and emissions of the source at the new location would be temporary;

(2) the emissions from the source would not exceed its allowable emissions;

(3) emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

(4) ten (10) days advance notice is given to the department prior to the relocation identifying the proposed new location and probable duration of the operation at the new location.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 2-2-2; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2395; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1098; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1001; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2419; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1564)*

SECTION 5. 326 IAC 2-2-3, AS AMENDED AT 24 IR 2419, SECTION 3, IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-3 Control technology review; requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-11; IC 13-15; IC 13-17

Sec. 3. ~~(a)~~ Any owner or operator of a major stationary source or major modification shall comply with the following requirements:

(1) A major stationary source or major modification shall meet each applicable emissions limitation under the state implementation plan and each applicable emissions standard and standard of performance under 40 CFR **Part** 60* and 40 CFR **Part** 61*.

(2) A new, major stationary source shall apply best available control technology for each pollutant subject to regulation under the provisions of the ~~Clean Air Act~~ **CAA** for which the source has the potential to emit in significant amounts as defined in section 1 of this rule.

(3) A major modification shall apply best available control technology for each pollutant subject to regulation under the provisions of the ~~Clean Air Act~~ **CAA** for which the modification would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase of the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(4) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time, which occurs no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable source may be required to demonstrate the adequacy of any previous determination of best available control technology for that source.

~~(b) The requirements for best available control technology set forth in subsection (a) shall not apply to a particular stationary source or modification that was subject to 40 CFR 52.21* as in effect on June 19, 1978, if the owner or operator of the source or modification submitted an application for a permit under this article or pursuant to this rule before August 7, 1980, and the department subsequently determined that the application submitted before that date was complete. Instead, the requirements of 40 CFR 52.21(j)* and 40 CFR 52.21(n)* as in effect on June 19, 1978, apply to any such source or modification.~~

~~*Copies of the Code of Federal Regulations (CFR) referenced in this section~~ ***These documents are incorporated by reference. Copies** may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana ~~46204-2220.~~ **46204.** *(Air Pollution Control Board; 326 IAC 2-2-3; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2395; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2419; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1564)*

SECTION 6. 326 IAC 2-2-4, AS AMENDED AT 24 IR 2420, SECTION 4, IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-4 Air quality analysis; requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 4. (a) Any application for a permit under the provisions of this rule shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

(1) For a source, each pollutant regulated under the provisions of the ~~Clean Air Act~~ **CAA** that the source would have the potential to emit in a significant amount.

(2) For a modification, each pollutant regulated under the provision of the ~~Clean Air Act~~ **CAA** for which the modification would result in a significant net emissions increase.

(b) Exemptions are as follows:

(1) The requirements of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification would:

(A) impact **no Class I area and** no area where an applicable increment is known to be violated; and

(B) be temporary.

~~(2) The requirements of this section as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a source that was in existence on March 1, 1978, if the net increase in allowable emissions of each pollutant subject to regulation under the provisions of the Clean Air Act, from the modification, after the application of best available control technology, would be less than fifty (50) tons per year.~~

~~(3)~~ **(2)** A source or modification shall be exempt from the requirements of this section with respect to monitoring for a particular pollutant if:

(A) the emissions increase of the pollutant from a new source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than:

Carbon Monoxide	575 $\mu g/m^3$, 8-hour average;
Nitrogen Dioxide	14 $\mu g/m^3$, annual average;
~~Total Suspended Particulate~~	~~10 $\mu g/m^3$, 24-hour average;~~
PM_{10}	10 $\mu g/m^3$, 24-hour average;
Sulfur Dioxide	13 $\mu g/m^3$, 24-hour average;
Ozone	No de minimis air quality level is provided for ozone; however, any net increase of one hundred (100) tons per year or more of volatile organic compounds subject to PSD would be required to ~~perform an ambient impact analysis including the gathering of~~ **provide ozone** ambient air quality data;
Lead	0.1 $\mu g/m^3$, 3-month average;
Mercury	0.25 $\mu g/m^3$, 24-hour average;
Beryllium	0.001 $\mu g/m^3$, 24-hour average;
Fluorides	0.25 $\mu g/m^3$, 24-hour average;
Vinyl Chloride	15 $\mu g/m^3$, 24-hour average;
Total Reduced Sulfur	10 mg/m^3, 1-hour average;
Hydrogen Sulfide	0.2 $\mu g/m^3$, 1-hour average;
Reduced Sulfur Compounds	10 $\mu g/m^3$, 1-hour average; or

(B) the concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in clause (A), or the pollutant is not listed in clause (A).

(c) All monitoring required by this section shall be done in accordance with the following provisions:

(1) With respect to any pollutant for which no ambient air quality standard designated in 326 IAC 1-3 exists, the analysis shall contain such air quality monitoring data as the commissioner determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(2) With respect to any pollutant (other than nonmethane hydrocarbons) for which an ambient air quality standard as designated in 326 IAC 1-3 does exist, the analysis shall contain continuous air quality monitoring data gathered for the purpose of determining whether emissions of that pollutant would cause or contribute to a violation of **the standard or** any maximum allowable increase.

(3) In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one (1) year preceding receipt of the application, except that, if the commissioner determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year (but not less than four (4) months), the data that is required shall have been gathered over at least that shorter period.

(4) The owner or operator of the proposed major stationary source or major modification of volatile organic compounds who satisfies all conditions of 40 CFR **Part** 51, Appendix S, Section IV* may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under this subsection.

(5) The owner or operator of a major stationary source or major modification shall, after construction of the source or modification, conduct such ambient monitoring as the commissioner determines is necessary to determine the effect of the emissions which the source or modification may have, or are having, on air quality in any area.

(6) The owner or operator of a major stationary source or major modification shall comply with the requirements of 40 CFR **Part** 58, Appendix B* during operation of monitoring stations for purposes of complying with this section.

(7) All air quality monitoring shall be done in accordance with state and federal monitoring procedures as set forth in the following references: May 1987 U.S. EPA, "Ambient Air Monitoring Guidelines for Prevention of Significant Deterioration" (EPA 45014-87-007)* and the May 1999, "Indiana Department of Environmental Management, Office of Air Management Quality Assurance Manual~~**~~ *".

~~*Copies of the Code of Federal Regulations (CFR) referenced~~ ***These documents are incorporated by reference. Copies** may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402. Copies are also~~ **20401 or are** available **for review and copying** at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana ~~46204-2220.~~ **46204.**

~~**These materials have been incorporated by reference and are available at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204-2220.~~ *(Air Pollution Control Board; 326 IAC 2-2-4; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2396; filed Apr 13, 1988, 3:35 p.m.: 11 IR 3026; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1099; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2420; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1565)*

SECTION 7. 326 IAC 2-2-5, AS AMENDED AT 24 IR 2422, SECTION 5, IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-5 Air quality impact; requirements

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

Sec. 5. (a) The owner or operator of the proposed major stationary source or major modification shall demonstrate that allowable emissions increases in conjunction with all other applicable emissions increases or reductions (including secondary emissions) will not cause or contribute to air pollution in violation of:

(1) any ambient air quality standard as designated in 326 IAC 1-3, in any air quality control region; or

(2) any applicable maximum allowable increase over the baseline concentration in any area.

(b) The requirements of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the new source, or the net emissions increase of that pollutant from the modification would:

(1) impact **no Class I area and** no area where an applicable increment is known to be violated; and

(2) be temporary.

(c) The requirements of this section do not apply to a major stationary source or major modification with respect to total suspended particulate matter.

~~(c)~~ **(d)** Air quality impact analysis required by this section shall be conducted in accordance with the following provisions:

(1) Any estimates of ambient air concentrations used in the demonstration processes required by this section, shall be based upon the applicable air quality models, data bases and other requirements specified in 40 CFR **Part** 51, Appendix W (Requirements for Preparation, Adoption, and Submittal of Implementation Plans, Guideline on Air Quality Models)*.

(2) Where an air quality impact model specified in the guidelines cited in subdivision (1) is inappropriate, a model may be modified or another model substituted, provided that all applicable guidelines are satisfied.

(3) Modifications or substitution of any model may only be done in accordance with guideline documents and with written approval from U.S. EPA and shall be subject to public comment procedures set forth in 326 IAC 2-1.1-6.

~~*Copies of 40 CFR 51, Appendix W referenced in this section~~ ***This document is incorporated by reference. Copies** may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401**

or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana ~~46204-2220.~~ **46204.** *(Air Pollution Control Board; 326 IAC 2-2-5; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2398; filed Jun 14, 1989, 5:00 p.m.: 12 IR 2024; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1001; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2422; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1566)*

SECTION 8. 326 IAC 2-2-6, AS AMENDED AT 24 IR 2422, SECTION 6, IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-6 Increment consumption; requirements

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 6. (a) Any demonstration pursuant to section 5 of this rule should demonstrate that increased emissions caused by the proposed major stationary source or major modification will not exceed eighty percent (80%) of the available maximum allowable increases (MAI) over the baseline concentrations for sulfur dioxide, particulate matter and nitrogen dioxide indicated in subsection ~~(c)(1).~~ **(b)(1).** Available maximum allowable increases are determined by adjusting the MAI to include impacts from:

(1) actual emissions from any major stationary source or major modification on which construction commenced after the major source baseline date; and

(2) actual emissions increases and decreases at any source occurring after the minor source baseline date.

On a case-by-case basis, a source may petition the commissioner to use in excess of this eighty percent (80%). The commissioner may authorize such use provided the source adequately demonstrates the need for the same.

~~(b) Exemptions are as follows:~~

~~(1) The requirements of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the allowable emissions of that pollutant from the source or the net emissions increase of that pollutant from the modification would:~~

~~(A) impact no area where an applicable increment is known to be violated; and~~

~~(B) be temporary.~~

~~(2) The requirements of this section, as they relate to the maximum allowable increase over the baseline nitrogen dioxide concentration, shall not apply to a major stationary source or major modification for which a complete application was submitted on or before October 16, 1989.~~

~~(c)~~ **(b)** Increment consumption shall be in accordance with the following:

(1) The following allowable increments reflect the PSD increments for a Class II area (as defined in the ~~Clean Air Act).~~ **CAA).** Indiana has no Class I or Class III areas; however, should some areas of the state be classified as Class I or III, the PSD increments pursuant to 40 CFR **Part** 52.21* must be adhered to. New permits issued after January 1, 1995, shall use PM_{10} as the indicator for particulate matter. The allowable increments are as follows:

Maximum Allowable Increments

Pollutants	Allowable Increments (Micrograms per Cubic Meter, $\mu g/m^3$ Limits)
(A) Particulate Matter:	
~~(i) TSP:~~	
~~Annual geometric mean~~	~~19~~
~~24-hour maximum~~	~~37~~
~~(ii)~~ (PM_{10}):	
Annual arithmetic mean	17
24-hour maximum	30
(B) Sulfur Dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
(C) Nitrogen Dioxide:	
Annual arithmetic mean	25

(2) For any period other than the annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location.

(3) When an applicant proposes to construct a major stationary source or major modification in an area designated as attainment or unclassified and the increments listed in subdivision (1) have been consumed, the increased emissions from the source or modification may be permitted to be offset by reducing emissions in the affected areas by an equal amount of the pollutant for which the area was designated as attainment or unclassified.

(4) The following pollutant concentrations shall be excluded when determining compliance with a maximum allowable increase:

(A) Concentrations attributable to the increase in emissions from sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under Sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 over the emissions from such sources before the effective date of such an order.

(B) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan.

(C) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources.

(D) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from **stationary** sources **that are affected by state**

implementation plan revisions approved by U.S. EPA are excluded provided ~~however, that as follows:~~ **the following criteria is met:**

(i) Such exclusion shall not exceed two (2) years in duration unless a longer time is approved by the commissioner **and the U.S. EPA.**

(ii) Such exclusion is not renewable.

(iii) Such exclusion shall allow no emissions increase which would impact **a Class I area or** an area where an applicable increment is known to be violated, or cause or contribute to a violation of an ambient air quality standard as designated in 326 IAC 1-3.

(iv) An emission limitation shall be in effect at the end of the time period specified in accordance with item (i) which will ensure that the emissions levels will not exceed those levels occurring from such source before ~~September 23, 1981.~~ **the exclusion was granted.**

(5) No exclusion of such a concentration pursuant to subdivision (4)(A) through (4)(B) shall apply more than five (5) years after ~~either September 23, 1981, or~~ the date the exclusion is granted pursuant to this rule, whichever is later. If both such order and plan are applicable, no such exclusion shall apply more than five (5) years after the latter of such effective dates.

~~*Copies of the Code of Federal Regulations (CFR) referenced in this section~~ ***This document is incorporated by reference. Copies** may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana ~~46204-2220.~~ **46204.** *(Air Pollution Control Board; 326 IAC 2-2-6; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2398; filed Jun 14, 1989, 5:00 p.m.: 12 IR 2025; filed Oct 3, 1995, 3:00 p.m.: 19 IR 185; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2422; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1567)*

SECTION 9. 326 IAC 2-2-7, AS AMENDED AT 24 IR 2424, SECTION 7, IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-7 Additional analysis; requirements

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

Sec. 7. (a) The owner or operator shall provide an analysis of the following:

(1) Impairment to visibility, soils, and vegetation that would occur as a result of the major stationary source or major modification and general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification.

(b) The requirements of this section shall not apply to a major stationary source or major modification as defined in section 1 of this rule, with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of the pollutant from the modification would:

~~(A)~~ **(1)** impact **no Class I area and** no area where an applicable increment is known to be violated; and

~~(B)~~ **(2)** be temporary.

(Air Pollution Control Board; 326 IAC 2-2-7; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2399; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2424; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1568)

SECTION 10. 326 IAC 2-2-9, AS AMENDED AT 24 IR 2424, SECTION 9, IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-9 Innovative control technology

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

Sec. 9. Any owner or operator of a proposed major stationary source or major modification may request the commissioner in writing to approve a system of innovative control technology as follows:

(1) The commissioner shall, with the consent of the governors of other affected states, allow the source or modification to employ a system of innovative control technology if **the following are met:**

(A) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

(B) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under section 3 of this rule by a date specified by the commissioner. Such date shall not be later than four (4) years from the time of startup or seven (7) years from the date of permit issuance.

(C) The source or modification will meet the requirements of sections 3 and ~~4~~ **5** of this rule, based on the emissions rate that the source employing the system of innovative control technology would be required to meet on the date specified by the commissioner.

(D) The source or modification will not, before the date specified by the commissioner:

(i) cause or contribute to a violation of an applicable ambient air quality standard as designated in 326 IAC 1-3; or

(ii) impact any area where an applicable increment is known to be violated.

(E) All other applicable requirements, including those for public participation, have been met.

(F) If applicable, the provisions of section 14 of this rule, relating to Class I areas, have been satisfied with respect to all periods during the life of the source or modification.

(2) The commissioner shall withdraw any approval to employ a system of innovative control technology made under this section if:

(A) the proposed system fails by the specified date to achieve the required continuous emissions reductions rate;

(B) the proposed system fails before the specified date, so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(C) the commissioner decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(3) If a major stationary source or major modification fails to meet the required level of continuous emission reduction within the specified time period, or the approval is withdrawn in accordance with ~~subsection (a)(2),~~ **subdivision (2),** the commissioner may allow the major stationary source or major modification up to an additional three (3) years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

(Air Pollution Control Board; 326 IAC 2-2-9; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2400; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2424; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1568)

SECTION 11. 326 IAC 2-2-12, AS AMENDED AT 24 IR 2425, SECTION 12, IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-12 Permit rescission

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15-6; IC 13-15-7; IC 13-17

Sec. 12. Any permit issued under this ~~title~~ **rule** shall remain in effect unless and until it is rescinded, modified, revoked, or **it** expires ~~pursuant to IC 13-15-6 and IC 13-15-7 as follows:~~ **in accordance with 326 IAC 2-1.1-9.5 or section 8 of this rule. The following apply to rescission:**

(1) Any owner or operator of a major stationary source or major modification who holds a permit for the source or modification which was issued under 40 CFR 52.21* **or this rule, prior to January 1, 2002,** may request the commissioner to rescind the permit or a particular portion of the permit.

(2) The commissioner shall grant an application for rescission if the application shows that this ~~section~~ **rule** would not apply to the major stationary source or major modification.

(3) If the commissioner rescinds a permit under this section the public shall be given adequate notice of the rescission. Publication of an announcement of the rescission in the affected region within sixty (60) days of the rescission shall be considered adequate notice.

~~*Copies of the Code of Federal Regulations (CFR) referenced in this section~~ ***This document is incorporated by reference. Copies** may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana ~~46204-2220.~~ **46204.** *(Air Pollution Control Board; 326 IAC 2-2-12; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2401; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2425; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1569)*

SECTION 12. 326 IAC 2-2-14, AS ADDED AT 24 IR 2427, SECTION 14, IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-14 Sources impacting federal Class I areas: additional requirements

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

Sec. 14. (a) The department shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a Class I area, to the federal land manager and the federal official charged with direct responsibility for management of any lands within any such area. Such notification shall be given within thirty (30) days of receipt of a permit application and at least sixty (60) days prior to any public hearing on the application for a permit to construct and shall include the following:

(1) A copy of all information relevant to the permit application.

(2) An analysis of the proposed source's anticipated impacts on visibility in the federal Class I area.

The department shall also provide the federal land manager and such federal officials with a copy of the preliminary determination required under this section, and shall make available to them any materials used in making that determination, promptly after the department makes the determination. The department shall also notify all affected federal land managers within thirty (30) days of receipt of any advance notification of any such permit application.

(b) The federal land manager and the federal official charged with direct responsibility for management of the Class I area have an affirmative responsibility to protect the air quality related values, including visibility, of the Class I area and to consider, in consultation with U.S. EPA, whether a proposed source or modification will have an adverse impact on such values.

(c) The department shall consider any analysis performed by the federal land manager, provided to the department within thirty (30) days of the notification required by subsection (a), that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any federal Class I area. Where the department finds that the analysis does not demonstrate to the satisfaction of the department that an adverse impact on visibility will result in the federal Class I area, the department must, in the notice of public hearing on the permit application, either explain the decision or give notice as to where the explanation may be obtained.

(d) The federal land manager of any Class I area may demonstrate to the department that the emissions from a proposed major stationary source or major modification would have an adverse impact on the air quality-related values, including visibility, of a Class I area, notwithstanding that the change in air quality resulting from emissions from the major stationary source or major modification would not cause or contribute to concentrations that would exceed the maximum allowable increases for a Class I area. If the department concurs with the demonstration, then the department shall not issue the permit.

(e) The owner or operator of a proposed major stationary source or major modification may demonstrate to the federal land manager that the emissions from the source or modification would have no adverse impact on the air quality related values of any Class I areas, including visibility, notwithstanding that the change in air quality resulting from emissions from the major stationary source or major modification would cause or contribute to concentrations that would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with the demonstration and the federal land manager so certifies, the department may issue the permit provided that the applicable requirements of this section are otherwise met, to issue the permit with emission limitations as may be necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides shall not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

Maximum Allowable Increase

Pollutant	(Micrograms Per Cubic Meter)
Particulate matter:	
PM_{10}, annual arithmetic mean	17
PM_{10}, 24 hour maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24 hour maximum	91
3 hour maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

(f) The owner or operator of a proposed major stationary source or major modification that cannot be approved under subsection (e) may demonstrate to the department that the source cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of twenty-four (24) hours or less applicable to any Class I area and, in the case of federal mandatory Class I areas, that an exemption under this subsection would not adversely affect the air quality related values of the area, including visibility. The department, after consideration of the federal land manager's recommendation, if any, and subject to the federal land manager's concurrence, may, after notice and public hearing, grant an exemption from such maximum allowable increase. If such exemption is granted, the department shall issue a permit to such major stationary source or major modification pursuant to the requirements under subsection (h) provided that the applicable requirements of this section are otherwise met.

(g) In any case where the department recommends an exemption in which the federal land manager does not concur, the recommendations of the department and the federal land manager shall be transmitted to the president. The president may approve the department's recommendation if the president finds that the exemption is in the national interest. If the exemption is approved, the department shall issue a permit pursuant to the requirements under subsection (h) provided that the applicable requirements of this section are otherwise met.

(h) In the case of a permit issued pursuant to subsection (f) or (g), the major stationary source or major modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the major stationary source or major modification would not, during any day on which the otherwise applicable maximum allowable increases are exceeded, cause or contribute to concentrations that would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations that exceed the otherwise applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than eighteen (18) days, not necessarily consecutive, during any annual period:

Maximum Allowable Increase
(Micrograms Per Cubic Meter) of Sulfur Dioxide

	Terrain Areas	
Period of Exposure	Low	High
24 hour maximum	36	62
3 hour maximum	130	221

(i) The department shall transmit to the U.S. EPA a copy of each permit application relating to a major stationary source or major modification and provide notice to the U.S. EPA of the following actions related to consideration of such permit under this section:

(1) Receipt of an advanced notification of a permit application affected by this section.

(2) Any written notice provided to the federal land manager under this section.

(3) Public notice of a preliminary determination.

(4) Notices of public hearings.

(5) Decisions to grant or deny exemptions in accordance with this section.

(6) Any decision in accordance with subsection (c) that an analysis submitted by the federal land manager does not demonstrate to the satisfaction of the department that an adverse impact on visibility will result in the Class I area.

(7) Denial of a permit.

(8) Issuance of a permit.

(Air Pollution Control Board; 326 IAC 2-2-14; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2427; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2427; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1569)

SECTION 13. 326 IAC 2-2.5 IS ADDED TO READ AS FOLLOWS:

Rule 2.5. Pollution Control Projects

326 IAC 2-2.5-1 Applicability

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

Sec. 1. (a) The modification, addition, or replacement of a pollution control project at an existing source shall not constitute a major modification under 326 IAC 2-2-1(x).

(b) A pollution control project that causes a significant net emission increase pursuant to 326 IAC 2-2, must be approved by the commissioner and the U.S. EPA, if necessary, under the SIP prior to beginning actual construction. To obtain approval of a pollution control project under this rule, the owner or operator shall submit an application for a significant source modification under 326 IAC 2-7-10.5(f)(8) or 326 IAC 2-7-10.5(f)(9).

(c) For sources subject to this rule, the following applies:

(1) The addition, replacement, or use of the pollution control project must be environmentally beneficial as described in subsection (d).

(2) The pollution control project may not cause a significant net increase in representative actual annual emissions of any regulated pollutant that causes or contributes to:

(A) a violation of any national ambient air quality standard;

(B) a violation of PSD increments; or

(C) an adverse impact on any air quality related value at any Class I area.

(d) The commissioner shall determine if a project is environmentally beneficial based on the following criteria:

(1) An evaluation of the types and quantity of air pollutants emitted before and after the project, as well as other relevant environmental factors shall be considered.

(2) Projects that result in an increase in pollutants other than those targeted in the project shall be reviewed to determine that the increase in emissions of the other pollutants has been minimized and does not result in environmental harm.

(3) A project that would result in an unacceptable increased risk due to the release of air toxics is not environmentally beneficial.

(e) The department may request a source to submit an analysis of the air quality impact of the net emissions increase of the pollution control project. *(Air Pollution Control Board; 326 IAC 2-2.5-1; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1571)*

326 IAC 2-2.5-2 Definitions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17; 40 CFR 60.15(b)

Sec. 2. (a) The definitions in this section apply throughout this rule, in addition to the definitions in 326 IAC 2-2, except for 326 IAC 2-2-1(dd).

(b) "Pollution control project" means, for purposes of this rule, an activity or project, listed below, undertaken at an existing emissions unit for purposes of reducing emissions from the unit.

(1) Pollution control projects are limited to any of the following:

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

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

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

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

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

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

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

(H) A pollution prevention project that the commissioner has determined to be environmentally beneficial under this rule.

(I) The installation of a technology not listed in subdivisions (1) through (8) of this subsection *[sic.]* **that the commissioner has determined to be environmentally beneficial under this rule.**

(2) These activities or projects do not include the replacement of an existing emissions unit with a newer or different unit, or the reconstruction, according to 40 CFR 60.15(b)*, of an existing emissions unit.

(c) "Pollution prevention project" means, for purposes of this rule, a project consisting of an activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants and other pollutants to the environment, including fugitive emissions, prior to recycling, treatment, or disposal.

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 2-2.5-2; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1571)*

SECTION 14. 326 IAC 2-6.1-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-6.1-2 Applicability
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 2. **Except for sources required to have a Part 70 permit as described in 326 IAC 2-7-2,** sources in existence prior to ~~the effective date of this rule,~~ **December 25, 1998,** and meeting any of the applicability criteria under 326 IAC 2-5.1-3(a) shall apply for an air operating permit as described in this rule. *(Air Pollution Control Board; 326 IAC 2-6.1-2; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1015; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1572)*

SECTION 15. 326 IAC 2-6.1-5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-6.1-5 Operating permit content
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 5. (a) Permits or permit revisions issued under this rule shall contain the following:

(1) Emission limitations for any source or emissions unit that assure:

(A) the ambient air quality standards set forth in 326 IAC 1-3 will be attained or maintained, or both;

(B) the applicable prevention of significant deterioration maximum allowable increases set forth in 326 IAC 2-2 will be maintained;

(C) the public health will be protected; and

(D) compliance with the requirements of this title and the requirements of the CAA will be maintained.

(2) Monitoring, testing, reporting, and record keeping requirements that assure reasonable information is provided to evaluate compliance consistent with the permit terms and conditions, the underlying requirements of this title and the CAA. Such requirements shall be in accordance with 326 IAC 3 and other applicable regulations.

(3) A requirement that any revision of an emission limitation, monitoring, testing, reporting, and record keeping requirements shall be made consistent with the permit revision requirements under section 6 of this rule and the procedures under this rule.

(4) A requirement that upon presentation of credentials and other documents as may be required by law, the owner or operator shall allow the commissioner, an authorized representative of the commissioner, or the U.S. EPA to perform the following at a reasonable time of day and in accordance with safety requirements:

(A) Enter upon the premises where a permitted source is located or emissions-related activity is conducted or where records required by a permit term or condition are kept.

(B) Have access to and copy any records that must be kept under this title or the conditions of a permit or operating permit revision.

(C) Inspect any operations, processes, emissions units (including monitoring and air pollution control equipment), or practices regulated or required under a permit or operating permit revision.

(D) Sample or monitor substances or parameters for the purpose of assuring compliance with a permit, permit revision, or applicable requirement as authorized by the CAA and this title.

(E) Document alleged violations using cameras or video equipment. Such documentation may be subject to a claim of confidentiality under ~~326 IAC 17.~~ **326 IAC 17.1.**

(5) A requirement that an authorized individual provide an annual notice to the department that the source is in operation and in compliance with the permit or registration. The commissioner may request that the source provide an identification of all emission units that have been installed that are described under 326 IAC 2-1.1-3(d)(1) through 326 IAC 2-1.1-3(d)(31) with the annual notification.

(b) An operating permit issued under this rule may include terms and conditions that, notwithstanding the permit modification or revision requirements under section 6 of this rule, allow the source to make modifications without review, provided the operating permit includes terms and conditions that prescribe emissions limitations and standards applicable to specifically identified modifications or types of modifications which may occur during the term of the permit. Such permit conditions shall include the following:

(1) Emission limitations and standards necessary to assure compliance with the permit terms and conditions and all applicable requirements.

(2) Monitoring, testing, reporting, and record keeping requirements that assure all reasonable information is provided to evaluate continuous compliance with the permit terms and conditions, the underlying requirements of this title, and the CAA.

(c) The commissioner shall not issue a minor source operating permit that includes terms and conditions that limit the potential to emit of the source to below emission thresholds for a Part 70 permit. *(Air Pollution Control Board; 326 IAC 2-6.1-5; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1016; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3106; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1572)*

SECTION 16. 326 IAC 2-7-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-1 Definitions

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

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

(1) "Acid rain program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with Title IV of the CAA, 40 CFR 72*, and 40 CFR 75* through 40 CFR 78*, 58 FR 3590*, and regulations implementing Sections 407 and 410 of the CAA.

(2) "Actual emissions" means the actual rate of emissions in tons per year of any regulated pollutant emitted from a Part 70 source over the preceding calendar year or any other period determined by the commissioner to be representative of normal source operation.

(3) "Affected source" shall have the meaning given to it in the regulations promulgated under Title IV of the CAA.

(4) "Affected states" means all states:

(A) whose air quality may be affected and are contiguous to the state of Indiana; or

(B) that are within fifty (50) miles of the permitted source.

(5) "Affected unit" shall have the meaning given to it in the regulations promulgated under Title IV of the CAA.

(6) "Applicable requirement" means all of the following as they apply to emissions units in a Part 70 source (including requirements that have been promulgated or approved by the U.S. EPA through rulemaking at the time of permit issuance but have future effective compliance dates):

(A) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by the U.S. EPA through rulemaking under Title I of the CAA that implements the relevant requirements of the CAA, including any revisions to that plan promulgated in 40 CFR 52*.

(B) Any term or condition of any preconstruction permits issued under regulations approved or promulgated through rulemaking under Title I, including Part C or D of the CAA.

(C) Any standard or other requirement under Section 111 of the CAA, including Section 111(d) of the CAA.

(D) Any standard or other requirement under Section 112 of the CAA, including any requirement concerning accident prevention under Section 112(r)(7) of the CAA.

(E) Any standard or other requirement of the acid rain program under Title IV of the CAA or the regulations promulgated thereunder.

(F) Any requirements established under Section 504(b) or 114(a)(3) of the CAA.

(G) Any standard or other requirement governing solid waste incineration under Section 129 of the CAA.

(H) Any standard or other requirement for consumer and commercial products under Section 183(e) of the CAA.

(I) Any standard or other requirement for tank vessels under Section 183(f) of the CAA.

(J) Any standard or other requirement of the Code of Federal Regulations promulgated to protect stratospheric ozone under Title VI of the CAA, unless the U.S. EPA has determined that such requirements need not be contained in a Part 70 permit.

(K) Any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the CAA, but only as it would apply to temporary sources permitted under Section 504(e) of the CAA.

(7) "Area source" means any stationary source of hazardous air pollutants that is not a major source. This term does not include motor vehicles or nonroad vehicles subject to regulation under Title II of the CAA.

(8) "Clean Air Act" or "CAA" means the Clean Air Act, as amended (including the Clean Air Act Amendments of 1990 (P.L.101-549)), 42 U.S.C. 7401, et seq.

(9) "Code of Federal Regulations" or "CFR", unless otherwise provided, means:

(A) with respect to 40 CFR~~*~~ **, generally, the July 1, ~~1994~~, **1998,** edition of the Code of Federal Regulations; and

(B) with respect to 40 CFR 70~~*~~ **, the codified regulation published in the Federal Register, Volume 57, Number 140, Tuesday, July 21, 1992.

(10) "Designated representative" shall have the meaning given to it in Section 402(26) of the CAA and the regulations promulgated thereunder.

(11) "Draft Part 70 permit" means the version of a Part 70 permit for which the commissioner offers public participation and notice to affected states under section 17 of this rule.

(12) "Emergency" means any situation, including acts of God, arising from sudden and reasonably unforeseeable events beyond the reasonable control of the source, which:

(A) requires immediate corrective action to restore normal operation; and

(B) causes the source to exceed an emission limit under a Part 70 permit due to unavoidable increases in emissions attributable to the emergency.

An emergency shall not include noncompliance to the extent caused by improperly designed equipment, failure to implement an adequate preventive maintenance plan, careless or improper operation, or operator error.

(13) "Emission limitation or standard" means any of the following as defined under the CAA:

(A) A federally enforceable emission limitation or standard.

(B) A standard of performance.

(C) A means of emission limitation.

An emission limitation or standard may be expressed in terms of the pollutant, expressed either as a specific quantity, rate, or concentration of emissions (for example, pounds of sulfur dioxide (SO_2) per hour, pounds of sulfur dioxide (SO_2) per mmBtu, or kilograms of volatile organic compounds (VOC) per liter of applied coating solids) or as the relationship of uncontrolled to controlled emissions (for example, percent capture and destruction efficiency of VOC or percent reduction of SO_2). An emission limitation or standard may also be expressed either as a work practice process or other form of design, equipment operation, or operation and maintenance requirement.

(14) "Emissions allowable under the Part 70 permit" means a federally enforceable Part 70 permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

(15) "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under Section 112(b) of the CAA. This term is not meant to alter or affect the definition of unit for purposes of Title IV of the CAA.

(16) "Federally enforceable state operating permit" or "FESOP" means a permit issued under 326 IAC 2-8.

(17) "Final Part 70 permit" means the version of a Part 70 permit issued by the commissioner that has completed all review procedures required by sections 17 and 18 of this rule.

(18) "Fugitive emissions" means emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(19) "General Part 70 permit" means a Part 70 permit that is applicable to a class or category of sources or modifications thereto, whether or not under common ownership or control, that are subject to similar applicable requirements.

(20) "Health-based emission limit" means any enforceable condition the sole purpose of which is to protect public health or welfare without regard to technical achievability, including, but not limited to, any requirement in a permit based on:

(A) an emission standard for hazardous air pollutants promulgated under 40 CFR 61*, including 326 IAC 14;

(B) conditions to prevent significant deterioration of air quality established under 40 CFR 52.21*, including 326 IAC 2-2-5 and 326 IAC 2-2-6 but excluding conditions based on best available control technology (BACT);

(C) limits relied upon in a formal attainment demonstration supporting a state implementation plan approved by the U.S. EPA under Section 110(a)(2)(K) of the CAA, with the exception of limits based on reasonably available control technology (RACT) for sources of volatile organic compounds (VOCs) in areas designated attainment for ozone in accordance with the CAA; or

(D) conditions established as residual risk standards under 42 U.S.C. 7412(f).

(21) "Insignificant activity" has any of the meanings specified in clauses (A) through (G) as follows:

(A) An emission unit or activity whose potential uncontrolled emissions meet the exemption levels specified in ~~326 IAC 2-1.1-3(d)(1)~~ **326 IAC 2-1.1-3(e)(1)** or the exemption levels specified in the following, whichever is lower:

(i) For lead or lead compounds measured as elemental lead, the exemption level is six-tenths (0.6) ton per year or three and twenty-nine hundredths (3.29) pounds per day.

(ii) For carbon monoxide (CO), the exemption limit is twenty-five (25) pounds per day.

(iii) For sulfur dioxide, the exemption level is five (5) pounds per hour or twenty-five (25) pounds per day.

(iv) For volatile organic compounds (VOC), the exemption limit is three (3) pounds per hour or fifteen (15) pounds per day.

(v) For nitrogen oxides (NO_x), the exemption limit is five (5) pounds per hour or twenty-five (25) pounds per day.

(B) For an emission unit or activity with potential uncontrolled emissions of particulate matter with an aerodynamic diameter less than or equal to ten (10) micrometers (PM_{10}), the exemption level is either five (5) pounds per hour or twenty-five (25) pounds per day.

(C) For units with potential uncontrolled emissions of HAPs, that are not listed as insignificant in clauses (D) through (G) or defined as trivial in subdivision (40), an insignificant activity is any of the following:

(i) Any unit, not regulated by a NESHAP, emitting greater than one (1) pound per day but less than five (5) pounds per day or one (1) ton per year of a single HAP.

(ii) Any unit, not regulated by a NESHAP, emitting greater than one (1) pound per day but less than twelve and five-tenths (12.5) pounds per day or two and five-tenths (2.5) tons per year of any combination of HAPs.

The source shall provide a description of the insignificant activity, including identification of the HAPs emitted and any applicable requirements. A source may rely on MSDS sheets, product labels, other manufacturer's information, or other technical and scientific judgement for identification of HAPs. Insignificant activities that are part of a multistep process line shall be reported as such on the operating

permit application, and the source shall include a description of the function and components of the process line on the operating permit application. Insignificant activities that perform equivalent functions shall be grouped, and the function and number of those units shall be included on the operating permit application.

(D) Emissions from a laboratory as defined in this clause. As used in this clause, "laboratory" means a place or activity devoted to experimental study or teaching, or to the testing and analysis of drugs, chemicals, chemical compounds or other substances, or similar activities, provided that the activities described in this clause are conducted on a laboratory scale. Activities are conducted on a laboratory scale if the containers used for reactions, transfers, and other handling of substances are designed to be easily and safely manipulated by one (1) person. If a facility manufactures or produces products for profit in any quantity, it shall not be considered to be a laboratory under this clause. Support activities necessary to the operation of the laboratory are considered to be part of the laboratory. Support activities do not include the provision of power to the laboratory from sources that provide power to multiple projects or from sources that would otherwise require permitting, such as boilers that provide power to an entire facility.

(E) Emissions from research and development activities as defined in this clause. As used in this clause, "research and development activities" means activities conducted under close supervision of technically trained personnel that are not engaged in the manufacture of products for sale, exchange for commercial profit, or distribution, except in a de minimis manner and the primary purpose of which is to:

(i) test more efficient production processes;

(ii) test methods for preventing or reducing adverse environmental impacts; or

(iii) conduct research and development into new processes and products.

Support activities necessary to the research and development activities are considered to be part of the research and development activities. Support activities do not include the provision of power to the research and development activities from sources that provide power to multiple projects or from sources that would otherwise require permitting, such as boilers that provide power to a source or solid waste disposal units, such as incinerators.

(F) Emissions from educational and teaching activities as defined in this clause. As used in this clause, "educational and teaching activities" means activities conducted at public and nonpublic schools and postsecondary educational institutions for educational, vocational, agricultural, occupational, employment, or technical training purposes provided the activities do not include the production of an intermediate or final product for sale or exchange for commercial profit or distribution. Support activities necessary to the educational and teaching activities are considered to be part of the educational and teaching activities. Support activities do not include the provision of power to the educational and teaching activities from sources that provide power to multiple projects or from sources that would otherwise require permitting, such as boilers that provide power to a source or solid waste disposal units, such as incinerators.

(G) Any of the following listed activities:

(i) Combustion related activities, including the following:

(AA) Space heaters, process heaters, heat treat furnaces, or boilers using the following fuels:

(aa) Natural gas-fired combustion sources with heat input equal to or less than ten million (10,000,000) British thermal units per hour.

(bb) Propane or liquified petroleum gas or butane-fired combustion sources with heat input equal to or less than six million (6,000,000) British thermal units per hour.

(cc) Fuel oil-fired combustion sources with heat input equal to or less than two million (2,000,000) British thermal units per hour and firing fuel containing equal to or less than five-tenths percent (0.5%) sulfur by weight.

(dd) Wood-fired combustion sources with heat input equal to or less than one million (1,000,000) British thermal units per hour and not burning treated wood or chemically contaminated wood.

(BB) Equipment powered by **diesel fuel fired or natural gas fired** internal combustion engines of capacity equal to or less than five hundred thousand (500,000) British thermal units per hour except where total capacity of equipment operated by one (1) stationary source as defined by subdivision (38) exceeds two million (2,000,000) British thermal units per hour.

(CC) Combustion source flame safety purging on startup.

(ii) Fuel dispensing activities, including the following:

(AA) A gasoline fuel transfer dispensing operation handling less than or equal to one thousand three hundred (1,300) gallons per day and filling storage tanks having a capacity equal to or less than ten thousand five hundred (10,500) gallons. Such storage tanks may be in a fixed location or on mobile equipment.

(BB) A petroleum fuel other than gasoline dispensing facility, having a storage tank capacity less than or equal to ten thousand five hundred (10,500) gallons, and dispensing three thousand five hundred (3,500) gallons per day or less.

(iii) The following VOC and HAP storage containers:

(AA) Storage tanks with capacity less than or equal to one thousand (1,000) gallons and annual throughputs equal to or less than twelve thousand (12,000) gallons.

(BB) Vessels storing the following:

(aa) Lubricating oils.

(bb) Hydraulic oils.

(cc) Machining oils.

(dd) Machining fluids.

(iv) Refractory storage not requiring air pollution control equipment.

(v) Equipment used exclusively for the following:

(AA) Packaging the following:

(aa) Lubricants.

(bb) Greases.

(BB) Filling drums, pails, or other packaging containers with the following:

(aa) Lubricating oils.

(bb) Waxes.

(cc) Greases.

(vi) Production related activities, including the following:

(AA) Application of:

(aa) oils;

(bb) greases;

(cc) lubricants; and

(dd) nonvolatile material;

as temporary protective coatings.

(BB) Machining where an aqueous cutting coolant continuously floods the machining interface.

(CC) Degreasing operations that do not exceed one hundred forty-five (145) gallons per twelve (12) months, except if subject to 326 IAC 20-6.

(DD) Cleaners and solvents characterized as:

(aa) having a vapor pressure equal to or less than two (2.0) kilo Pascals (fifteen (15) millimeters of mercury or three-tenths (0.3) pound per square inch) measured at thirty-eight (38) degrees Centigrade (one hundred (100) degrees Fahrenheit); or

(bb) having a vapor pressure equal to or less than seven-tenths (0.7) kilo Pascal (five (5) millimeters of mercury or one-tenth (0.1) pound per square inch) measured at twenty (20) degrees Centigrade (sixty-eight (68) degrees Fahrenheit);

the use of which, for all cleaners and solvents combined, does not exceed one hundred forty-five (145) gallons per twelve (12) months.

(EE) The following equipment related to manufacturing activities not resulting in the emission of HAPs:

(aa) Brazing.

(bb) Cutting torches.

(cc) Soldering.

(dd) Welding.

(FF) Closed loop heating and cooling systems.

(GG) Infrared cure equipment.

(HH) Exposure chambers (towers or columns), for curing of ultraviolet inks and ultraviolet coatings where heat is the intended discharge.

(II) Any of the following structural steel and bridge fabrication activities:

(aa) Cutting two hundred thousand (200,000) linear feet or less of one (1) inch plate or equivalent.

(bb) Using eighty (80) tons or less of welding consumables.

(vii) Activities associated with the following recovery systems:

(AA) Rolling oil recovery systems.

(BB) Ground water oil recovery wells.

(viii) Solvent recycling systems with batch capacity less than or equal to one hundred (100) gallons.

(ix) Water based activities, including the following:

(AA) Activities associated with the treatment of wastewater streams with an oil and grease content less than or equal to one percent (1%) by volume.

(BB) Water run-off ponds for petroleum coke-cutting and coke storage piles.

(CC) Activities associated with the transportation and treatment of sanitary sewage, provided discharge to the treatment plant is under the control of the owner or operator, that is, an on-site sewage treatment facility.

(DD) Any operation using aqueous solutions containing less than or equal to one percent (1%) by weight of VOCs excluding HAPs.

(EE) Water based adhesives that are less than or equal to five percent (5%) by volume of VOCs excluding HAPs.

(FF) Noncontact cooling tower systems with either of the following:

(aa) Natural draft cooling towers not regulated under a NESHAP.

(bb) Forced and induced draft cooling tower systems not regulated under a NESHAP.

(GG) Quenching operations used with heat treating processes.

Oil, grease, or VOC content shall be determined by a test method acceptable to the department and the U.S. EPA.

(x) Repair activities, including the following:

(AA) Replacement or repair of electrostatic precipitators, bags in baghouses, and filters in other air filtration equipment.

(BB) Heat exchanger cleaning and repair.

(CC) Process vessel degassing and cleaning to prepare for internal repairs.

(xi) Trimmers that do not produce fugitive emissions and that are equipped with a dust collection or trim material recovery device, such as a bag filter or cyclone.

(xii) Stockpiled soils from soil remediation activities that are covered and waiting transport for disposal.

(xiii) Paved and unpaved roads and parking lots with public access.

(xiv) Conveyors as follows:

(AA) Covered conveyors for solid raw material, including the following:

(aa) Coal or coke conveying of less than or equal to three hundred sixty (360) tons per day.

(bb) Limestone conveying of less than or equal to seven thousand two hundred (7,200) tons per day for sources other than mineral processing plants constructed after August 31, 1983.

(BB) Uncovered coal or coke conveying of less than or equal to one hundred twenty (120) tons per day.
(CC) Underground conveyors.
(DD) Enclosed systems for conveying plastic raw material and plastic finished goods.

(xv) Coal bunker and coal scale exhausts and associated dust collector vents.

(xvi) Asbestos abatement projects regulated by 326 IAC 14-10.

(xvii) Routine maintenance and repair of buildings, structures, or vehicles at the source where air emissions from those activities would not be associated with any production process, including the following:
(AA) Purging of gas lines.
(BB) Purging of vessels.

(xviii) Flue gas conditioning systems and associated chemicals, such as the following:
(AA) Sodium sulfate.
(BB) Ammonia.
(CC) Sulfur trioxide.

(xix) Equipment used to collect any material that might be released during a malfunction, process upset, or spill cleanup, including the following:
(AA) Catch tanks.
(BB) Temporary liquid separators.
(CC) Tanks.
(DD) Fluid handling equipment.

(xx) Blowdown for the following:
(AA) Sight glass.
(BB) Boiler.
(CC) Cooling tower.
(DD) Compressors.
(EE) Pumps.

(xxi) Furnaces used for melting metals other than beryllium with a brim full capacity equal to or less than four hundred fifty (450) cubic inches by volume.

(xxii) Activities associated with emergencies, including the following:
(AA) On-site fire training approved by the department.
(BB) Emergency generators as follows:
(aa) Gasoline generators not exceeding one hundred ten (110) horsepower.
(bb) Diesel generators not exceeding one thousand six hundred (1,600) horsepower.
(cc) Natural gas turbines or reciprocating engines not exceeding sixteen thousand (16,000) horsepower.
(CC) Stationary fire pump engines.

(xxiii) Grinding and machining operations controlled with fabric filters, scrubbers, mist collectors, wet collectors, and electrostatic precipitators with a design grain loading of less than or equal to three one-hundredths (0.03) grains per actual cubic foot and a gas flow rate less than or equal to four thousand (4,000) actual cubic feet per minute, including the following:
(AA) Deburring.
(BB) Buffing.
(CC) Polishing.
(DD) Abrasive blasting.
(EE) Pneumatic conveying.
(FF) Woodworking operations.

(xxiv) Purge double block and bleed valves.

(xxv) Filter or coalescer media changeout.

(xxvi) Vents from ash transport systems not operated at positive pressure.

(xxvii) Mold release agents using low volatile products (vapor pressure less than or equal to two (2) kilo Pascals measured at thirty-eight (38) degrees Centigrade).

(xxviii) Farm operations.

(xxix) Woodworking equipment controlled by a baghouse provided that the following criteria are met:
(AA) The baghouse does not exhaust to the atmosphere greater than one hundred twenty-five thousand (125,000) cubic feet per minute.
(BB) The baghouse does not emit particulate matter with a diameter less than ten (10) microns in excess of three-thousandths (0.003) grain per dry standard cubic feet of outlet air.
(CC) Opacity from the baghouse does not exceed ten percent (10%).
(DD) The baghouse is in operation at all times that the woodworking equipment is in use.
(EE) Visible emissions from the baghouse are observed daily using procedures in accordance with 40 CFR 60, Appendix A, Method 22* and normal or abnormal emissions are recorded. In the event abnormal emissions are observed for greater than six (6) minutes in duration, the following shall occur:
(aa) The baghouse shall be inspected.
(bb) Corrective actions, such as replacing or reseating bags, are initiated, when necessary.
(FF) The baghouse is inspected quarterly when vented to the atmosphere.
(GG) The owner or operator keeps the following records:
(aa) Records documenting the date when the baghouse redirected indoors or to the atmosphere.
(bb) Quarterly inspection reports, when vented to the atmosphere.
(cc) Visible observation reports.
(dd) Records of corrective actions.

(xxx) Woodworking equipment controlled by a baghouse provided that the following criteria are met:
(AA) The baghouse does not exhaust to the atmosphere greater than forty thousand (40,000) cubic feet per minute.
(BB) The baghouse does not emit particulate matter with a diameter less than ten (10) microns in excess of one-hundredth (0.01) grain per dry standard cubic feet of outlet air.
(CC) Opacity from the baghouse does not exceed ten percent (10%).

(DD) The baghouse is in operation at all times that the woodworking equipment is in use.

(EE) Visible emissions from the baghouse are observed daily using procedures in accordance with 40 CFR 60, Appendix A, Method 22* and normal or abnormal emissions are recorded. In the event abnormal emissions are observed for greater than six (6) minutes in duration, the following shall occur:

(aa) The baghouse shall be inspected.

(bb) Corrective actions, such as replacing or reseating bags, are initiated, when necessary.

(FF) The baghouse is inspected quarterly when vented to the atmosphere.

(GG) The owner or operator keeps the following records:

(aa) Records documenting the date when the baghouse redirected indoors or to the atmosphere.

(bb) Quarterly inspection reports, when vented to the atmosphere.

(cc) Visible observation reports.

(dd) Records of corrective actions.

(H) Detailed information concerning emissions from activities or equipment listed in clauses (A) through (G) is not required in a permit application submitted under this rule or 326 IAC 2-8; however, additional emissions information must be provided upon request by the department.

(I) Notwithstanding any other requirements in this rule, the applicant shall include all emissions sources and quantify emissions if needed to determine major source status, to determine compliance with any applicable requirement or to determine the applicability of any applicable requirement. Identification of an activity or equipment as insignificant under this section does not preclude the inclusion of the activity or equipment in a compliance plan or protocol as appropriate.

(J) Notwithstanding any other provision of this rule or 326 IAC 2-6, emissions from activities defined as insignificant in this subdivision or trivial in subdivision (40) need not be included in a source's annual emission statement required by 326 IAC 2-6.

(K) A change in a source's insignificant or trivial activities or the addition of an insignificant activity or trivial activity shall not constitute a modification for purposes of section 12 of this rule, if the new activity or modified activity:

(i) meets the definition of "insignificant activity" of this subdivision or "trivial activity" of subdivision (40);

(ii) has all applicable requirements and associated monitoring in the current permit; and

(iii) is not a modification under any provision of Title I of the CAA.

The department may request that the source update its list of insignificant activities as part of its annual compliance certification.

(22) "Major source" means any stationary source or any group of stationary sources as described in this subdivision. For purposes of clauses (B) and (C), the term shall include any group of stationary sources that are located on one (1) or more contiguous or adjacent properties and are under common control of the same person (or persons under common control) belonging to a single major industrial grouping. In addition, for the purposes of defining major source in clause (B) or (C), a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of stationary sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two (2) digit code) as described in the Standard Industrial Classification Manual, 1987*. For purposes of clauses (B) and (C), any stationary source (or group of stationary sources) that supports another source, where both are under common control of the same person (or persons under common control) and are located on contiguous or adjacent properties, shall be considered a support facility and part of the same source regardless of the two (2) digit SIC code for that support facility. A stationary source (or group of stationary sources) is considered a support facility to a source if at least fifty percent (50%) of the output of the support facility is dedicated to the source. This term includes the following:

(A) A major source under Section 112 of the CAA, which is defined as follows:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate:

(AA) ten (10) tons per year (tpy) or more of any hazardous air pollutant that has been listed in Section 112(b) of the CAA;

(BB) twenty-five (25) tpy or more of any combination of such hazardous air pollutants; or

(CC) such lesser quantity as the U.S. EPA may establish by rule.

(ii) Notwithstanding item (i):

(AA) emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; and

(BB) research and development activities may be considered separately for purposes of determining whether a major source is present, and need not be aggregated with collocated stationary sources unless the research and development activities contribute to the product produced or service rendered by the collocated sources in a more than de minimis manner.

(iii) For radionuclides, major source shall have the meaning specified by the U.S. EPA by rule.

(B) A major stationary source of air pollutants, as defined in Section 302 of the CAA, that directly emits or has the potential to emit, one hundred (100) tpy or more of any regulated air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by the U.S. EPA by rule). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the CAA unless the source belongs to one (1) of the following categories of stationary sources:

(i) Coal cleaning plants (with thermal dryers).
(ii) Kraft pulp mills.
(iii) Portland cement plants.
(iv) Primary zinc smelters.
(v) Iron and steel mills.
(vi) Primary aluminum ore reduction plants.
(vii) Primary copper smelters.
(viii) Municipal incinerators, or combinations of municipal incinerators, capable of charging more than fifty (50) tons of refuse per day.
(ix) Hydrofluoric, sulfuric, or nitric acid plants.
(x) Petroleum refineries.
(xi) Lime plants.
(xii) Phosphate rock processing plants.
(xiii) Coke oven batteries.
(xiv) Sulfur recovery plants.
(xv) Carbon black plants (furnace process).
(xvi) Primary lead smelters.
(xvii) Fuel conversion plants.
(xviii) Sintering plants.
(xix) Secondary metal production plants.
(xx) Chemical process plants.
(xxi) Fossil fuel boilers (or combination thereof) totaling more than two hundred fifty million (250,000,000) British thermal units per hour heat input.
(xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand (300,000) barrels.
(xxiii) Taconite ore processing plants.
(xxiv) Glass fiber processing plants.
(xxv) Charcoal production plants.
(xxvi) Fossil fuel fired steam electric plants of more than two hundred fifty million (250,000,000) British thermal units per hour heat input.
(xxvii) Any other stationary source category regulated under Section 111 or 112 of the CAA and for which the U.S. EPA has made an affirmative determination under Section 302(j) of the CAA.

(C) A major stationary source as defined in Part D of Title I of the CAA, including the following:

(i) For ozone nonattainment areas, sources with the potential to emit:
(AA) one hundred (100) tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as marginal or moderate;
(BB) fifty (50) tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as serious;
(CC) twenty-five (25) tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as severe; or
(DD) ten (10) tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as extreme;
except that the references in this item to one hundred (100), fifty (50), twenty-five (25), and ten (10) tpy of nitrogen oxides shall not apply with respect to any source for which the U.S. EPA has made a finding, under Section 182(f)(1) or 182(f)(2) of the CAA, that requirements under Section 182(f) of the CAA do not apply.
(ii) For ozone transport regions established under Section 184 of the CAA, sources with the potential to emit fifty (50) or more tpy of volatile organic compounds.
(iii) For carbon monoxide nonattainment areas:
(AA) that are classified as serious; and
(BB) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the U.S. EPA;
sources with the potential to emit fifty (50) tpy or more of carbon monoxide.
(iv) For particulate matter PM_{10} nonattainment areas classified as serious, sources with the potential to emit seventy (70) tpy or more of PM_{10}.

(23) "Part 70 permit" or "permit", unless the context suggests otherwise, means any Part 70 permit or group of Part 70 permits authorizing the operation of a Part 70 source that is issued, renewed, amended, or revised under this rule.

(24) "Part 70 permit modification" means a revision to a Part 70 permit that meets the requirements of section 12 of this rule.

(25) "Part 70 permit program costs" means all reasonable (direct and indirect) costs required to develop and administer a Part 70 permit program, as set forth in section 19 of this rule (whether such costs are incurred by the commissioner or other state or local agencies that do not issue Part 70 permits directly, but that support Part 70 permit issuance or administration).

(26) "Part 70 permit revision" means any Part 70 permit modification or administrative Part 70 permit amendment.

(27) "Part 70 program" means the operating permit program established by this rule and approved by the U.S. EPA under 40 CFR 70*.

(28) "Part 70 source" means any source subject to the permitting requirements as provided in section 2 of this rule.

(29) "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or type or amount of material combusted, stored, or

processed shall be treated as part of its design if the limitation is enforceable by the U.S. EPA. This term does not alter or affect the use of this term for any other purpose under the CAA, (or the term "capacity factor" as used in Title IV of the CAA) (or the regulations promulgated thereunder).

(30) "Proposed Part 70 permit" means the version of a Part 70 permit that the commissioner proposes to issue and forwards to the U.S. EPA for review in compliance with section 18 of this rule.

(31) "Regulated air pollutant" means any of the following:

(A) Nitrogen oxides or any volatile organic compounds.

(B) Any pollutant for which a national ambient air quality standard has been promulgated.

(C) Any pollutant that is subject to any standard promulgated under Section 111 of the CAA.

(D) Any Class I or Class II substance subject to a standard promulgated under or established by Title VI of the CAA.

(E) Any pollutant subject to a standard promulgated under Section 112 of the CAA or other requirements established under Section 112 of the CAA, including Section 112(g), 112(j), and 112(r) of the CAA, including the following:

(i) Any pollutant subject to requirements under Section 112(j) of the CAA. If the U.S. EPA fails to promulgate a standard by the date established under Section 112(e) of the CAA, any pollutant for which a subject source would be major shall be considered to be regulated on the date eighteen (18) months after the applicable date established under Section 112(e) of the CAA.

(ii) Any pollutant for which the requirements of Section 112(g)(2) of the CAA have been met, but only with respect to the individual source subject to Section 112(g)(2) of the CAA.

(32) "Regulated pollutant which is used only for purposes of section 19 of this rule" means any regulated air pollutant, except the following:

(A) Carbon monoxide.

(B) Any pollutant that is a regulated air pollutant solely because it is a Class I or Class II substance subject to a standard promulgated under or established by Title VI of the CAA.

(C) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the CAA.

(D) Any pollutant emitted by an insignificant or trivial activity as defined in this rule.

(33) "Renewal" means the process by which a Part 70 permit is reissued at the end of its term.

(34) "Responsible official" means the following:

(A) For a corporation:

(i) a president;

(ii) a secretary;

(iii) a treasurer;

(iv) a vice president of the corporation in charge of a principal business function;

(v) any other person who performs similar policy or decision making functions for the corporation; or

(vi) a duly authorized representative of any person listed in this clause if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a Part 70 permit and either:

(AA) the facilities employ more than two hundred fifty (250) persons or have gross annual sales or expenditures exceeding twenty-five million dollars ($25,000,000) (in second quarter 1980 dollars); or

(BB) the delegation of authority to such representative is approved in advance by the commissioner.

(B) For a partnership or sole proprietorship, a general partner or the proprietor, respectively.

(C) For a municipality, state, federal, or other public agency, either a principal executive officer or ranking elected official. As used in this clause, "principal executive officer of a federal agency" includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency, for example, a regional administrator of the U.S. EPA.

(D) For affected sources:

(i) the designated representative for actions, standards, requirements, or prohibitions under Title IV of the CAA or the regulations promulgated thereunder; and

(ii) the designated representative for any other purposes under a Part 70 permit.

(35) "Risk management plan" means a plan specified by Section 112(r) of the CAA.

(36) "Section 502(b)(10) changes" means changes that contravene an express Part 70 permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable Part 70 permit terms and conditions that are monitoring (including test methods), record keeping, reporting, or compliance certification requirements.

(37) "State" means any nonfederal permitting authority, including any local agency, interstate association, or statewide program. The term shall have its conventional meaning where such meaning is clear from the context. For purposes of the acid rain program, the term shall be limited to authorities within the forty-eight (48) contiguous states and the District of Columbia as provided in Section 402(14) of the CAA.

(38) "Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the CAA.

(39) "Technology-based emission limit" means any enforceable condition that is derived solely or in part from the capabilities of manmade equipment or processes, including, but not limited to, any requirement in a permit based on reasonably available control technology (RACT), best available control technology (BACT), maximum achievable control technology (MACT), lowest achievable emissions

reduction (LAER), generally available control technology (GACT), best available retrofit technology (BART), any manufacturers' specifications, or the sources' physical potential to emit unless the applicable requirement was relied upon in a formal attainment demonstration supporting a state implementation plan approved by the U.S. EPA under Section 110(a)(2)(K) of the CAA.

(40) "Trivial activity" has any of the following meanings:

(A) Any activity or emission unit:

(i) not regulated by a NESHAP, ~~whose~~ **with** potential uncontrolled emissions **that** are equal to or less than one (1) pound per day on an emission unit basis for any single HAP or combination of HAPs; **and**

(ii) for which the potential uncontrolled emissions meet the exemption levels specified in the following:

(AA) For lead or lead compounds measured as elemental lead, potential uncontrolled emissions that are equal to or less than one (1) pound per day.

(BB) For carbon monoxide (CO), potential uncontrolled emissions that are equal to or less than one (1) pound per day.

(CC) For sulfur dioxide, potential uncontrolled emissions that are equal to or less than one (1) pound per day.

(DD) For volatile organic compounds (VOC), potential uncontrolled emissions that are equal to or less than one (1) pound per day.

(EE) For nitrogen oxides (NO_x), potential uncontrolled emissions that are equal to or less than one (1) pound per day.

(FF) For particulate matter with an aerodynamic diameter less than or equal to ten (10) micrometers (PM_{10}), potential uncontrolled emissions that are equal to or less than one (1) pound per day.

(B) Water related activities, including the following:

(i) Production of hot water for on-site personal use not related to any industrial or production process.

(ii) Water treatment activities used to provide potable and process water for the plant, excluding any activities associated with wastewater treatment.

(iii) Steam traps, vents, leaks, and safety relief valves.

(iv) Cooling ponds.

(v) Laundry operations using only water solutions of bleach or detergents.

(vi) Demineralized water tanks and demineralizer vents.

(vii) Boiler water treatment operations, not including cooling towers.

(viii) Oxygen scavenging (deaeration) of water.

(ix) Steam cleaning operations and steam sterilizers.

(x) Pressure washing of equipment.

(xi) Water jet cutting operations.

(C) Combustion activities, including the following:

(i) Portable electrical generators that can be moved by hand from one (1) location to another. As used in this item, "moved by hand" means that it can be moved without the assistance of any motorized or nonmotorized vehicle, conveyance, or device.

(ii) Combustion emissions from propulsion of mobile sources.

(iii) Fuel use related to food preparation for on-site consumption.

(iv) Tobacco smoking rooms and areas.

(v) Blacksmith forges.

(vi) Indoor and outdoor kerosene heaters.

(D) Activities related to ventilation, venting equipment, and refrigeration, including the following:

(i) Ventilation exhaust, central chiller water systems, refrigeration, and air conditioning equipment, not related to any industrial or production process, including natural draft hoods or ventilating systems that do not remove air pollutants.

(ii) Stack and vents from plumbing traps used to prevent the discharge of sewer gases, handling domestic sewage only, excluding those at wastewater treatment plants or those handling any industrial waste.

(iii) Vents from continuous emissions monitors and other analyzers.

(iv) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.

(v) Air vents from air compressors.

(vi) Vents for air cooling of electric motors provided the air does not commingle with regulated air pollutants.

(vii) Vents from equipment used to air blow water from cooled plastics strands or sheets.

(E) Activities related to routine fabrication, maintenance, and repair of buildings, structures, equipment, or vehicles at the source where air emissions from those activities would not be associated with any commercial production process, including the following:

(i) Activities associated with the repair and maintenance of paved and unpaved roads, including paving or sealing, or both, of parking lots and roadways.

(ii) Painting, including interior and exterior painting of buildings, and solvent use excluding degreasing operations utilizing halogenated organic solvents.

(iii) Brazing, soldering, or welding operations and associated equipment.

(iv) Portable blast-cleaning equipment with enclosures.

(v) Blast-cleaning equipment using water as the suspension agent and associated equipment.

(vi) Batteries and battery charging stations except at battery manufacturing plants.

(vii) Lubrication, including the following:

(AA) Hand-held spray can lubrication.

(BB) Dipping metal parts into lubricating oil.

(CC) Manual or automated addition of cutting oil in machining operations.

(viii) Nonasbestos insulation installation or removal.

(ix) Tarring, retarring, and repair of building roofs.

(x) Bead blasting of heater tubes.

(xi) Instrument air dryer and filter maintenance.
(xii) Manual tank gauging.
(xiii) Open tumblers associated with deburring operations in maintenance shops.

(F) Activities performed using hand-held equipment, including the following:
(i) Application of hot melt adhesives with no VOC in the adhesive formulation.
(ii) Buffing.
(iii) Carving.
(iv) Cutting, excluding cutting torches.
(v) Drilling.
(vi) Grinding.
(vii) Machining wood, metal, or plastic.
(viii) Polishing.
(ix) Routing.
(x) Sanding.
(xi) Sawing.
(xii) Surface grinding.
(xiii) Turning wood, metal, or plastic.

(G) Housekeeping and janitorial activities and supplies, including the following:
(i) Vacuum cleaning systems used exclusively for housekeeping or custodial activities, or both.
(ii) Steam cleaning activities.
(iii) Rest rooms and associated cleanup operations and supplies.
(iv) Alkaline or phosphate cleaners and associated equipment.
(v) Mobile floor sweepers and floor scrubbers.
(vi) Pest control fumigation.

(H) Office related activities, including the following:
(i) Office supplies and equipment.
(ii) Photocopying equipment and associated supplies.
(iii) Paper shredding.
(iv) Blueprint machines, photographic equipment, and associated supplies.

(I) Lawn care and landscape maintenance activities and equipment, including the storage, spraying, or application of insecticides, pesticides, and herbicides.

(J) Storage equipment and activities, including the following:
(i) Pressurized storage tanks and associated piping for the following:
(AA) Acetylene.
(BB) Anhydrous ammonia.
(CC) Carbon monoxide.
(DD) Chlorine.
(EE) Inorganic compounds.
(FF) Liquid petroleum gas (LPG).
(GG) Liquid natural gas (LNG) (propane).
(HH) Natural gas.
(II) Nitrogen dioxide.
(JJ) Sulfur dioxide.
(ii) Storage tanks, vessels, and containers holding or storing liquid substances that do not contain any VOC or HAP.
(iii) Storage tanks, reservoirs, and pumping and handling equipment of any size containing soap, vegetable oil, grease, wax, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized.
(iv) Storage of drums containing maintenance raw materials.
(v) Storage of the following:
(AA) Castings.
(BB) Lance rods.
(CC) Any non-HAP containing material in solid form stored in a sealed or covered container.
(vi) Portable containers used for the collection, storage, or disposal of materials provided the container capacity is equal to or less than forty-six hundredths (0.46) cubic meters and the container is closed, except when the material is added or removed.

(K) Emergency and standby equipment, including the following:
(i) Emergency (backup) electrical generators at residential locations, such as dormitories, prisons, and hospitals.
(ii) Safety and emergency equipment except engine driven fire pumps, including fire suppression systems and emergency road flares.
(iii) Process safety relief devices installed solely for the purpose of minimizing injury to persons or damage to equipment that could result from abnormal process operating conditions, including the following:
(AA) Explosion relief vents, diaphragms, or panels.
(BB) Rupture discs.
(CC) Safety relief valves.
(iv) Activities and equipment associated with on-site medical care not otherwise specifically regulated.
(v) Vacuum-producing devices for the purpose of removing potential accidental releases.

(L) Sampling and testing equipment and activities, including the following:
(i) Equipment used for quality control/assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis.
(ii) Hydraulic and hydrostatic testing equipment.
(iii) Ground water monitoring wells and associated sample collection equipment.
(iv) Environmental chambers not using HAP gases.
(v) Shock chambers.
(vi) Humidity chambers.
(vii) Solar simulators.
(viii) Sampling activities, including the following:
(AA) Sampling of waste.
(BB) Glove box sampling, charging, and packaging.
(ix) Instrument air dryers and distribution.

(M) Use of consumer products and equipment where the product or equipment is used at a source in the same manner as normal consumer use and is not associated with any production process.

(N) Equipment and activities related to the handling, treating, and processing of animals, including the following:

(i) Equipment used exclusively to slaughter animals, but not including the following:

(AA) Rendering cookers.

(BB) Boilers.

(CC) Heating plants.

(DD) Incinerators.

(EE) Electrical power generating equipment.

(ii) Veterinary operating rooms.

(O) Activities generating limited amounts of fugitive dust, including the following:

(i) Fugitive emissions related to movement of passenger vehicles, provided the emissions are not counted for applicability purposes under subdivision (22)(B), and any required fugitive dust control plan or its equivalent is submitted.

(ii) Soil boring.

(iii) Road salting and sanding.

(P) Activities associated with production, including the following:

(i) Closed, nonvented tumblers used for cleaning or deburring metal products without abrasive blasting.

(ii) Electrical resistance welding.

(iii) CO_2 lasers, used only on metals and other materials that do not emit HAPs in the process.

(iv) Laser trimmers that do not produce fugitive emissions and are equipped with a dust collection device such as a bag filter, cyclone, or equivalent device.

(v) Application equipment for hot melt adhesives with no VOC in the adhesive formulation.

(vi) Drop hammers or hydraulic presses for forging or metalworking.

(vii) Air compressors and pneumatically operated equipment, including hand tools.

(viii) Compressor or pump lubrication and seal oil systems.

(ix) Equipment used to mix and package soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized.

(x) Equipment for washing or drying fabricated glass or metal products, if no VOCs or HAPs are used in the process, and no gas, oil, or solid fuel is burned.

(xi) Handling of solid steel, including coils and slabs, excluding scrap burning, scarfing, and charging into steelmaking furnaces and vessels.

(Q) Miscellaneous equipment, but not emissions associated with the process for which the equipment is used, and activities, including the following:

(i) Equipment used for surface coating, painting, dipping, or spraying operation, except those that will emit VOCs or HAPs.

(ii) Condensate drains for natural gas and landfill gas.

(iii) Electric or steam heated drying ovens and autoclaves, including only the heating emissions and not any associated process emissions.

(iv) Salt baths using nonvolatile salts, including caustic solutions that do not result in emissions of any regulated air pollutants.

(v) Ozone generators.

(vi) Portable dust collectors.

(vii) Scrubber systems circulating water based solutions of inorganic salts or bases that are installed to be available for response to emergency situations.

(viii) Soil borrow pits.

(ix) Manual loading and unloading operations.

(x) Purging of refrigeration devices using a combination of nitrogen and CFC-22 (R-22) as pressure test media.

(xi) Construction and demolition operations.

(xii) Mechanical equipment gear boxes and vents that are isolated from process materials.

(xiii) Nonvolatile mold release waxes and agents.

(R) A change in a source's trivial activities or the addition of a trivial activity shall not constitute a modification for purposes of section 12 of this rule, if the new activity or modified activity:

(i) meets the definition of trivial activity of this subdivision;

(ii) has all applicable requirements and associated monitoring in the current permit; and

(iii) is not a modification under any provision of Title I of the CAA.

Trivial activities do not need to be included in a permit application required under this rule or 326 IAC 2-8, **provided that the applicant documents applicable requirements and compliance status as required by 326 IAC 2-7-4** *[section 4 of this rule]***. Upon request, the applicant shall submit any information necessary to fulfill the requirements of this rule or 326 IAC 2-8.**

(41) "U.S. EPA" means the administrator of the United States Environmental Protection Agency or the administrator's designee.

~~*Copies of the Code of Federal Regulations (CFR) and the Federal Register (FR) referenced~~ ***These documents are incorporated by reference. Copies** may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, **Office of Air Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana ~~46204-2220.~~ **46204.**

****Copies of these documents may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue,**

Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-7-1; filed May 25, 1994, 11:00 a.m.: 17 IR 2249; filed Dec 19, 1995, 3:05 p.m.: 19 IR 1051; errata filed Apr 9, 1996, 2:30 p.m.: 19 IR 2045; filed May 31, 1996, 4:00 p.m.: 19 IR 2856; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2326; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1020; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3106; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1573)*

SECTION 17. 326 IAC 2-7-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-2 Applicability
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 2. (a) The following sources are required to have a Part 70 permit:

(1) Any major source as defined in section 1(22) of this rule.

(2) Any source, including an area source, subject to a standard, a limitation, or other requirement under Section 111 of the CAA.

(3) Any source, including an area source, subject to a standard or other requirement under Section 112 of the CAA, or required to have a Part 70 permit under 326 IAC 20, except that a source is not required to obtain a Part 70 permit solely because it is subject to regulations or requirements under Section 112(r) of the CAA.

(4) Any affected source as defined in section 1(3) of this rule.

(5) Any source in a source category designated by the U.S. EPA under 40 CFR 70.3*.

(b) The following source categories are exempt from the requirement to have a Part 70 permit:

(1) All sources listed in subsection (a) that are not major sources unless such sources are affected sources or solid waste incineration units required to obtain a Part 70 permit under Section 129(e) of the CAA and except as provided in 326 IAC 20.

(2) Nonmajor sources subject to a standard or other requirement under either Section 111 or 112 of the CAA that are determined by the U.S. EPA to be exempt at the time a new standard is promulgated.

(3) All sources and source categories that would be required to obtain a Part 70 permit solely because they are subject to 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters*.

(4) All sources and source categories that would be required to obtain a Part 70 permit solely because they are subject to 40 CFR 61, Subpart M, National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation*.

(5) A major source that has become nonmajor through the issuance of ~~one (1) of the following permits:~~

~~(A)~~ a federally enforceable state operating permit under 326 IAC 2-8.

~~(B) A valid initial operating permit under 326 IAC 2-6.1, that the commissioner determines has established enforceable conditions limiting potential to emit to less than the applicability levels of this rule. This permit shall function as a FESOP until its expiration. The source shall:~~

~~(i) pay a fee of one thousand five hundred dollars ($1,500) in accordance with 326 IAC 2-8-16 upon billing by the department;~~

~~(ii) submit an annual compliance certification in accordance with 326 IAC 2-8-5; and~~

~~(iii) apply for a FESOP under 326 IAC 2-8 upon expiration of its operating permit under 326 IAC 2-6.1.~~

(6) A source for which the commissioner has issued an operating agreement under 326 IAC 2-9.

(7) A source that is not subject to this rule because it meets the requirements of 326 IAC 2-10 or 326 IAC 2-11.

(c) Any source listed in subsection (b) as exempt from the requirement to obtain a Part 70 permit may opt to apply for a Part 70 permit under this rule.

(d) Emissions units and Part 70 sources are subject to the following requirements:

(1) For major sources, the commissioner shall include in a Part 70 permit all applicable requirements for all relevant emissions units in the major source.

(2) For any nonmajor source subject to the Part 70 program under this section, the commissioner shall include in a Part 70 permit all applicable requirements applicable to emissions units that cause the source to be subject to the Part 70 program.

(e) Fugitive emissions from a Part 70 source shall be included in a Part 70 permit application and a Part 70 permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(f) A Part 70 source shall be exempt from the requirement to have an operating permit under 326 IAC 2-6.1 upon the date that an original Part 70 permit issued to the source under this rule becomes effective.

(g) A Part 70 source that has received a permit under 326 IAC 2-5.1 and receives approval to operate under 326 IAC 2-5.1-4(a)(3) by the date a Part 70 permit application would be required for the source is exempt from the requirement to obtain a Part 70 permit under this rule.

~~*Copies of the Code of Federal Regulations (CFR) referenced~~ ***These documents are incorporated by reference. Copies** may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for copying at the Indiana Department of Environmental Management, **Office of Air Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana ~~46204-2220.~~ **46204.** *(Air*

Pollution Control Board; 326 IAC 2-7-2; filed May 25, 1994, 11:00 a.m.: 17 IR 2253; filed Sep 5, 1996, 11:00 a.m.: 20 IR 9; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2337; errata filed May 9, 1997, 11:30 a.m.: 20 IR 2414; filed May 7, 1997, 4:00 p.m.: 20 IR 2302; errata filed May 9, 1997, 11:30 a.m.: 20 IR 2413; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1031; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3106; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1584)

SECTION 18. 326 IAC 2-7-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-4 Permit application

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

Sec. 4. (a) The owner or operator of each Part 70 source has a duty to submit a timely and complete permit application as follows:

(1) An application is timely if the following conditions are met:

(A) For a first time applicant, a timely application is an application that is submitted within twelve (12) months after the source becomes subject to the Part 70 permit program unless the commissioner establishes otherwise in accordance with clause (C). A source becomes subject to the Part 70 permit program:

(i) on December 14, 1995, if the source is in existence and meets an applicability criterion of section 2 of this rule on that date; or

(ii) for other sources, on the date on which a source first meets an applicability criterion of section 2 of this rule.

(B) Part 70 sources subject to Section 112(g) of the CAA or required to have a Part 70 permit under the preconstruction review program approved into the applicable implementation plan under Part C or Part D of Title I of the CAA, shall file a complete application to obtain a Part 70 permit or Part 70 permit revision within twelve (12) months after commencing operation or on or before such earlier date as the commissioner may establish. Where an existing Part 70 permit would prohibit such construction or change in operation, the source must obtain a Part 70 permit revision before commencing operation.

(C) The commissioner may establish a schedule for submission of applications by source category or other means in order to fulfill the purposes of the CAA with regard to timely issuance of permits. Such schedule shall provide that an application shall be due no more than twelve (12) months after U.S. EPA approval of the Part 70 program. The department shall provide at least twelve (12) months' notice to any source for which an application is due prior to the date established in clause (A).

(D) For purposes of a Part 70 permit renewal, a timely application is one that is submitted at least nine (9) months prior to the date of expiration of the source's existing permit. If the commissioner fails to issue or deny the permit renewal prior to the expiration date of the source's existing permit, the existing permit shall not expire and all terms and conditions shall continue in effect, including any permit shield provided under section 15 of this rule, until the renewal permit has been issued or denied.

(2) In order for an application to be deemed complete, it must contain the following information:

(A) Substantive information required by each subdivision under subsection (c). Applications for a Part 70 permit revision must supply substantive information required by each subdivision under subsection (c) only as it relates to the proposed change.

(B) Certification by a responsible official that the submitted information is consistent with subsection (f).

(C) Unless, within sixty (60) days of receipt of an application, the commissioner determines, in accordance with section 8(c) of this rule, that an application is not complete, such application shall be deemed to be complete.

(D) If, while processing an application that has been determined or deemed to be complete, the commissioner determines that additional information is necessary to evaluate or take final action on that application, the commissioner may request such information in writing and set a reasonable deadline for a response.

(E) The source's ability to operate without a permit, as set forth in section 3 of this rule, shall be in effect from the date the application is determined or deemed to be complete until a final Part 70 permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the commissioner.

(3) In the case where a source has submitted confidential information to the commissioner under a claim of confidentiality under 326 IAC 17, the commissioner may also require the source to submit a copy of such information directly to the U.S. EPA.

(b) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a Part 70 permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date the applicant filed a complete application but prior to release of a draft Part 70 permit.

(c) An application for a Part 70 permit shall be submitted on the application form or forms prescribed by the commissioner, or in other application formats authorized by the commissioner, and shall include the information specified in this subsection. Such information shall be included in the application for all emissions units at a Part 70 source. The forms and attachments shall include the following information to the extent necessary to determine applicable requirements, including the requirement to pay fees, compliance with applicable requirements and this rule, and compliance during the term of the permit:

(1) Identifying information, including the following:
(A) Company name and address (or plant name and address if different from the company name).
(B) Owner's name and agent.
(C) Telephone numbers and names of plant site manager or site contact.
(2) A description of the source's processes and products (by Standard Industrial Classification Code), including any associated with each alternate scenario identified by the source.
(3) The following emissions related information:
(A) All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A Part 70 permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under this subsection. The applicant shall provide such additional information related to the emissions of air pollutants as is sufficient to verify which requirements are applicable to the source and other information necessary to collect any Part 70 permit fees owed under the fee schedule approved under section 19 of this rule.
(B) Identification and description of all points of emissions described in clause (A) in sufficient detail to establish the basis for fees and applicability of requirements of the CAA.
(C) Emissions rates of all pollutants described in clause (A) in tons per year (tpy) and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.
(D) The following information to the extent it is needed to determine or regulate emissions:
(i) Fuels, including types and characteristics.
(ii) Fuel use, including types and quantities combusted.
(iii) Raw materials.
(iv) Production and process rates.
(v) Operating schedules.
(E) Identification and description of air pollution control equipment and compliance monitoring devices or activities.
(F) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at a Part 70 source.
(G) Other information required by any applicable requirement, including information related to stack height limitations developed under Section 123 of the CAA.
(H) Calculations, examples of calculations, or descriptions of calculation methods or basis on which the information in this subsection is based.
(4) The following air pollution control requirements:
(A) Citation and description of all applicable requirements.
(B) Description of or reference to any applicable test method for determining compliance with each applicable requirement.
(C) Where an applicant is proposing alternative or streamlined limitations or requirements, or both, the applicant shall provide the required documentation in accordance with ~~section 24 or 25 of this rule,~~ 326 IAC 8-1-5 or 326 IAC 10-1-3(3)(A).
(5) Other specific information that may be necessary to implement and enforce other applicable requirements of the CAA or of this rule or to determine the applicability of such requirements.
~~(6) An explanation of any proposed exemptions from otherwise applicable requirements, including any required documentation in accordance with section 24 or 25 of this rule, 326 IAC 8-1-5, or 326 IAC 10-1-3(3)(A).~~
~~(7)~~ **(6)** At the option of the applicant, a request that alternative operating scenarios be provided for in its Part 70 permit. Such a request shall include a description of the alternate operating scenarios that are proposed and any additional information determined to be necessary by the commissioner to define appropriate permit terms and conditions for such alternative scenarios under sections 5(9) and 20(d) of this rule.
~~(8)~~ **(7)** At the option of the applicant, a request that the permit provide terms and conditions allowing for the trading of emissions increases and decreases in the applicant's facility under sections 5(10) and 20(c) of this rule. In addition to such other information as may be requested by the commissioner as necessary to define such permit terms and conditions, the applicant shall include proposed replicable procedures and permit terms that ensure that emission trades conducted under such provisions are quantifiable and enforceable.
~~(9)~~ **(8)** At the option of the applicant, a request that the permit provide terms and conditions allowing for the establishment of an emission cap program or programs. The request for an emission cap program or programs shall include the information under 326 IAC 2-1.1-12(d).
~~(10)~~ **(9)** Confirmation of the following:
(A) That the source maintains on-site a preventive maintenance plan as described in 326 IAC 1-6-3.
(B) That, upon request, the preventive maintenance plan will be forwarded to the department.
~~(11)~~ **(10)** A compliance plan for all Part 70 sources that contains all of the following information:
(A) A description of the compliance status of the source with respect to all applicable requirements ~~or alternative or streamlined requirements proposed in accordance with section 24 or 25 of this rule to assure compliance with otherwise applicable requirements~~ that addresses the following:
(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
(ii) For applicable requirements that will become effective during the Part 70 permit term, a statement that the source will meet such requirements on a timely basis.
(iii) For requirements for which the source is not in compliance at the time of a Part 70 permit issuance, a narrative description of how the source will achieve compliance with such requirements.

~~(iv) For alternative or streamlined requirements proposed in accordance with section 24 or 25 of this rule to assure compliance with otherwise applicable requirements, a statement that the source will continue to comply with the alternative or streamlined requirements and a description of how the source will continue to comply. For the purposes of this item, the description of how compliance will be maintained may be satisfied by the information provided in accordance with section 24 or 25 of this rule.~~

(B) A compliance schedule as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the Part 70 permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet, in a timely manner, applicable requirements that become effective during the Part 70 permit term shall satisfy this requirement unless a more detailed schedule is expressly required by the applicable requirement.

(iii) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of a Part 70 permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of Part 70 permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(C) A schedule for submission of certified progress reports no less frequently than every six (6) months for sources required to have a schedule of compliance to remedy a violation.

(D) The compliance plan content requirements specified in this section shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the CAA with regard to the schedule and methods the source will use to achieve compliance with the acid rain emissions limitations.

~~(12)~~ **(11)** Requirements for compliance certification, including the following:

(A) A certification of compliance with all applicable requirements ~~or alternative or streamlined requirements proposed in accordance with section 24 or 25 of this rule to assure compliance with otherwise applicable requirements~~ by a responsible official consistent with subsection (f) and Section 114(a)(3) of the CAA.

(B) A statement of methods used for determining compliance, including a description of monitoring, record keeping, reporting requirements, and test methods.

(C) A schedule for submission of compliance certifications during the Part 70 permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the commissioner.

(D) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the CAA.

~~(13)~~ **(12)** The use of nationally standardized forms for acid rain portions of Part 70 permit applications and compliance plans as required by the acid rain program.

~~(14)~~ **(13)** Identification of terms, conditions, or requirements under this title that are state enforceable and not enforceable by U.S. EPA.

(d) An applicant may include in a permit application a description of the types of emergency situations that may arise at the source and the response actions the source proposes to take in such emergency situations.

(e) The following information need not be included in a permit application submitted under this rule:

(1) Information concerning insignificant activities as defined in section 1(21) of this rule. However, an applicant shall include a list of all insignificant activities in the application.

(2) Trivial activities as defined in section 1(40) of this rule.

(f) Any application form, report, or compliance certification submitted under this rule shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this section shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

(g) An applicant wishing to obtain a compliance extension for requirements under Section 112(d) of the CAA shall follow the procedures under 40 CFR 63.70* that address application requirements. The commissioner shall forward any application information provided under 40 CFR 63.70* to the U.S. EPA for approval upon receipt of such information.

~~*Copies of the Code of Federal Regulations (CFR) referenced~~ ***This document is incorporated by reference. Copies** may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, **Office of Air Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana ~~46204-2220.~~ **46204.** *(Air Pollution Control Board; 326 IAC 2-7-4; filed May 25, 1994, 11:00 a.m.: 17 IR 2254; errata filed Jun 10, 1994, 5:00 p.m.: 17 IR 2358; filed May 31, 1996, 4:00 p.m.: 19 IR 2866; filed*

Apr 22, 1997, 2:00 p.m.: 20 IR 2338; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1032; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3106; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1585)

SECTION 19. 326 IAC 2-7-5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-5 Permit content

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-16-2-1; IC 13-17

Sec. 5. The following shall be included in each Part 70 permit issued under this rule:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements and any additional requirement that is enforceable by the state at the time of a Part 70 permit issuance. The Part 70 permit shall include the following:

(A) The Part 70 permit shall specify and reference the origin of and authority for each term or condition and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(B) Copies of relevant portions of the Part 70 permit application may be incorporated as attachments or exhibits only when referenced by specific permit conditions.

(C) Where an applicable requirement of the CAA is more stringent than an applicable requirement of regulations promulgated under Title IV of the CAA, both provisions shall be incorporated into the Part 70 permit and shall be described in the permit as enforceable by the commissioner and the U.S. EPA.

(D) If an applicable implementation plan allows a determination of an alternative emission limit for a Part 70 source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the commissioner elects to use such process, any Part 70 permit containing an alternative emission limit based on such an equivalency determination shall contain provisions to ensure that the emission limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

~~(E) The permit shall provide that, in the event of any exceedance of a permit limitation or condition which occurs contemporaneously with an exceedance of an associated surrogate or operating parameter established to detect or assure compliance with that limit or condition, both arising out of the same act or occurrence, such multiple exceedances shall constitute a single potential violation of the permit.~~

~~(F) Emission limitations applicable to start-up, shutdown, and emergency bypasses shall be addressed on a case-by-case basis in the permit. Such limitations shall be designed so as to minimize the frequency of such events and to minimize the excess emissions caused by these events, to the extent feasible, taking into consideration available technologies, safety, cost, and other relevant factors.~~

~~(G)~~ **(E)** The Part 70 permit shall specify for each term or condition, including terms and conditions set forth in this title, contained therein whether the term or condition is federally enforceable or state enforceable.

~~(H)~~ **(F)** The Part 70 permit shall specify the permit conditions for which the emergency provision of section 16 of this rule is available. The permit may specify emergency situations identified by the source in its application and response actions that, if taken by the source during the emergency, shall constitute reasonable steps to minimize emissions and correct the emergency.

(2) A fixed permit term of five (5) years in the case of affected sources, and a term not to exceed five (5) years in the case of all other sources.

(3) Monitoring and related record keeping and reporting requirements, which assure that all reasonable information is provided to evaluate continuous compliance with the applicable requirements. ~~or alternative requirements established in accordance with section 24 or 25 of this rule.~~ At a minimum, the following shall be contained in each Part 70 permit:

(A) With respect to monitoring, each Part 70 permit shall contain the following:

(i) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, ~~or alternative requirements established in accordance with section 24 or 25 of this rule,~~ including any procedures and methods promulgated under Section 504(b) or 114(a)(3) of the CAA.

(ii) Where an applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of record keeping designed to serve as monitoring), such periodic monitoring specifications sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the Part 70 permit as reported under clause (C). Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Record keeping provisions may be sufficient to meet the requirements of this item.

(iii) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(B) With respect to record keeping, the Part 70 permit shall incorporate all applicable record keeping requirements, ~~or alternative requirements established in accordance with section 24 or 25 of this rule,~~ including, where applicable, the following:

(i) Records of required monitoring information that include the following:

(AA) The date, place, as defined in a Part 70 permit, and time of sampling or measurements.

(BB) The dates analyses were performed.

(CC) The company or entity that performed the analyses.

(DD) The analytical techniques or methods used.

(EE) The results of such analyses.

(FF) The operating conditions as existing at the time of sampling or measurement.

(ii) Retention of records of all required monitoring data and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Support information includes the following:

(AA) All calibration and maintenance records.

(BB) All original strip chart recordings for continuous monitoring instrumentation.

(CC) Copies of all reports required by the Part 70 permit.

(DD) For the purposes of complying with this subdivision, the permittee shall retain the records on-site for three (3) years and shall make them available upon request for the two (2) years following.

(C) With respect to reporting, a Part 70 permit shall incorporate all applicable reporting requirements ~~or alternative requirements established in accordance with section 24 or 25 of this rule~~ and require the following:

(i) Submittal of reports of any required monitoring at least every six (6) months. All instances of deviations from Part 70 permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with section 4(f) of this rule.

(ii) The reporting of deviations from Part 70 permit requirements, including those attributable to upset conditions as defined in a Part 70 permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. Proper notice submittal under section 16 of this rule satisfies the reporting requirements of this item. Notwithstanding requirements in this section, the reporting of deviations required by an applicable requirement shall follow the schedule stated in the applicable requirement.

(iii) Submittal of an annual emission statement that meets the requirements of 326 IAC 2-6, or other equivalent information.

(4) A Part 70 permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the CAA subject to the following limitations:

(A) No Part 70 permit revision shall be required for increases in emissions that are authorized by allowances acquired under the Title IV acid rain program, provided that such increases do not require a Part 70 permit revision under any other applicable requirement.

(B) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(C) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the CAA.

(5) A severability clause to ensure the continued validity of the various Part 70 permit requirements in the event that a portion of the Part 70 permit is determined to be invalid.

(6) Provisions stating the following:

(A) The permittee must comply with all conditions of the Part 70 permit. Any Part 70 permit noncompliance constitutes a violation of the CAA and is grounds for:

(i) enforcement action;

(ii) Part 70 permit termination, revocation and reissuance, or modification; or

(iii) denial of a Part 70 permit renewal application.

(B) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of a Part 70 permit.

(C) The Part 70 permit may be modified, reopened, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a Part 70 permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any Part 70 permit condition.

(D) The Part 70 permit does not convey any property rights of any sort or any exclusive privilege.

(E) The permittee shall furnish to the commissioner, within a reasonable time, any information that the commissioner may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the Part 70 permit or to determine compliance with the Part 70 permit. Upon request, the permittee shall also furnish to the commissioner copies of records required to be kept by a Part 70 permit or, for information claimed to be confidential, the permittee may furnish such records directly to the U.S. EPA along with a claim of confidentiality.

(7) A provision to ensure that a Part 70 source pays fees to the commissioner consistent with the fee schedule approved under section 19 of this rule, or in accordance with a fee schedule established under IC 13-16-2-1. A fee schedule established under IC 13-16-2-1 shall include the determination that a single payment of the entire fee is an undue hardship on the person and that the department is not required to assess installments separately.

(8) A provision stating that no Part 70 permit revision shall be required under any approved economic incentives, marketable Part 70 permits, emissions trading, and other similar programs or processes for changes that are provided for in a Part 70 permit.

(9) Terms and conditions which allow for changes by the permitted source among reasonably anticipated operating scenarios that are identified by the source in its application as approved by the commissioner. Such terms and conditions shall:

(A) require the source, contemporaneously with making a change from one (1) operating scenario to another, to make a record in a log at the permitted facility of the scenario under which it is operating;

(B) require the source to comply with all applicable requirements and the requirements of this rule for each such alternative operating scenario; and

(C) include a summary of the records required under clause (A) to be included in the annual compliance certification submitted under section 6(5) of this rule.

(10) Terms and conditions, if a Part 70 permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions shall:

(A) include all terms required under subdivision (3) and section 6 of this rule to determine compliance; and

(B) require the permittee to meet all applicable requirements and requirements of this rule.

(11) Terms and conditions, if requested by the permit applicant, which allow for changes at the permitted source that comply with a federally enforceable emissions cap established in accordance with 326 IAC 2-1.1-12 and section 20(e) of this rule. Such terms and conditions shall:

(A) include all terms required under subdivision (3) and section 6 of this rule to determine compliance with the emission cap limit, all associated applicable requirements, and all terms required under section 20(a) and 20(e) of this rule;

(B) include a federally enforceable emissions cap, which may be independent of otherwise applicable requirements, with which the source must comply;

(C) be consistent with any specific emissions limits or restrictions otherwise required in the permit by any applicable requirements and require the permittee to meet all applicable requirements and all requirements of this rule;

(D) allow construction of new emission units or reconstruction or modification to existing emission units or processes that would otherwise require an operating permit revision or an approval under section 10.5 of this rule, provided the actual emissions from the emission units or processes specified under an emissions cap or to be included under the emissions cap do not exceed the emissions limitation for the cap;

(E) allow for emissions trading solely for the purposes of complying with the emissions cap, provided the emissions cap request contains adequate terms and conditions, including all terms required under subdivision (3) and section 6 of this rule to determine compliance with the cap and with any emissions trading provisions;

(F) contain replicable procedures and permit terms that ensure the emissions cap is enforceable and trades pursuant to the cap are quantifiable and enforceable;

(G) be established in accordance with the procedures pursuant to sections 8, 17, and 18 of this rule; and

(H) require the owner or operator to provide notice for those changes that would have otherwise required a minor or significant operating permit revision or an approval under section 10.5 of this rule in accordance with section 20(e) of this rule.

(12) Each Part 70 permit for a source at which a regulated substance is present in more than a threshold quantity and that is subject to 40 CFR 68* **shall:**

(A) ~~shall~~ identify 40 CFR 68* as an applicable requirement;

(B) ~~shall~~ include conditions that require the source owner or operator to submit:

(i) a compliance schedule for meeting the requirements of 40 CFR 68* by the date provided in 40 CFR 68.10(a)*; or

(ii) as a part of the compliance certification submitted under section 6(5) of this rule, a certification statement that the source is in compliance with all requirements of 40 CFR 68*, including the registration and submission of a risk management plan (RMP); and

(C) ~~shall~~ require the source to verify to the commissioner that a RMP or a revised plan was prepared and submitted as required by 40 CFR 68*.

(13) A provision that requires the source to do all of the following:

(A) Maintain on-site the preventive maintenance plan required under section ~~4(c)(10)~~ **4(c)(9)** of this rule.

(B) Implement the preventive maintenance plan.

(C) Forward to the department upon request the preventive maintenance plan.

(14) Except as otherwise provided in section 15 or 20 of this rule, a provision providing the Part 70 permit shield described in section 15 of this rule.

(15) Descriptive information.

(16) Terms and conditions, if requested by the permit applicant, that, notwithstanding the modification approval requirements under section 10.5 of this rule or the permit modification or revision requirements under section 12 of this rule, allow the source to make specifically identified modifications without review, provided the operating permit includes terms and conditions that prescribe emissions limitations and standards applicable to specifically identified modifications or types of modifications which may occur during the term of the permit. Such permit conditions shall include the following:

(A) Emission limitations and standards necessary to assure compliance with the permit terms and conditions and all applicable requirements.

(B) Monitoring, testing, reporting, and record keeping requirements that are necessary to assure all reasonable information is provided to evaluate continuous compliance with the permit terms and conditions, the underlying requirements of this title, and the CAA.

~~*Copies of the Code of Federal Regulations (CFR) referenced~~ ***These documents are incorporated by reference. Copies** may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, **Office of Air**

Quality, Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana ~~46204-2220.~~ **46204.** *(Air Pollution Control Board; 326 IAC 2-7-5; filed May 25, 1994, 11:00 a.m.: 17 IR 2257; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2341; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1035; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3106; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1588)*

SECTION 20. 326 IAC 2-7-11 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-11 Administrative permit amendments

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

Sec. 11. (a) An administrative permit amendment is a Part 70 permit revision that does any of the following:

(1) Corrects typographical errors.

(2) Identifies a change in the name, address, or telephone number of any person identified in the Part 70 permit, or provides a similar minor administrative change at the source.

(3) Requires more frequent monitoring or reporting by the permittee.

(4) Allows for a change in ownership or operational control of a source where the commissioner determines that no other change in a Part 70 permit is necessary, provided that a written agreement containing a specific date for transfer of a Part 70 permit responsibility, coverage, and liability between the current and new permittee has been submitted to the commissioner.

(5) Incorporates into a Part 70 permit the requirements from preconstruction permits issued under section 10.5 of this rule that have satisfied the requirements of sections 17 and 18 of this rule as appropriate.

(6) Incorporates into a Part 70 permit a general permit issued under section 13 of this rule.

~~(7) Makes a change to a monitoring, maintenance, or record keeping requirement established by this article that is not environmentally significant. Such change shall not be an administrative amendment if the monitoring, maintenance, or record keeping is required by an applicable requirement.~~

~~(8)~~ **(7)** Revises descriptive information where the revision will not trigger a new applicable requirement or violate a permit term.

(b) Administrative Part 70 permit amendments, for purposes of the acid rain portion of a Part 70 permit, shall be governed by regulations promulgated under Title IV of the CAA.

(c) An administrative Part 70 permit amendment may be made by the commissioner consistent with the following:

(1) The commissioner shall take no more than sixty (60) days from receipt of a request for an administrative Part 70 permit amendment to take final action on such request and may incorporate such changes without providing prior notice to the public or affected states provided that it designates any such Part 70 permit revisions as having been made under this subsection.

(2) The commissioner shall submit a copy of a revised Part 70 permit to the U.S. EPA.

(3) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(Air Pollution Control Board; 326 IAC 2-7-11; filed May 25, 1994, 11:00 a.m.: 17 IR 2262; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2345; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1043; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1591)

SECTION 21. 326 IAC 2-7-12 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-12 Permit modification

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

Sec. 12. (a) A Part 70 permit modification is any revision to a Part 70 permit that cannot be accomplished under the program's provisions for administrative permit amendments under section 11 of this rule. A permit modification, for purposes of the acid rain portion of the permit, shall be governed by regulations promulgated under Title IV of the CAA.

(b) Minor permit modification procedures shall be as follows:

(1) Minor permit modification procedures may be used only for those permit modifications that meet the following requirements:

(A) Do not violate any applicable requirement.

(B) Do not involve significant changes to existing monitoring, reporting, or record keeping requirements in the Part 70 permit.

(C) Do not require or change a:

(i) case-by-case determination of an emission limit or other standard;

(ii) source specific determination for temporary sources of ambient impacts; or

(iii) visibility or increment analysis.

(D) Do not seek to establish or change a Part 70 permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include the following:

(i) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the CAA.

(ii) An alternative emissions limit approved under regulations promulgated under Section 112(i)(5) of the CAA.

(E) Are not modifications under any provision of Title I of the CAA.

(F) Are not required by the Part 70 program to be processed as a significant modification.

(2) Notwithstanding subdivision (1) and subsection (c)(1),

minor Part 70 permit modification procedures may be used for Part 70 permit modifications involving the use of economic incentives, marketable Part 70 permits, emissions trading, and other similar approaches to the extent that such minor Part 70 permit modification procedures are explicitly provided for in the applicable implementation plan (SIP) or in applicable requirements promulgated or approved by the U.S. EPA.

(3) An application requesting the use of minor Part 70 permit modification procedures shall meet the requirements of section 4(c) of this rule and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(B) The source's suggested draft Part 70 permit reflecting the requested change.

(C) Certification by a responsible official, consistent with section 4(f) of this rule, that the proposed modification meets the criteria for use of minor Part 70 permit modification procedures and a request that such procedures be used.

(D) Completed forms for the commissioner to use to notify the U.S. EPA and affected states.

(E) A copy of any previous approval issued by the commissioner under this article.

(4) The public notice provisions of section 17 of this rule shall apply to minor modifications.

~~(4)~~ **(5)** Within five (5) working days of receipt of a complete Part 70 permit modification application, the commissioner shall notify the U.S. EPA and affected states of the requested Part 70 permit modification. The commissioner promptly shall send any notice required to the U.S. EPA.

~~(5)~~ **(6)** The commissioner may not issue a final Part 70 permit modification until after the U.S. EPA's forty-five (45) day review period or until U.S. EPA has notified the commissioner that U.S. EPA will not object to issuance of the Part 70 permit modification, whichever is first, although the commissioner may approve the Part 70 permit modification prior to that time. Within ninety (90) days of the commissioner's receipt of an application under the minor Part 70 permit modification procedures or fifteen (15) days after the end of the U.S. EPA's forty-five (45) day review period, whichever is later, the commissioner shall do any of the following:

(A) Issue the Part 70 permit modification as proposed.

(B) Deny the Part 70 permit modification application.

(C) Determine that the requested modification does not meet the minor Part 70 permit modification criteria and should be reviewed under the significant modification procedures.

(D) Revise the draft Part 70 permit modification and transmit to the U.S. EPA the new proposed Part 70 permit modification as required by section 18(b) of this rule.

~~(6)~~ **(7)** The source may make the change proposed in its minor Part 70 permit modification application immediately after it files such application. After the source makes the change allowed by this subdivision, and until the commissioner takes any of the actions specified in subdivision ~~(5)(A)~~ **(6)(A)** through ~~(5)(C),~~ **(6)(C),** the source must comply with both the applicable requirements governing the change and the proposed Part 70 permit terms and conditions. During this time period, the source need not comply with the existing Part 70 permit terms and conditions it seeks to modify. If the source fails to comply with its proposed Part 70 permit terms and conditions during this time period, the existing Part 70 permit terms and conditions it seeks to modify may be enforced against it.

~~(7)~~ **(8)** The Part 70 permit shield under section 15 of this rule is not applicable to minor Part 70 permit modifications until after the commissioner has issued the modification.

(c) Consistent with the following, the commissioner may modify the procedure outlined in subsection (b) to process groups of a source's applications for modifications eligible for minor Part 70 permit modification processing:

(1) Group processing of modifications may be used only for those Part 70 permit modifications that meet the following requirements:

(A) The modifications meet the criteria for minor Part 70 permit modification procedures under subsection (b).

(B) The modifications are exempt from preconstruction or permit revision approval under 326 IAC 2-1.1-3.

(2) An application requesting the use of group processing procedures shall meet the requirements of section 4(c) of this rule and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(B) The source's suggested draft Part 70 permit which reflects the requested change.

(C) Certification by a responsible official, consistent with section 4(f) of this rule, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

(D) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under subdivision (1)(B).

(E) Certification, consistent with section 4(f) of this rule, that the source has notified the U.S. EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

(F) Completed forms for the commissioner to use to notify the U.S. EPA and affected states as required under section 18 of this rule.

(3) The notice provisions of section 17 of this rule shall apply to modifications eligible for group processing.

(4) On a quarterly basis or within five (5) business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under subdivision (1)(B), whichever is

earlier, the commissioner promptly shall notify the U.S. EPA, under section 18(a) of this rule, and affected states, under section 17(4) of this rule, of the requested Part 70 permit modifications. The commissioner shall send any notice required under section 18(b) of this rule to the U.S. EPA.

(5) The provisions of subsection (b)(5) shall apply to modifications eligible for group processing, except that the commissioner shall take one (1) of the actions specified in subsection (b)(5) within one hundred eighty (180) days of receipt of the application or fifteen (15) days after the end of the U.S. EPA's forty-five (45) day review period, whichever is later.

(6) The provisions of subsection (b)(6) shall apply to modifications eligible for group processing.

(7) The Part 70 permit shield under section 15 of this rule is not applicable to modifications eligible for group processing until after the commissioner has issued the modifications.

(d) Significant modification procedures shall be as follows:

(1) Significant modification procedures shall be used for applications requesting Part 70 permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring Part 70 permit terms or conditions and every relaxation of reporting or record keeping permit terms or conditions shall be considered significant. Nothing in this subdivision shall be construed to preclude the permittee from making changes consistent with this rule that would render existing Part 70 permit compliance terms and conditions irrelevant.

(2) Significant Part 70 permit modifications shall meet all requirements of this rule, including those for application, public participation, review by affected states, and review by the U.S. EPA, and availability of the permit shield as they apply to Part 70 permit issuance and Part 70 permit renewal. The commissioner shall complete review of the majority of significant Part 70 permit modifications within nine (9) months after receipt of a complete application.

(Air Pollution Control Board; 326 IAC 2-7-12; filed May 25, 1994, 11:00 a.m.: 17 IR 2262; errata filed Jun 10, 1994, 5:00 p.m.: 17 IR 2358; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2345; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1044; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3107; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1591)

SECTION 22. 326 IAC 2-7-16 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-16 Emergency provision

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

Sec. 16. (a) An emergency as defined in section 1(12) of this rule is not an affirmative defense for an action brought for noncompliance with a federal or state health-based emission limitation, except as otherwise provided in this section.

(b) An emergency as defined in section 1(12) of this rule constitutes an affirmative defense to an action brought for noncompliance with a ~~health-based~~ ~~or~~ technology-based emission limitation if the affirmative defense of an emergency is demonstrated through properly signed, contemporaneous operating logs or other relevant evidence that describe the following:

(1) An emergency occurred and the permittee can, to the extent possible, identify the causes of the emergency.

(2) The permitted facility was at the time being properly operated.

(3) During the period of an emergency, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in a Part 70 permit.

(4) For an emergency lasting one (1) hour or more, the permittee notified the commissioner within four (4) daytime business hours after:

(A) the beginning of the emergency; or

(B) the emergency is discovered or reasonably should have been discovered.

(5) The permittee submitted notice either in writing or by facsimile of the emergency under subdivision (4) to the commissioner within two (2) working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirements of section 5(3)(C)(ii) of this rule and must contain the following:

(A) A description of the emergency.

(B) Any steps taken to mitigate emissions.

(C) Corrective actions taken.

(6) The permittee immediately took all reasonable steps to correct the emergency.

(c) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(d) This emergency provision supersedes 326 IAC 1-6 for sources subject to this rule after the effective date of this rule. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

(e) Failure to notify the commissioner by telephone or facsimile of an emergency lasting more than one (1) hour in compliance with ~~subdivisions (4) and (5) of subsection (b)~~ **subsection (b)(4) and (b)(5)** shall constitute a violation of this rule and any other applicable rules.

(f) The commissioner may require that the preventive maintenance plan required under section 4(c)(9) of this rule be revised in response to an emergency.

(g) Operations may continue during an emergency only if ~~the following conditions are met:~~

~~(1)~~ ~~If~~ the emergency situation causes a deviation from a technology-based limit. The source may continue to operate the affected emitting facilities during the emergency provided the source immediately takes all reasonable steps to correct the emergency and minimize emissions.

~~(2) If an emergency situation causes a deviation from a health-based limit, the source may not continue to operate the affected emissions facilities unless:~~

~~(A) the source immediately takes all reasonable steps to correct the emergency situation and to minimize emissions; and~~

~~(B) continued operation of the facilities is necessary to prevent imminent injury to persons, severe damage to equipment, substantial loss of capital investment, or loss of product or raw materials of substantial economic value.~~

~~Any operation shall continue no longer than the minimum time required to prevent the situations identified in clause (B).~~

(Air Pollution Control Board; 326 IAC 2-7-16; filed May 25, 1994, 11:00 a.m.: 17 IR 2265; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2347; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1593)

SECTION 23. 326 IAC 2-7-20 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-20 Operational flexibility

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

Sec. 20. (a) An owner or operator of a Part 70 source may make any change or changes at the source that are described in subsection (b), (c), or (e), without a prior permit revision, if each of the following conditions is met:

(1) The changes are not modifications under any provisions of Title I of the CAA.

(2) The changes do not result in emissions which exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions).

(3) The owner or operator of the Part 70 source notifies the commissioner and U.S. EPA in advance of the change by written notification given at least ten (10) days in advance of the proposed change. The commissioner and the owner or operator of a Part 70 source each shall attach every such notice to their copy of the relevant permit.

(4) The owner or operator of the source maintains records on-site which document, on a rolling five (5) year basis, all such changes and emissions trading that are subject to subsection (b), (c), or (e), and makes such records available, upon reasonable request, to public review. Such records shall consist of all information required to be submitted to the commission in the notices specified in subsections (b)(1), (c)(1), and (e)(2).

(b) An owner or operator of a Part 70 source may make Section 502(b)(10) of the CAA changes without a permit revision, subject to the constraints of subsection (a) and the following additional conditions:

(1) For each such change, the required written notification shall include a brief description of the change within the source, the date on which the change will occur, any change in emissions, and any permit term or conditions that are no longer applicable as a result of the change.

(2) The permit shield described in section 15 of this rule shall not apply to any change made under this subsection.

(c) An owner or operator of a Part 70 source may trade increases and decreases in emissions in the Part 70 source, where the applicable state implementation plan (SIP) provides for such emission trades without requiring a permit revision, subject to the constraints of subsection (a) and the further conditions of this subsection. Such changes may be made without a permit revision regardless of whether the permit fails to provide expressly for such emissions trading provided the following:

(1) For each such change, the required written notification shall include such information as may be required by the provision in the applicable implementation plan authorizing the emissions trade, including, at a minimum, the following:

(A) When the proposed change will occur.

(B) A description of each such change.

(C) Any change in emissions.

(D) The permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan.

(E) The pollutants emitted subject to the emissions trade.

The notice shall also refer to the provisions in the applicable implementation plan with which the source will comply and that provide for the emissions trade.

(2) The permit shield described in section 15 of this rule shall not apply to any change made under this subsection. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to the requirements of the applicable implementation plan authorizing the emissions trade.

(d) An owner or operator of a Part 70 source may make changes at the source within the range of alternative operating scenarios that are described in the terms and conditions of the Part 70 permit for the source in accordance with section 5(9) of this rule, without a prior permit revision, subject to compliance with such permit terms and conditions. To procure alternative operating scenarios for its Part 70 permit, the owner or operator of a Part 70 source must request such alternative scenarios in its application for the permit in accordance with section ~~4(c)(7)~~ **4(c)(6)** of this rule. The provisions of subsection (a) notwithstanding, no advanced notice to the department is required prior to making such a change.

(e) An owner or operator of a Part 70 source may make changes otherwise requiring a minor or significant permit revision under an emissions cap included in a Part 70 permit without a permit revision, subject to the conditions of subsection (a) and the following additional conditions:

(1) The emissions cap has been established in accordance with the emission cap provisions of 326 IAC 2-1.1-12 and this rule.

(2) The notification to the commissioner under subsection (a) shall include the information required under 326 IAC 2-1.1-12(f).

(3) The permit shield in section 15 of this rule shall extend to terms and conditions that allow such increases and decreases in emissions.

(Air Pollution Control Board; 326 IAC 2-7-20; filed May 25, 1994, 11:00 a.m.: 17 IR 2269; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1047; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3107; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1594)

SECTION 24. 326 IAC 2-7-24 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-24 Establishment of streamlined requirements for units subject to multiple requirements

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

Sec. 24. (a) A source owner subject to this rule may request to comply with streamlined requirements for any unit subject to multiple requirements for a specific pollutant, provided the streamlined requirements are established under the Part 70 permit issuance, renewal, or significant permit modification process under this rule.

(b) ~~Instead of the requirements imposed under 326 IAC 3, 326 IAC 4-2, 326 IAC 5, 326 IAC 6, 326 IAC 7, 326 IAC 8, 326 IAC 9, 326 IAC 10, 326 IAC 11, 326 IAC 12, 326 IAC 14, 326 IAC 15, and 326 IAC 20 or a permit issued under 326 IAC 2-5.1,~~ A source proposing the streamlining of multiple requirements shall use the following procedures:

(1) The applicant shall submit a proposal for the streamlining of multiple requirements with the permit application required under section 4 of this rule or any amendment thereof. The proposal for streamlining of multiple requirements may be submitted up to thirty (30) days after issuance of the draft permit.

(2) The applicant shall provide a side-by-side comparison of all requirements included in a streamlining proposal that are currently applicable and effective for each specific regulated air pollutant and emissions unit for which streamlining is being proposed. The applicant shall distinguish between requirements that are emissions standards or work practice standards, or both, and monitoring and compliance demonstration provisions in the streamlining proposal. The applicant shall provide any information the department determines is needed to evaluate the proposal.

(3) The applicant shall develop and provide a compliance schedule with the streamlining proposal to implement any new monitoring requirements or compliance requirements, or both, relevant to the streamlined limit, if the source is unable to comply with the streamlined limit upon permit issuance. The record keeping, monitoring, and reporting requirements of the applicable requirements being subsumed shall remain in effect, as well as any emission limits associated with those requirements, until the new monitoring requirements or compliance requirements, or both, become effective.

(c) In the event the department determines the proposal to be inadequate, the applicant shall be notified and given a reasonable deadline to respond.

(d) The commissioner shall include citations to all subsumed requirements in the Part 70 permit's specification of the origin and authority of permit conditions and shall specify all subsumed requirements under the permit shield. In addition, the Part 70 permit shall include any additional terms and conditions necessary to assure compliance with the streamlined requirement and all subsumed requirements. In all instances, the proposed permit terms and conditions shall be enforceable as a practical matter.

(e) The commissioner may deny a request for streamlining of multiple requirements for any of the following reasons:

(1) The streamlined requirements are not as stringent as the requirements to be subsumed.

(2) The streamlined requirements will not adequately assure compliance with all applicable requirements.

(3) U.S. EPA objects to the use of the streamlined requirements.

(4) Any other reason related to the stringency of the streamlined requirements or compliance with the CAA.

(f) In carrying out the public participation and notice to affected states requirements under section 17 of this rule, the commissioner shall do the following:

(1) Note the use of streamlined requirements or limits, or both, in any required transmittal of a Part 70 application, Part 70 modification application, application summary, or revised application to U.S. EPA and an affected state.

(2) Include the demonstration used to establish streamlined requirements and supporting documentation in the public record.

(3) Reissue a draft permit in any case where a request for streamlining of multiple requirements is submitted to the department after issuance of the draft permit.

(g) A streamlined requirement is approved for the source by the U.S. EPA if it is incorporated in an issued Part 70 permit to which the U.S. EPA has not objected. Public comments concerning a Part 70 permit that includes a streamlined requirement shall be transmitted to the U.S. EPA no later than five (5) working days after the end of the public comment period. The commissioner's determination of approval is not binding on the U.S. EPA.

(h) If the commissioner or the U.S. EPA determines that the Part 70 permit does not assure compliance with applicable requirements, the commissioner shall reopen and revise the permit.

(i) The source shall comply with all applicable requirements to be subsumed by the proposed streamlined requirement until the Part 70 permit has been issued with the streamlined requirements.

(j) A source violating a streamlined limitation or requirement in a Part 70 permit may be subject to an enforcement action for violation of one (1) or more of the subsumed requirements.

(k) Noncompliance with any provision in a permit established pursuant to this section constitutes a violation of this rule. *(Air Pollution Control Board; 326 IAC 2-7-24; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2352; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1048; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1595)*

SECTION 25. 326 IAC 3-5-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 3-5-1 Applicability; monitoring requirements for applicable pollutants

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

Sec. 1. (a) This rule establishes the following:

(1) Substantive requirements for monitoring certain types of sources.

(2) A process for developing suitable monitoring requirements for other types of sources.

(b) This rule applies to the following sources and facilities hereinafter referred to as affected facilities:

(1) Any facility required to perform continuous monitoring under 326 IAC 12, which incorporates by reference the requirements of 40 CFR 60*, or by a standard for hazardous air pollutants under 326 IAC 14, which incorporates by reference the requirements of 40 CFR 61*, or 326 IAC 20, which incorporates by reference the requirements of 40 CFR 63*.

(2) Fossil fuel-fired steam generators of greater than one hundred million (100,000,000) British thermal units (Btus) per hour heat input capacity.

(3) Sulfuric acid plants or production facilities of greater than three hundred (300) tons per day acid production capacity.

(4) Petroleum refinery catalyst regenerators for fluid bed catalytic cracking units of greater than twenty thousand (20,000) barrels (eight hundred forty thousand (840,000) gallons) per day fresh feed capacity.

(5) Portland cement plants.

(6) Facilities that combust sewage sludge.

(7) Sources making coke from raw materials, including the following:

(A) Coal refining byproducts.

(B) Petroleum refining byproducts.

(8) Facilities in Clark and Floyd Counties that:

(A) have potential to emit NO_x greater than or equal to forty (40) tons per year; and

(B) are located at sources that have potential to emit NO_x greater than or equal to one hundred (100) tons per year as described in 326 IAC 10.

(c) Sources and facilities described in subsection (b) are subject to the following requirements: ~~or an approved streamlined requirement established in accordance with 326 IAC 2-7-24.~~

(1) Any facility subject to 326 IAC 12, which incorporates by reference the requirements of 40 CFR 60*, 326 IAC 14, which incorporates by reference the requirements of 40 CFR 61*, or 326 IAC 20, which incorporates by reference the requirements of 40 CFR 61*, shall comply with the following:

(A) The monitoring and reporting requirements as specified for the applicable rule.

(B) All requirements of this rule.

(2) Fossil fuel-fired steam generators of greater than one hundred million (100,000,000) Btu per hour heat input capacity shall monitor the following:

(A) Opacity, unless:

(i) Gaseous fuel is the only fuel combusted.

(ii) Oil or a mix of gas and oil are the only fuels combusted and the facility is able to comply with both of the following without using particulate matter collection equipment:

(AA) 326 IAC 5-1.

(BB) 326 IAC 6-2.

(iii) An alternative monitoring requirement request has been granted by the department. An alternative monitoring requirement may be requested when installation of an opacity monitoring system would not provide accurate determinations of emissions as a result of interference from condensed uncombined water vapor. Any alternative monitoring requirement request shall address the following:

(AA) Information pertaining to the inability of the affected facility to find an acceptable monitoring location prior to the source of the condensed, uncombined water vapor.

(BB) A list of proposed alternative monitoring requirements. For each proposed alternative monitoring requirement, the request must provide a detailed description of thresholds or triggers for corrective action resulting from deviation from normal operating parameters and how deviations from key surrogate parameters shall be addressed to insure continuous compliance with all applicable particulate and opacity requirements. An example of an acceptable alternative monitoring requirement is a particulate compliance demonstration that is no less frequent than annual in accordance with 326 IAC 3-6 and a compliance monitoring plan that, at a minimum, satisfies monitoring requirements under 326 IAC 2-7 or 326 IAC 2-8.

(CC) Record keeping that is consistent with section 6 of this rule.

(DD) Reporting frequency that is no less frequent than that required in section 7 of this rule.

(iv) An alternative monitoring requirement request granted by the department under item (iii) shall be submitted to U.S. EPA as a SIP revision and shall not be in effect until approved as a SIP revision.

(B) Sulfur dioxide (SO_2) under the following conditions:
(i) SO_2 pollution control equipment has been installed.
(ii) A monitor is required to determine compliance with either of the following:
(AA) 326 IAC 12.
(BB) A construction permit required under 326 IAC 2.
(C) Nitrogen oxide (NO_x) under the following conditions:
(i) NO_x pollution control equipment has been installed.
(ii) A monitor is required to determine compliance with either of the following:
(AA) 326 IAC 12.
(BB) A construction permit required under 326 IAC 2.
(D) The percent O_2 or CO_2 if measurements of O_2 or CO_2 in the flue gas are required to convert either SO_2 or NO_x continuous monitoring data, or both, to units of the emission limitation for the particular facility.
(3) Sulfuric acid plants or production facilities of greater than three hundred (300) tons per day acid production capacity shall monitor SO_2 for each sulfuric acid producing facility within the source.
(4) Petroleum refinery catalyst regenerators for fluid bed catalytic cracking units of greater than twenty thousand (20,000) barrels (eight hundred forty thousand (840,000) gallons) per day fresh feed capacity shall monitor opacity for each regenerator within the source.
(5) Portland cement plants shall monitor opacity at the following facilities:
(A) Kilns.
(B) Clinker coolers.
(6) Facilities that combust sewage sludge shall monitor from the effluent gas exiting incinerator the following:
(A) Total hydrocarbons.
(B) Oxygen.
(C) Moisture, unless an alternative method is approved by the department and the U.S. EPA.
(D) Temperature.
(7) Sources making coke from coal shall monitor opacity on the underfire stack associated with each coke oven battery.
(8) Facilities in Clark and Floyd Counties that have potential to emit NO_x greater than or equal to forty (40) tons per year and are located at sources that have potential to emit NO_x greater than or equal to one hundred (100) tons per year shall install NO_x continuous emission monitors as described in 326 IAC 10-1.

(d) The department may require, as a condition of a construction or operating permit issued under 326 IAC 2-1, 326 IAC 2-2, 326 IAC 2-3, 326 IAC 2-7, 326 IAC 2-8, or 326 IAC 2-9 that the owner or operator of a new or existing source of air emissions monitor emissions to ensure compliance with the following:
(1) An emission limitation or standard established in one (1) of the permits listed in **this** subsection. ~~(d).~~
(2) Permit requirements.
(3) Monitoring requirements in 326 IAC 7.

(e) Unless explicitly stated otherwise, nothing in this rule shall:
(1) Excuse the owner or operator of a source from any monitoring, record keeping, or reporting requirement that applies under any provision of the CAA or state statutes or regulations.
(2) Restrict the authority of the department to impose additional or more restrictive monitoring, record keeping, testing, or reporting requirements on any owner or operator of a source under any other provision of the CAA, including Section 114(a)(1), or state statutes or regulations, as applicable.

(f) Within one hundred eighty (180) days of startup or, for a source existing on the effective date of this rule, within three hundred sixty-five (365) days of becoming an affected facility under this rule, all continuous monitoring systems shall be installed, operational, and the certification testing complete pursuant to section 3 of this rule.

~~*Copies of the Code of Federal Regulations (CFR) referenced~~ ***Copies of these documents** may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, **Office of Air Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana ~~46206-6015.~~ **46204.** *(Air Pollution Control Board; 326 IAC 3-5-1; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2064; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1596; errata filed Jan 7, 2002, 2:20 p.m.: 25 IR 1644)*

SECTION 26. 326 IAC 4-2-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 4-2-1 Applicability
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. This rule ~~(326 IAC 4-2)~~ establishes standards for the use of incinerators which emit regulated pollutants. This rule ~~(326 IAC 4-2)~~ does not apply to incinerators in residential units consisting of four (4) or fewer families. ~~or incinerators for which streamlined requirements have been established in accordance with 326 IAC 2-7-24~~. All other incinerators are subject to this rule. ~~(326 IAC 4-2).~~ *(Air Pollution Control Board; 326 IAC 4-2-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2420; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2366; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1597)*

SECTION 27. 326 IAC 5-1-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 5-1-1 Applicability
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-11; IC 13-17

Sec. 1. (a) This rule applies to opacity, not including con-

densed water vapor, emitted by or from a facility or source. The limitations set forth in section 2 of this rule shall not apply to facilities for which specific opacity limitations have been established in 326 IAC 6, 326 IAC 11, **or** 326 IAC 12. ~~or a Part 70 permit pursuant to 326 IAC 2-7-24.~~

(b) Section 2(1) of this rule applies to sources or facilities located in areas not listed in this section.

(c) Section 2(2) of this rule applies to sources or facilities located in the following areas:

(1) Clark County, Jeffersonville Township.

(2) Dearborn County, Lawrenceburg Township.

(3) Dubois County, Bainbridge Township.

(4) Lake County, an area bounded on the north by Lake Michigan, on the west by the Indiana-Illinois state line, on the south by U.S. 30 from the state line to the intersection of I-65 to the intersection of I-94 then following I-94 to the Lake-Porter county line, and on the east by the Lake-Porter county line.

(5) Marion County, except the area of Washington Township east of Fall Creek and the area of Franklin Township south of Thompson Road and east of Five Points Road.

(6) St. Joseph County, the area north of Kern Road and east of Pine Road.

(7) Vanderburgh County, the area included in the city of Evansville and Pigeon Township.

(8) Vigo County, the area within a five-tenths (0.5) kilometer radius circle centered at UTM Coordinates Zone 16 East four hundred sixty-four and fifty-two hundredths (464.52) kilometers North four thousand three hundred sixty-nine and twenty-one hundredths (4,369.21) kilometers.

(Air Pollution Control Board; 326 IAC 5-1-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2421; filed May 12, 1993, 11:30 a.m.: 16 IR 2364; filed Jun 19, 1996, 9:00 a.m.: 19 IR 3049; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2366; filed Oct 9, 1998, 3:56 p.m.: 22 IR 426; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1597)

SECTION 28. 326 IAC 6-1-1, AS AMENDED AT 25 IR 710, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

326 IAC 6-1-1 Applicability

Authority: IC 13-14-8; IC 13-17-1-1; IC 13-17-3-4; IC 13-17-3-14
Affected: IC 13-15; IC 13-17

Sec. 1. (a) Except as provided in subsections (b) through ~~(d),~~ **(c),** sources or facilities located in the counties of Clark, Dearborn, Dubois, Howard, Lake, Marion, St. Joseph, Vanderburgh, Vigo, or Wayne shall comply with:

(1) the limitations in sections 8.1 through 18 of this rule, if the source or facility is specifically listed in sections 8.1 through 18 of this rule; or

(2) the limitations of section 2 of this rule, if the source or facility is not specifically listed in sections 8.1 through 18 of this rule, but has the potential to emit one hundred (100) tons or more, has actual emissions of ten (10) tons or more, of particulate matter per year.

~~(b) The limitations in sections 2 and 8.1 through 18 of this rule shall not apply to sources that have specific emission limitations established in a Part 70 permit in accordance with 326 IAC 2-7-24.~~

~~(c)~~ **(b)** Particulate limitations shall not be established for combustion units that burn only natural gas at sources or facilities identified in sections 8.1, 9, and 12 through 18 of this rule, as long as the units continue to burn only natural gas.

~~(d)~~ **(c)** If the limitations in sections 2 and 8.1 through 18 of this rule conflict with or are inconsistent with limitations established in 326 IAC 12, then the more stringent limitation shall apply. *(Air Pollution Control Board; 326 IAC 6-1-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2425; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2366; filed Apr 17, 1998, 9:00 a.m.: 21 IR 3342; filed Nov 8, 2001, 2:02 p.m.: 25 IR 710; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1598; errata filed January 10, 2002, 4:08 p.m.: 25 IR 1644)*

SECTION 29. 326 IAC 6-2-1, AS READOPTED AT 24 IR 1477, IS AMENDED TO READ AS FOLLOWS:

326 IAC 6-2-1 Applicability

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule establishes limitations for sources of indirect heating.

(b) Particulate emissions from the combustion of fuel for indirect heating from all facilities located in Lake, Porter, Marion, Boone, Hamilton, Hendricks, Johnson, Morgan, Shelby, and Hancock Counties, which were existing and in operation or which received permit to construct prior to September 21, 1983, shall be limited by section 2 of this rule.

(c) Particulate emissions from the combustion of fuel for indirect heating from all facilities not specified in subsection (b), which were existing and in operation or which received permits to construct prior to September 21, 1983, shall be limited by section 3 of this rule.

(d) Particulate emissions from the combustion of fuel for indirect heating from all facilities receiving permits to construct on or after September 21, 1983, shall be limited by section 4 of this rule.

(e) If any limitation established by this rule is inconsistent with applicable limitations contained in 326 IAC 6-1, then the limitations contained in 326 IAC 6-1 prevail.

(f) If any limitation established by this rule is inconsistent with applicable limitations contained in 326 IAC 12 concerning new source performance standards, then the limitations contained in 326 IAC 12 prevail.

(g) If any limitation established by this rule is inconsistent

with a limitation contained in a facility's construction or operation permit as issued pursuant to 326 IAC 2 concerning permit review regulations, then the limitations contained in the source's current permits prevail.

(h) If any limitation established by this rule is inconsistent with a limitation required by 326 IAC 2 concerning permit review regulations, to prevent a violation of the ambient air quality standards set forth in 326 IAC 1-4, then the limitations required by 326 IAC 2 prevail.

(i) The addition of a new facility at a source does not affect the limitations of the existing facilities unless such changes in the limitations are required by the provisions of 326 IAC 2 or 326 IAC 6-1.

~~(j) The limitations established by this rule shall not apply to sources for which specific emission limitations have been established in a Part 70 permit in accordance with 326 IAC 2-7-24.~~ *(Air Pollution Control Board; 326 IAC 6-2-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2493; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2366; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1598)*

SECTION 30. 326 IAC 6-5-1, AS READOPTED AT 24 IR 1477, IS AMENDED TO READ AS FOLLOWS:

326 IAC 6-5-1 Applicability

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 1. (a) Any source of fugitive particulate matter emissions located in nonattainment areas for particulate matter as designated by the board (except for such a source located in Lake County) which has potential fugitive particulate matter emissions of twenty-five (25) tons per year or more, including the following:

(1) Primary nonattainment areas, to include the portion of Marion County bounded on the west by Keystone Avenue, on the north and east by Southeastern Avenue, and on the east and south by Center Township.

(2) Secondary nonattainment areas as follows:

(A) The portion of Clark County included in Jeffersonville Township.

(B) The portion of Dubois County included in Bainbridge Township.

(C) The portions of Marion County included in Center and Wayne Townships, the portion of Decatur Township located east and north of I-465, and the portion of Perry Township located north of I-465.

(D) The portion of St. Joseph County north of Kern Road and east of Pine Road.

(E) The portion of Vanderburgh County included in the city of Evansville and Pigeon Township.

(F) The portion of Vigo County located within a five-tenths (0.5) kilometer radius of UTM Coordinates four hundred sixty-four and five hundred nineteen-thousandths (464.519) east and four thousand three hundred sixty-nine and two hundred eight-thousandths (4,369.208) north, in Indiana State University parking lot number 23 in Terre Haute.

(b) Any new source of fugitive particulate matter emissions, located anywhere in the state, requiring a permit as set forth in 326 IAC 2, which has not received all the necessary preconstruction approvals before December 13, 1985. If any control measure established by this rule is inconsistent with an applicable control measure contained in 326 IAC 12, the more stringent measure shall apply.

(c) Any source or facility of fugitive particulate matter emissions subject to the requirements of this rule shall be subject to 326 IAC 6-4-6.

(d) The following emission factors and control efficiencies apply to sources subject to this rule:

(1) Emission factor equations listed in supplements 11.2.1, 11.2.3, and 11.2.6 of the May 1983 edition and no later amendments of "Compilation of Air Pollutant Factors" (AP-42)* shall be used to determine potential emissions for unpaved roads, aggregate handling and storage piles, and paved roads, respectively.

(2) Efficiencies of any existing control measures shall be obtained from the following:

(A) Supplement 11.2.1 of the May 1983 edition and no later amendments of "Compilation of Air Pollutant Factors" (AP-42)* for unpaved roads.

(B) The August 1983 edition* of "Iron and Steel Plant Open Source Fugitive Emission Control Evaluation" (prepared by Midwest Research Institute) for aggregate handling and storage piles.

(C) The April 26, 1984, edition* of "Cost Estimates for Selected Fugitive Dust Controls Applied to Unpaved and Paved Roads in Iron and Steel Plants" for paved roads (prepared by Midwest Research Institute).

(3) Emission factors and efficiencies of existing controls, if any, for sources in the categories not covered in subdivisions (1) and (2) shall be obtained from "Reasonably Available Control Measures for Fugitive Dust Sources", as amended August 1983 and no later amendments, Ohio EPA**. Where a range of values is available for a source or process as referenced in subdivisions (1) and (2), the mid-value of the range shall be used.

(4) A source may petition the commissioner to use emission factors and control efficiencies other than those referenced in subdivisions (1), (2), and (3) if adequate support documentation is submitted.

~~(e) This rule shall not apply to sources for which alternative requirements have been established in a Part 70 permit in accordance with 326 IAC 2-7-24 or 326 IAC 2-7-25.~~

***These documents are incorporated by reference.** Copies

~~of the May 1983 edition of "Compilation of Air Pollutant Factors" (AP-42); the August 1983 edition of "Iron and Steel Plant Open Source Fugitive Emission Control Evaluation"; and the April 26, 1984, edition of "Cost Estimates for Selected Fugitive Dust Controls Applied to Unpaved and Paved Roads in Iron and Steel Plants"~~ may be obtained from the U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604 ~~and~~ **or** are available for **review and** copying at the Indiana Department of Environmental Management, **Office of Air Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana ~~46204-2220.~~ **46204.**

~~**~~**This document is incorporated by reference.** Copies ~~of "Reasonably Available Control Measures for Fugitive Dust Sources", as amended August 1983~~ may be obtained from Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216 ~~and~~ **or** are available for **review and** copying at the Indiana Department of Environmental Management, **Office of Air Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana ~~46204-2220.~~ **20401** *[sic., 46204]***.** *(Air Pollution Control Board; 326 IAC 6-5-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2501; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2367; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1599)*

SECTION 31. 326 IAC 6-6-1, AS READOPTED AT 24 IR 1477, IS AMENDED TO READ AS FOLLOWS:

326 IAC 6-6-1 Applicability
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 1. This rule is effective December 7, 1984. Sources and facilities specifically listed in sections 4 and 5 of this rule shall comply with the limitations contained therein. ~~unless alternative limitations have been established in a Part 70 permit in accordance with 326 IAC 2-7-24 or 326 IAC 2-7-25.~~ Sources and facilities subject to this rule ~~or alternative requirements established in a Part 70 permit in accordance with 326 IAC 2-7-24 or 326 IAC 2-7-25~~ are exempt from the requirements of 326 IAC 6-1, 326 IAC 6-2, 326 IAC 6-3, 326 IAC 6-4, and 326 IAC 6-5. *(Air Pollution Control Board; 326 IAC 6-6-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2505; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2368; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1600)*

SECTION 32. 326 IAC 7-1.1-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 7-1.1-1 Applicability
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 1. All facilities with a potential to emit twenty-five (25) tons per year or ten (10) pounds per hour of sulfur dioxide shall comply with the limitations in section 2 of this rule and the compliance test methods in 326 IAC 7-2. ~~unless alternative limitations and requirements have been established in a Part 70 permit in accordance with 326 IAC 2-7-24.~~ The above facilities shall also comply with the sulfur dioxide emission limitations and other requirements pursuant to 326 IAC 2, 326 IAC 7-4, and 326 IAC 12. ~~unless alternative limitations and requirements have been established in a Part 70 permit in accordance with 326 IAC 2-7-24.~~ *(Air Pollution Control Board; 326 IAC 7-1.1-1; filed Aug 28, 1990, 4:50 p.m.: 14 IR 52; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2368; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1600)*

SECTION 33. 326 IAC 7-1.1-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 7-1.1-2 Sulfur dioxide emission limitations
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 2. (a) Sulfur dioxide emissions from fuel combustion facilities shall be limited as follows, unless specified otherwise in 326 IAC 7-4 or in a construction permit issued pursuant to 326 IAC 2: ~~or in a Part 70 permit in accordance with 326 IAC 2-7-24:~~

(1) Six and zero-tenths (6.0) pounds per million Btu for coal combustion.

(2) One and six-tenths (1.6) pounds per million Btu for residual oil combustion.

(3) Five-tenths (0.5) pound per million Btu for distillate oil combustion.

(b) For facilities combusting coal and oil simultaneously, the sulfur dioxide emission limitation shall be six and zero-tenths (6.0) pounds per million Btu. ~~unless alternative limitations have been established in a Part 70 permit in accordance with 326 IAC 2-7-24.~~ For facilities combusting oil and any fuel other than coal simultaneously, the sulfur dioxide emission limitation shall be the limitation specified in subsection (a)(2) or (a)(3), depending on the type of oil combusted. ~~unless alternative limitations have been established in a Part 70 permit in accordance with 326 IAC 2-7-24.~~ For the purposes of this subsection, simultaneous combustion of coal and oil shall include those periods of startup, shutdown, and flame stabilization required under normal facility operations. *(Air Pollution Control Board; 326 IAC 7-1.1-2; filed Aug 28, 1990, 4:50 p.m.: 14 IR 52; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2369; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1600)*

SECTION 34. 326 IAC 7-3-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 7-3-1 Applicability
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 1. Sources with total actual emissions of sulfur dioxide greater than ten thousand (10,000) tons per year are subject to the requirements of this rule. ~~unless alternative requirements have been established in a Part 70 permit in accordance with 326 IAC 2-7-24.~~ *(Air Pollution Control Board; 326 IAC 7-3-1; filed Aug 28, 1990, 4:50 p.m.: 14 IR 53; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2369; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1600)*

SECTION 35. 326 IAC 8-1-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 8-1-1 Applicability
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule contains general provisions applicable to all other rules in this article. Once a facility becomes subject to a rule within this article under any rule applicability section in this article, such facility shall remain subject to such rule notwithstanding any subsequent decrease in VOC emissions unless the provisions of subsections (b) through (d) are met. ~~or alternative limitations and requirements have been streamlined in a Part 70 permit in accordance with 326 IAC 2-7-24.~~ Any proposal to establish an alternative limitation or requirement other than the streamlining of multiple requirements shall be in accordance with ~~326 IAC 8-1-5.~~ **section 5 of this rule.**

(b) A facility subject to this article may be exempted by the commissioner from any of these applicability sections if the facility has an enforceable permit issued under 326 IAC 2 or a federally-approved SIP revision that permanently restricts one (1) or more facility activities that result in VOC emissions, such as production, hours of operation, or capacity utilization, such that restrictions lower actual emissions before add-on controls to a level below fifteen (15) pounds per day. Upon expiration of any facility's permit, such exemption shall also expire, and such facility shall be subject to the requirements of all applicable rules within this article, unless a renewed permit containing such exemption is issued pursuant to 326 IAC 2.

(c) The permit or other enforceable document referenced in subsection (b) shall also require a facility owner or operator to keep records to demonstrate compliance with the permit or document restrictions. If the restriction is based on actual emissions or operations, the facility owner or operator shall keep records of throughput or actual coating usage to determine compliance. If the applicability level of the rule is in terms of actual emissions per day, the facility owner or operator shall be required to keep, at a minimum, daily consumption records, certification of VOC emission rates, and daily calculation of VOC emissions. If the rule specifies an applicability level based on potential emissions per year, the permit or enforceable document shall restrict actual production, hours of operation, and/or capacity utilization on a monthly basis, and the facility owner or operator shall be required to keep, at a minimum, daily consumption records, certification of VOC emission rates, and monthly calculations of VOC emissions.

(d) All permits, renewed permits, and other enforceable documents referenced in subsection (b) shall be submitted to the U.S. EPA as SIP revisions. *(Air Pollution Control Board; 326 IAC 8-1-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2527; filed May 6, 1991, 4:45 p.m.: 14 IR 1712; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2369; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1601)*

SECTION 36. 326 IAC 9-1-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 9-1-2 Carbon monoxide emission limits
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 2. ~~Emission~~ **Emissions** of carbon monoxide shall be limited to the following ~~unless alternative limitations and requirements have been established in a Part 70 permit in accordance with 326 IAC 2-7-24.~~ **unless specific carbon monoxide emission limits have been established in 326 IAC 11, 326 IAC 20, 326 IAC 60*, 40 CFR 62*, or 40 CFR 63*:**

(1) Petroleum refining emissions. No person shall cause or allow the discharge of carbon monoxide from any catalyst regeneration of a petroleum cracking system or from any petroleum fluid coker into the atmosphere unless the waste gas stream is burned in a direct-flame afterburner or boiler **that maintains a minimum temperature of one thousand three hundred (1,300) degrees Fahrenheit for a minimum retention time of three-tenths (0.3) second** or is controlled by other means approved by the commissioner.

(2) Ferrous metal smelters. No person shall cause or allow the discharge of carbon monoxide from any grey iron cupola, blast furnace, basic oxygen steel furnace, or other ferrous metal smelting equipment, having a capacity of ten (10) tons per hour or more process weight unless the waste gas stream is burned in a direct-flame afterburner or boiler **that maintains a minimum temperature of one thousand three hundred (1,300) degrees Fahrenheit for a minimum retention time of three-tenths (0.3) second** or is controlled by other means approved by the commissioner. In instances where carbon monoxide destruction is not required, carbon monoxide emissions shall be released at such elevation that the maximum ground level concentration from a single source shall not exceed twenty percent (20%) of the maximum one (1) hour Indiana ambient air quality value for carbon monoxide.

(3) ~~Refuse~~ **Solid waste** incineration and burning equipment. No person shall ~~cause or allow the discharge of carbon monoxide from refuse incineration~~ **operate an incinerator** or burning equipment **that burns solid waste, as defined in 329 IAC 11-2-39,** unless the waste gas stream is burned in a direct-flame afterburner **that maintains a minimum temperature of one thousand three hundred (1,300) degrees Fahrenheit for a minimum retention time of three-tenths (0.3) seconds** or ~~is~~ **carbon monoxide emissions are** controlled by other means approved by the commissioner.

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 9-1-2; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2547; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2370; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1601; errata filed Jan 7, 2002, 2:20 p.m.: 25 IR 1644)*

SECTION 37. 326 IAC 10-1-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 10-1-1 Applicability

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 1. (a) Emissions of nitrogen oxides (NO_x) from facilities located in Clark or Floyd County shall be controlled as follows, ~~unless alternative limitations~~ and ~~requirements have been established in a Part 70 permit in accordance with 326 IAC 2-7-24.~~ any proposal to establish an alternative limitation ~~or requirement other than the streamlining of multiple requirements~~ shall be in accordance with section 4(c)(1) of this rule:

(1) Any stationary source located in Clark or Floyd County that exists on or before the effective date of this rule and that emits or has the potential to emit greater than or equal to one hundred (100) tons per year or more of NO_x from all facilities at the source shall apply reasonable available control technology (RACT) as set forth in this rule.

(2) Any facility that exists on or before the effective date of this rule that has the potential to emit NO_x greater than or equal to forty (40) tons per year and that is located at a source that emits or has the potential to emit NO_x greater than or equal to one hundred (100) tons per year, shall comply with the applicable provisions of this rule.

(3) Facilities requiring a permit under 326 IAC 2 that are constructed, modified, or reconstructed after the effective date of this rule and to which a new source performance standard (NSPS) does not apply shall comply with this rule or best available control technology (BACT), whichever is more stringent.

(b) Unless emissions have been limited in accordance with subsection (c), the emission limitations established in section 4 of this rule shall apply to the following facilities at sources meeting the requirements of subsection (a)(1):

(1) Each electric utility steam generating unit of the type listed in section 4(b)(2) of this rule with heat input capacity greater than or equal to two hundred fifty (250) million Btu per hour.

(2) Each industrial, commercial, or institutional steam generating unit of the type listed in section 4(b)(3) of this rule with heat input capacity greater than or equal to one hundred (100) million Btu per hour.

(3) Each portland cement long dry kiln with production capacity greater than or equal to twenty (20) tons of clinker per hour.

(4) Each portland dry preheat process kiln with production capacity greater than or equal to twenty (20) tons of clinker per hour.

(5) Any other type of facility that emits or has the potential to emit NO_x greater than or equal to forty (40) tons per year.

(c) A facility identified in subsection (b) shall not be subject to the emissions limits of section 4 of this rule if the source's actual emissions have been limited to below one hundred (100) tons per year through federally enforceable production or capacity limitations in an operating permit in accordance with section 3(2) of this rule and 326 IAC 2-8 on or before December 14, 1996.

(d) A facility that exists on or before the effective date of this rule that is subject to a NSPS under 40 CFR 60* that affects emissions of NO_x is not subject to this rule.

~~*Copies of 40 CFR 60, New Source Performance Standards for New Stationary Sources,~~ ***This document is incorporated by reference. Copies** may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, **Office of Air Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana ~~46204-2220.~~ **46204.** *(Air Pollution Control Board; 326 IAC 10-1-1; filed May 13, 1996, 5:00 p.m.: 19 IR 2869; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2370; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1602)*

SECTION 38. 326 IAC 11-1-1, AS READOPTED AT 24 IR 1477, IS AMENDED TO READ AS FOLLOWS:

326 IAC 11-1-1 Applicability

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 1. This rule establishes emission limitations for particulate matter from foundries. Particulate emissions from all foundries in operation on or before December 6, 1968, shall comply with the requirements set forth in section 2 of this rule. All foundries beginning operation after December 6, 1968, shall comply with 326 IAC 6-3. If any emission limit established by this rule is inconsistent with applicable limits contained in 326 IAC 6-1, then the limit contained herein shall not apply; but the limit in 326 IAC 6-1 shall apply. ~~The requirements of this rule, including compliance with 326 IAC 6-1 or 326 IAC 6-3, shall not apply to sources for which alternative requirements or limitations, or both, have been established in a Part 70 permit in accordance with 326 IAC 2-7-24.~~ *(Air Pollution Control Board; 326 IAC 11-1-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2548; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2371; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1602)*

SECTION 39. 326 IAC 11-2-1, AS READOPTED AT 24 IR 1477, IS AMENDED TO READ AS FOLLOWS:

326 IAC 11-2-1 Applicability
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 1. (a) All sulfuric acid production facilities located in ~~the state of~~ Indiana are subject to the emission limitations specified in this rule ~~unless alternative limitations and requirements have been established in a Part 70 permit in accordance with 326 IAC 2-7-24 or 326 IAC 2-7-25,~~ and shall be defined as established in subsection (b).

(b) As used in this rule, "sulfuric acid production unit" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfides and mercaptans, or acid sludge. The term does not include facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds. *(Air Pollution Control Board; 326 IAC 11-2-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2548; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2371; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1603)*

SECTION 40. 326 IAC 11-3-1, AS READOPTED AT 24 IR 1477, IS AMENDED TO READ AS FOLLOWS:

326 IAC 11-3-1 Applicability
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 1. This rule applies to all coke oven batteries for which construction or modification commenced prior to June 19, 1979. ~~unless alternative limitations and requirements have been established in a Part 70 permit in accordance with 326 IAC 2-7-24.~~ Emission limitations for coke oven batteries construction or modification of which commences after June 19, 1979, shall be established as permit conditions pursuant to the provisions and requirements of 326 IAC 2 concerning permits and new source review. *(Air Pollution Control Board; 326 IAC 11-3-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2548; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2371; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1603)*

SECTION 41. 326 IAC 11-4-1, AS READOPTED AT 24 IR 1477, IS AMENDED TO READ AS FOLLOWS:

326 IAC 11-4-1 Applicability
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 1. This rule applies to facilities for producing fiberglass insulation by the superfine (flame blown) process existing on June 19, 1979, located in Shelby County. ~~unless alternative limitations and requirements have been established in a Part 70 permit in accordance with 326 IAC 2-7-24.~~ Facilities shall be exempt from 326 IAC 6-3. *(Air Pollution Control Board; 326 IAC 11-4-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2551; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2371; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1603)*

SECTION 42. 326 IAC 11-5-1, AS READOPTED AT 24 IR 1477, IS AMENDED TO READ AS FOLLOWS:

326 IAC 11-5-1 Applicability
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 1. This rule establishes fluoride emission limitations for primary aluminum plants in operation on or before January 26, 1976. ~~unless alternative limitations and requirements have been established in a Part 70 permit in accordance with 326 IAC 2-7-24.~~ A primary aluminum plant is defined as any facility manufacturing aluminum by electrolytic reduction. All primary aluminum plants for which construction or modification commenced after January 26, 1976, shall comply with the limitations set forth in 326 IAC 12. ~~unless alternative limitations and requirements have been established in a Part 70 permit in accordance with 326 IAC 2-7-24.~~ *(Air Pollution Control Board; 326 IAC 11-5-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2552; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2371; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1603)*

SECTION 43. 326 IAC 12-1-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 12-1-1 Applicability
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This article applies to the owner or operator of any stationary source for which a standard is prescribed under this article.

(b) The air pollution control board incorporates by reference the following:
(1) 40 CFR 60*.
(2) 54 FR 34008*.
(3) 54 FR 37534*.
(4) 55 FR 5211*.
(5) 55 FR 26912*.
(6) 55 FR 26931*.
(7) 55 FR 36932*.
(8) 55 FR 37674*.
(9) 55 FR 40171*.

(c) If the emission limitations contained in this article conflict with or are inconsistent with any other emission limitations established by this title, ~~or in a Part 70 permit in accordance with 326 IAC 2-7-24,~~ then the more stringent limitation shall apply.

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 12-1-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2554; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2218; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2372; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1603)*

SECTION 44. 326 IAC 14-1-3, AS READOPTED AT 24 IR 1477, IS AMENDED TO READ AS FOLLOWS:

326 IAC 14-1-3 More stringent limitations apply
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 3. If emission limitations contained in this article conflict with or are inconsistent with any other emission limitations established by ~~326 IAC or in a Part 70 permit in accordance with 326 IAC 2-7-4,~~ **this title,** then the more stringent limit shall apply. *(Air Pollution Control Board; 326 IAC 14-1-3; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2562; filed Apr 13, 1988, 3:30 p.m.: 11 IR 3011; errata, 11 IR 3047; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2372; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1604)*

SECTION 45. 326 IAC 15-1-1, AS READOPTED AT 24 IR 1478, IS AMENDED TO READ AS FOLLOWS:

326 IAC 15-1-1 Applicability
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 1. This rule applies to stationary sources listed in section 2 of this rule. ~~unless alternative limitations and requirements have been established in a Part 70 permit in accordance with 326 IAC 2-7-24.~~ *(Air Pollution Control Board; 326 IAC 15-1-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2564; filed Jun 14, 1989, 5:00 p.m.: 12 IR 1850; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2372; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1604)*

SECTION 46. 326 IAC 2-7-25 IS REPEALED.

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Approved by Governor: December 19, 2001
Filed with Secretary of State: December 20, 2001, 4:30 p.m.
Incorporated Documents Filed with Secretary of State: (1) 40 CFR Part 51, Appendix S, Section IV; 40 CFR Part 51, Appendix W (Requirements for Preparation, Adoption, and Submittal of Implementation Plans, Guideline on Air Quality Models); 40 CFR 52; 40 CFR 52.21; 40 CFR 52.21(b)(14)(iv); 40 CFR Part 58, Appendix B; 40 CFR 60; 40 CFR 60.15(b); 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters; 40 CFR 60, Appendix A, Method 22; 40 CFR 61; 40 CFR 61, Subpart M, National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation; 40 CFR 62; 40 CFR 63; 40 CFR 63.70; 40 CFR 68; 40 CFR 68.10(a); 40 CFR Part 70; 40 CFR 70.3; 40 CFR 72; 40 CFR 75; and 40 CFR 78 have been previously incorporated by reference in LSA Document #99-220(F), filed with the Secretary of State on October 30, 2000; (2) 58 FR 3590 was subsumed in 40 CFR 72, 40 CFR 73, 40 CFR 75, 40 CFR 77, and 40 CFR 78 that have been previously incorporated by reference in LSA Document #99-220(F), filed with the Secretary of State on October 30, 2000; (3) 54 FR 34008, 54 FR 37534, 55 FR 5211, 55 FR 26912, 55 FR 26931, 55 FR 36932, 55 FR 37674, and 55 FR 40171 were subsumed in 40 CFR 60 that has been previously incorporated by reference in LSA Document #99-220(F), filed with the Secretary of State on October 30, 2000; (4) Supplements 11.2.1, 11.2.3, and 11.2.6 of the May 1983 edition of "Compilation of Air Pollutant Factors" (AP-42) have been previously incorporated by reference in LSA Document #00-137(F) published at 25 IR 6 (October 1, 2001, Indiana Register); (5) Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office); (6) Title II, Section 101(d) of the Further Continuing Appropriations Act of 1985 42 U.S.C. 5903(d); (7) May 1987 U.S. EPA, "Ambient Air Monitoring Guidelines for Prevention of Significant Deterioration" (EPA 45014-87-007); (8) May 1999, "Indiana Department of Environmental Management, Office of Air Management Quality Assurance Manual"; (9) Standard Industrial Classification Manual, 1987; (10) August 1983 edition of "Iron and Steel Plant Open Source Fugitive Emission Control Evaluation" (prepared by Midwest Research Institute); (11) April 26, 1984, edition of "Cost Estimates for Selected Fugitive Dust Controls Applied to Unpaved and Paved Roads in Iron and Steel Plants" for paved roads (prepared by Midwest Research Institute); and (12) "Reasonably Available Control Measures for Fugitive Dust Sources", as amended August 1983 and no later amendments, Ohio EPA.

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #01-184(F)

DIGEST

Readopts, without changes, 326 IAC 6-4 concerning fugitive dust emissions. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period (#96-16): December 1, 1996, Indiana Register (20 IR 792).

Second Notice of Comment Period (#96-16): March 1, 1997, Indiana Register (20 IR 1650).

First Notice of Comment Period (#00-44): March 1, 2000, Indiana Register (23 IR 1488).

Extension of First Notice of Comment Period (#00-44): May 1, 2000, Indiana Register (23 IR 2109).

Second Notice of Comment Period (#00-44): October 1, 2000, Indiana Register (24 IR 132).

Second Notice of Comment Period and Notice of First Hearing (#96-16): February 1, 2001, Indiana Register (24 IR 1459).

Date of First Hearing: April 12, 2001.

Proposed Rule and Notice of Second Hearing (#01-184): June 1, 2001, Indiana Register (24 IR 2792).

Notice of Third Comment Period (#01-184): June 1, 2001, Indiana Register (24 IR 2792).

Date of Second Hearing: August 1, 2001.

326 IAC 6-4-1
326 IAC 6-4-2
326 IAC 6-4-3
326 IAC 6-4-4
326 IAC 6-4-5
326 IAC 6-4-6
326 IAC 6-4-7

SECTION 1. 326 IAC 6-4-1 IS READOPTED TO READ AS FOLLOWS:

326 IAC 6-4-1 Applicability of rule
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-1-1

Sec. 1. This rule (326 IAC 6-4) shall apply to all sources of fugitive dust. For the purposes of this rule (326 IAC 6-4), "fugitive dust" means the generation of particulate matter to the extent that some portion of the material escapes beyond the property line or boundaries of the property, right-of-way, or easement on which the source is located. *(Air Pollution Control Board; 326 IAC 6-4-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2499; readopted filed Dec 26, 2001, 2:57 p.m.: 25 IR 1605)*

SECTION 2. 326 IAC 6-4-2 IS READOPTED TO READ AS FOLLOWS:

326 IAC 6-4-2 Emission limitations
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-1-1

Sec. 2. A source or sources generating fugitive dust shall be in violation of this rule (326 IAC 6-4) if any of the following criteria are violated:

(1) A source or combination of sources which cause to exist fugitive dust concentrations greater than sixty-seven percent (67%) in excess of ambient upwind concentrations as determined by the following formula:

$$P \quad \frac{100\ (R\ \ U)}{U}$$

P = Percentage increase
R = Number of particles of fugitive dust measured at downward receptor site
U = Number of particles of fugitive dust measured at upwind or background site

(2) The fugitive dust is comprised of fifty percent (50%) or more respirable dust, then the percent increase of dust concentration in subdivision (1) of this section shall be modified as follows:

$$P_R = (1.5 \pm N)\ P$$

Where N = Fraction of fugitive dust that is respirable dust;
P_R = allowable percentage increase in dust concentration above background; and
P = no value greater than sixty-seven percent (67%).

(3) The ground level ambient air concentrations exceed fifty (50) micrograms per cubic meter above background concentrations for a sixty (60) minute period.

(4) If fugitive dust is visible crossing the boundary or property line of a source. This subdivision may be refuted by factual data expressed in subdivisions (1), (2) or (3) of this section.

(Air Pollution Control Board; 326 IAC 6-4-2; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2500; readopted filed Dec 26, 2001, 2:57 p.m.: 25 IR 1605)

SECTION 3. 326 IAC 6-4-3 IS READOPTED TO READ AS FOLLOWS:

326 IAC 6-4-3 Multiple sources of fugitive dust
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-1-1

Sec. 3. (a) The allowable particles shall refer to the total of all particles leaving the boundaries or crossing the property lines of any source of fugitive dust regardless of whether from a single operation or a number of operations. If the source is determined to be comprised of two (2) or more legally separate persons, each shall be held proportionately responsible on the basis of contributions by each person as determined by microscopic analysis. In such cases, samples shall be taken downwind from the combination of sources and at the fence line of each source.

(b) No source which is contributing to a combined downwind fugitive dust concentration in excess of the limits of this rule (326 IAC 6-4) shall be required to reduce emissions if the concentrations at his property line are in compliance, unless all contributors are individually in compliance and a combined fugitive dust concentration still exceeds the limits of this rule (326 IAC 6-4). Each source shall then be required to reduce its emissions by like percentages to achieve an acceptable combined downwind concentration.

(c) When all contributors are individually in compliance and no nuisance to the surrounding community is created, the commissioner may waive the requirement for further reduction in emissions by combined contributors. *(Air Pollution Control Board; 326 IAC 6-4-3; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2500; readopted filed Dec 26, 2001, 2:57 p.m.: 25 IR 1605)*

SECTION 4. 326 IAC 6-4-4 IS READOPTED TO READ AS FOLLOWS:

326 IAC 6-4-4 Motor vehicle fugitive dust sources
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-1-1

Sec. 4. No vehicle shall be driven or moved on any public street, road, alley, highway, or other thoroughfare, unless such vehicle is so constructed as to prevent its contents from dripping, sifting, leaking, or otherwise escaping therefrom so as to create conditions which result in fugitive dust. This section applies only to the cargo any vehicle may be conveying and mud tracked by the vehicle. *(Air Pollution Control Board; 326 IAC 6-4-4; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2500; readopted filed Dec 26, 2001, 2:57 p.m.: 25 IR 1606)*

SECTION 5. 326 IAC 6-4-5 IS READOPTED TO READ AS FOLLOWS:

326 IAC 6-4-5 Measurement processes
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-1-1

Sec. 5. (a) Particle quantities and sizes will be measured by manual microscopic analysis of a dustfall sample collected on a sticky slide, or by use of commercially available particle counting devices which count and classify particles by micron size range, or other methods acceptable to the commissioner.

(b) Ambient air concentrations shall be measured using the standard hi volume sampling and analysis techniques as specified by 40 C.F.R. 50*.

(c) Observations by a qualified representative of the commissioner of visible emissions crossing the property line of the source at or near ground level.

*Copies of the Code of Federal Regulations (C.F.R.) referenced may be obtained from the Government Printing Office, Washington, D.C. 20402. Copies are also available at the Department of Environmental Management, Office of Air Management, 105 South Meridian Street, Indianapolis, Indiana 46225. *(Air Pollution Control Board; 326 IAC 6-4-5; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2500; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1125; readopted filed Dec 26, 2001, 2:57 p.m.: 25 IR 1606)*

SECTION 6. 326 IAC 6-4-6 IS READOPTED TO READ AS FOLLOWS:

326 IAC 6-4-6 Exceptions
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-1-1

Sec. 6. The following conditions will be considered as exceptions to this rule (326 IAC 6-4) and therefore not in violation:

(1) Release of steam not in combination with any other gaseous or particulate pollutants unless the condensation from said steam creates a nuisance or hazard in the surrounding community.

(2) Fugitive dust from publicly maintained unpaved thoroughfares where no nuisance or health hazard is created by its usage or where it is demonstrated to the commissioner that no means are available to finance the necessary road improvements immediately. A reasonable long-range schedule for necessary road improvements must be submitted to support the commissioner's granting such an exception.

(3) Fugitive dust from construction or demolition where every reasonable precaution has been taken in minimizing fugitive dust emissions.

(4) Fugitive dust generated from agricultural operations providing every reasonable precaution is taken to minimize emissions and providing operations are terminated if a severe health hazard is generated because of prevailing meteorological conditions.

(5) Visible plumes from a stack or chimney which provide adequate dispersion and are in compliance with other applicable rules.

(6) Fugitive dust from a source caused by adverse meteorological conditions.

(Air Pollution Control Board; 326 IAC 6-4-6; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2501; readopted filed Dec 26, 2001, 2:57 p.m.: 25 IR 1606)

SECTION 7. 326 IAC 6-4-7 IS READOPTED TO READ AS FOLLOWS:

326 IAC 6-4-7 Compliance date
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-1-1

Sec. 7. All sources must comply with this rule (326 IAC 6-4) as soon as practicable but no later than July 1, 1974. *(Air Pollution Control Board; 326 IAC 6-4-7; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2501; readopted filed Dec 26, 2001, 2:57 p.m.: 25 IR 1606)*

LSA Document #01-184(F)
Proposed Rule Published: June 1, 2001; 24 IR 2792
Hearing Held: August 1, 2001
Approved by Attorney General: December 6, 2001
Approved by Governor: December 20, 2001
Filed with Secretary of State: December 26, 2001, 2:57 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

LSA Document #01-37(F)

DIGEST

Amends 345 IAC 1-6 to add and remove diseases in animals

that must be reported to the Indiana state board of animal health. Makes other changes in the law of reporting diseases in animals. Repeals 345 IAC 1-6-1. Effective 30 days after filing with the secretary of state.

345 IAC 1-6-1 **345 IAC 1-6-2**
345 IAC 1-6-1.5 **345 IAC 1-6-3**

SECTION 1. 345 IAC 1-6-1.5 IS ADDED TO READ AS FOLLOWS:

345 IAC 1-6-1.5 Definitions and general provisions
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3; IC 15-2.1-4; IC 15-2.1-18-10

Sec. 1.5. The following definitions and the definitions in IC 15-2.1-2 apply throughout this rule:

(1) "Board" means the Indiana state board of animal health created under IC 15-2.1-3.

(2) "Reportable disease" means a transmissible disease that the board determines to have socio-economic or public health importance to the state and which is significant in the trade of animals and animal products. Reportable diseases are designated as reportable to the state veterinarian under this rule.

(3) "State veterinarian" means the Indiana state veterinarian appointed under IC 15-2.1-4 or an authorized agent.

(Indiana State Board of Animal Health; 345 IAC 1-6-1.5; filed Dec 31, 2001, 10:00 a.m.: 25 IR 1607)

SECTION 2. 345 IAC 1-6-2, AS READOPTED AT 24 IR 2895, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

345 IAC 1-6-2 Individual and veterinarian responsibility
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-18-10

Sec. 2. ~~Any~~ **A diagnostic laboratory,** veterinarian, owner, or custodian ~~of an animal~~ must report a clinical diagnosis of ~~a~~ **any of the following** reportable ~~disease~~ **diseases** in ~~the~~ **an** animal to the ~~office of the~~ state veterinarian within two (2) business days of the diagnosis:

(1) Anthrax (Bacillus anthracis).
(2) Aujezsky's disease (Pseudorabies).
(3) Avian mycoplasmosis (Mycoplasma gallisepticum) in turkeys.
(4) Bovine tuberculosis (Mycobacterium bovis).
(5) Brucellosis (Brucella abortus, brucella suis, caprine and ovine brucellosis).
(6) Equine infectious anemia (EIA).
(7) Foreign animal diseases.
(8) Fowl typhoid (Salmonella gallinarum).
(9) Paratuberculosis (Johne's disease, Mycobacterium paratuberculosis).
(10) Pullorum disease (Salmonella pullorum).
(11) Rabies.
(12) Transmissible spongiform encephalopathies, including the following:
(A) Chronic wasting disease.
(B) Scrapie.
(C) Bovine spongiform encephalopathy.
(13) Vesicular diseases, including the following:
(A) Foot-and-mouth disease.
(B) Vesicular stomatitis.
(C) Swine vesicular disease.
(D) Vesicular exanthema.

(Indiana State Board of Animal Health; 345 IAC 1-6-2; filed Jul 23, 1992, 2:00 p.m.: 15 IR 2568; filed Oct 11, 1996, 2:00 p.m.: 20 IR 740; filed Jun 17, 1998, 9:03 a.m.: 21 IR 4205; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895; filed Dec 31, 2001, 10:00 a.m.: 25 IR 1607)

SECTION 3. 345 IAC 1-6-3, AS READOPTED AT 24 IR 2895, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

345 IAC 1-6-3 Laboratory responsibility
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-18-10

Sec. 3. ~~Any~~ **For the purpose of participating in the United States Department of Agriculture, National Animal Health Reporting System, a** diagnostic laboratory must report a diagnosis of ~~a~~ **any of the following** reportable ~~disease~~ **diseases** in an animal located in Indiana to the ~~office of the~~ state veterinarian within two (2) business days of the diagnosis:

(1) Multiple species diseases as follows:
(A) Anthrax (Bacillus anthracis).
(B) Aujezsky's disease (Pseudorabies).
(C) Bluetongue.
(D) Bovine tuberculosis (Mycobacterium bovis).
(E) Brucellosis (Brucella abortus, brucella suis, caprine and ovine brucellosis).
(F) Contagious bovine pleuropneumonia (Mycoplasma mycoides mycoides).
(G) Foot-and-mouth disease (all FMD virus types).
(H) Echinococcosis/hydatidosis.
(I) Heartwater (Cowdria ruminantium).
(J) Leptospirosis.
(K) Lumpy skin disease.
(L) New World screwworm (Cochliomyia hominivorax).
(M) Old World screwworm (Chrysomya bezziana).
(N) Paratuberculosis (Johne's disease, Mycobacterium paratuberculosis).
(O) Peste des petits ruminants.
(P) Q Fever (Coxiella burnetti).
(Q) Rabies.
(R) Rift valley fever.
(S) Rinderpest.
(T) Transmissible spongiform encephalopathies, including the following:
(i) Chronic wasting disease.

(ii) Scrapie.
(iii) Bovine spongiform encephalopathy.
(U) Trichinellosis (Trichinella spiralis).
(V) Vesicular stomatitis (VS viruses Indiana, New Jersey, or not typed).
(2) Cattle diseases as follows:
(A) Bovine anaplasmosis (Anaplasma marginale, A. centrale).
(B) Bovine babesiosis (Babesia bovis, B. bigemina).
(C) Bovine cysticercosis (Cysticercus bovis metacestode stage of Taenia saginata).
(D) Bovine genital campylobacteriosis (Campylobacter fetus venerealis).
(E) Dermatophilosis (Dermatophilus congolensis).
(F) Enzootic bovine leukosis (BLV).
(G) Haemorrhagic septicaemia (Pasteurella multocida, B/Asian or E/African serotypes).
(H) Infectious bovine rhinotracheitis/infectious pustular vulvovaginitis (IBR/IPV).
(I) Malignant catarrhal fever (Bovine malignant catarrh, wildebeest associated).
(J) Theileriosis (Theileria annulata, T. parva).
(K) Trichomonosis (Tritrichomonas (Trichomonas) foetus).
(L) Trypanosomosis (Trypanosoma congolense, T. vivax, T. brucei brucei).
(3) Sheep and goat diseases as follows:
(A) Caprine and ovine brucellosis (excluding B. ovis).
(B) Caprine arthritis/encephalitis (CAE).
(C) Contagious agalactia (Mycoplasma agalactiae, M. capricolum capricolum, M. putrefaciens, M. mycoides mycoids, M. mycoides mycoides (LC)).
(D) Contagious caprine pleuropneumonia (Mycoplasma capricolum capripneumoniae).
(E) Enzootic abortion of ewes (Ovine Psittacosis, Chlamydia psittaci).
(F) Ovine pulmonary adenomatosis.
(G) Maedi-visna/ovine progressive pneumonia.
(H) Nairobi sheep disease.
(I) Ovine epididymitis (Brucella ovis infection).
(J) Salmonellosis (Salmonella abortusovis).
(K) Sheep pox and goat pox.
(4) Equine diseases as follows:
(A) African horse sickness.
(B) Contagious equine metritis (Tylorella equigenitalis).
(C) Dourine (Trypanosoma equiperdum).
(D) Epizootic lymphangitis (Histoplasma farciminosum).
(E) Equine encephalomyelitis (Eastern and Western).
(F) Equine infectious anemia (EIA).
(G) Equine influenza (virus type A).
(H) Equine piroplasmosis (Babesiosis, Babesia (Piroplasma) equi, B. caballi).
(I) Equine rhinopneumonitis (1 and 4).
(J) Equine viral arteritis (EVA).
(K) Glanders (Pseudomonas mallei).
(L) Horse mange.
(M) Horse pox.
(N) Japanese encephalitis.
(O) Surra (Trypanosoma evansi).
(P) Venezuelan equine encephalomyelitis.
(5) Swine diseases as follows:
(A) Atrophic rhinitis of swine (Bordetella bronchiseptica, Pasteurella multocida).
(B) African swine fever.
(C) Classical swine fever.
(D) Enterovirus encephalomyelitis.
(E) Porcine brucellosis (Brucella suis).
(F) Porcine cysticercosis (Cistercus cellulosae metacestode stage of Taenia solium).
(G) Porcine reproductive and respiratory syndrome (PRRS).
(H) Swine vesicular disease.
(I) Transmissible gastroenteritis (TGE).
(6) Avian diseases as follows:
(A) Avian chlamydiosis (Psittacosis and Ornithosis, Chlamydia psittaci).
(B) Avian infectious bronchitis.
(C) Avian infectious laryngotracheitis.
(D) Avian influenza.
(E) Avian mycoplasmosis (Mycoplasma gallisepticum).
(F) Avian tuberculosis (Mycobacterium avian).
(G) Duck virus hepatitis.
(H) Duck virus enteritis.
(I) Fowl cholera (Pasturella multocida).
(J) Fowl pox.
(K) Fowl typhoid (Salmonella gallinarum).
(L) Infectious bursal disease (Gumboro disease).
(M) Marek's disease.
(N) Newcastle disease.
(O) Pullorum disease (Salmonella pullorum).
(7) Fish diseases as follows:
(A) Viral haemorrhagic septicaeimia.
(B) Spring viraemia of carp.
(C) Infectious haematopoietic necrosis.
(D) Epizootic haematopoietic necrosis.
(E) Oncorhynchus masou virus disease.

(Indiana State Board of Animal Health; 345 IAC 1-6-3; filed Jul 23, 1992, 2:00 p.m.: 15 IR 2568; filed Oct 11, 1996, 2:00 p.m.: 20 IR 740; filed Jun 17, 1998, 9:03 a.m.: 21 IR 4205; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895; filed Dec 31, 2001, 10:00 a.m.: 25 IR 1607)

SECTION 4. 345 IAC 1-6-1 IS REPEALED.

LSA Document #01-37(F)
Notice of Intent Published: 24 IR 1687
Proposed Rule Published: September 1, 2001; 24 IR 4119
Hearing Held: October 18, 2001
Approved by Attorney General: December 14, 2001
Approved by Governor: December 28, 2001
Filed with Secretary of State: December 31, 2001, 10:00 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

LSA Document #01-166(F)

DIGEST

Amends 345 IAC 7-3.5 to reflect changes made in IC 15-2.1-14 by the Indiana general assembly, including eliminating fees for livestock dealer licenses and eliminating annual renewal of licenses. Requires annual reports from licensees. Makes other changes in the law of livestock dealers and markets. Effective 30 days after filing with the secretary of state.

345 IAC 7-3.5-2
345 IAC 7-3.5-3
345 IAC 7-3.5-5
345 IAC 7-3.5-5.5
345 IAC 7-3.5-6
345 IAC 7-3.5-8
345 IAC 7-3.5-8.5

SECTION 1. 345 IAC 7-3.5-2, AS READOPTED AT 24 IR 2895, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

345 IAC 7-3.5-2 Definitions

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2-15; IC 15-2.1-2-27; IC 15-2.1-3; IC 15-2.1-4; IC 15-2.1-14; IC 15-2.1-15

Sec. 2. The following definitions apply throughout this rule:

(1) "Board" means the Indiana state board of animal health **appointed under IC 15-2.1-3.**

(2) "Cattle" means all dairy and beef animals and bison.

(3) "Concentration point" means a licensed place of business under the provisions of IC 15-2.1-14 where only feeder pigs, to which the licensee of such point has taken title, are assembled for resale within or without of the state of Indiana.

(4) "Consignee" means one to whom livestock is delivered or assigned for the purpose of sale, resale, or exchange.

(5) "Consignment" or "consigning" means the act of delivering or shipping domestic animals to another for sale, resale, or exchange.

(6) "Consignor" means any person consigning, shipping, or delivering domestic animals for sale, resale, or exchange.

(7) "Dealer" means any person engaged in the business of dealing and includes, but is not limited to, stockyards, auction markets, buying stations, and concentration points.

(8) "Dealing" means buying, selling, trading, or negotiating the transfer of livestock either for processing into meat products in conjunction with the operation of a business enterprise or for the purpose of resale, transfer, or final disposition in any other manner.

(9) "Domestic animals" has the meaning set forth in IC 15-2.1-2-15.

(10) "Draft" means a group of animals that are weighed and sold together as a unit.

(11) "Immediate slaughter" means any domestic animals purchased or sold for slaughter must be consigned to a recognized slaughtering establishment or be slaughtered within seven (7) days of first consignment and must not be diverted for further feeding or breeding purposes.

(12) "Inspection" means a critical observation of livestock by a licensed, accredited veterinarian or by one under his or her direct supervision and conducted in a manner that will lend itself to the disclosure of the apparent physical condition or health status of the animals inspected.

(13) "Licensee" means any person licensed by the state of Indiana as an individual or market facility dealer or holding a combination license.

(14) "Livestock" has the meaning set forth in IC 15-2.1-2-27(a).

(15) "Livestock auction market" or "auction market" means an established place of business and contiguous surroundings where domestic animals are consigned to be sold at public auction upon a commission basis to be paid by the consignor at which place the operator of the business acts as agent for consignor.

(16) "Market facility" means a livestock auction market, stockyard, or concentration point.

(17) "Nonambulatory" or "downed" animal means a conscious animal that is unable to stand or walk without assistance.

(18) "Official health certificate" or "certificate of veterinary inspection" means the printed form adopted by any of the various states and designed to record the identification, description, tests, vaccinations, and other data concerning the health status of domestic animals listed thereon.

(19) "Permit" means permission granted by the board for the importation of domestic animals that will include an identification number of the permit.

(20) "Person" means individual(s) of either sex, firms, copartnerships, corporations, associations, cooperatives, and joint ventures of all kinds, and places of residence, or any other groups or combinations acting in concert.

~~(21) "Producer" or "farmer" means a person who buys or sells livestock in connection with business of raising, feeding, grazing, or breeding livestock as an incident to his or her farming enterprise and who does not follow a definite or routine pattern in disposing of such livestock whereby such livestock reenters the channels of trade in less than sixty (60) days from the date of acquisition.~~

~~(22) "Recognized slaughtering establishment" means a place of business where domestic animals are slaughtered and meat products are processed for human consumption subject to federal, state, or local inspection.~~

~~(23)~~ **(21)** "Sale" means sale, lease, donation, trade, or exchange in any manner.

~~(24)~~ **(22)** "Sell" means to sell, lease, donate, trade, barter, or exchange in any manner.

~~(25)~~ **(23)** "Selling" means selling, leasing, donating, trading, bartering, or exchanging in any manner.

~~(26)~~ **(24)** "Quarantined" means the subject of an order issued by the board restricting the movement of animals onto or off of a premises.

~~(27)~~ **(25)** "Slaughter only market" means any market facility where all animals purchased are consigned directly to a recognized slaughtering establishment or sold for direct reassignment to a recognized slaughtering establishment but not including auction markets.

(26) "Slaughtering establishment" means a place of business where domestic animals are slaughtered and meat products are processed for human consumption subject to federal, state, or local inspection.

(27) "State veterinarian" means the state veterinarian appointed under IC 15-2.1-4.

(28) "Stockyard" means any place of business commonly known or advertised as a stockyard, and which is operated for compensation or profit as a public market consisting of sheds, pens, or other enclosures, and their contiguous appurtenances in which live livestock is received from the public and kept temporarily for sale, marketing, or shipping.

(Indiana State Board of Animal Health; 345 IAC 7-3.5-2; filed Jan 20, 1988, 4:01 p.m.: 11 IR 1750; filed Nov 20, 1997, 2:45 p.m.: 21 IR 1285; errata filed Dec 5, 1997, 9:15 a.m.: 21 IR 1349; errata filed Mar 23, 1998, 10:05 a.m.: 21 IR 2990; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895; filed Dec 31, 2001, 10:02 a.m.: 25 IR 1609)

SECTION 2. 345 IAC 7-3.5-3, AS READOPTED AT 24 IR 2895, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

345 IAC 7-3.5-3 Individual and market facility dealer license and exceptions

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-14-2

Sec. 3. (a) ~~No~~ **A** person may **not** engage in the business of operating a market facility, buying, selling, or otherwise dealing in livestock without obtaining a license **from the state veterinarian.** The following persons and activities are exempt from the livestock dealer license requirement:

(1) ~~Purchases~~ **The purchase** of livestock by an individual for ~~his or her~~ **the individual's** own use other than resale on the livestock market.

(2) ~~A distributor~~ **The distribution** of livestock **in connection with programs** dedicated to improvement of breeding practices or experimental procedures and ownership ~~is~~ **of the livestock remains,** in whole or in part, ~~a~~ **in the** distributor or breeder.

(3) The sale or purchase **of livestock** by a producer or farmer ~~(as defined in section 2(21) of this rule)~~ **that buys or sells livestock in connection with a business of raising, feeding, grazing, or breeding livestock** as ~~an incident to~~ **part of** a farming enterprise, as distinguished from that of a dealer or trader, **and does not follow a definite or routine pattern of disposing of acquired livestock through the channels of trade in less than sixty (60) days from the date of acquisition.**

(4) Purchases of livestock by operators of restaurants, grocery stores, meat processing plants, and slaughtering plants for the sole purpose of processing and sale in connection with the business enterprise if the total number of head of livestock purchased does not exceed twenty (20) head in any one (1) week.

(b) Nothing contained in this rule shall apply to any of the following:

(1) Pens or enclosures where livestock is housed or kept temporarily for the purpose of public exhibition.

(2) Pens and enclosures maintained by ~~recognized~~ slaughtering establishments and used for the temporary deposit and holding of livestock immediately prior to their being slaughtered and processed for human consumption.

(c) No person may continue the business of operating a market facility, buying, selling, or otherwise dealing in livestock after his or her license has expired or been suspended or revoked. *(Indiana State Board of Animal Health; 345 IAC 7-3.5-3; filed Jan 20, 1988, 4:01 p.m.: 11 IR 1751; filed Nov 20, 1997, 2:45 p.m.: 21 IR 1287; errata filed Dec 5, 1997, 9:15 a.m.: 21 IR 1349; errata filed Mar 23, 1998, 10:05 a.m.: 21 IR 2990; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895; filed Dec 31, 2001, 10:02 a.m.: 25 IR 1610)*

SECTION 3. 345 IAC 7-3.5-5, AS READOPTED AT 24 IR 2895, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

345 IAC 7-3.5-5 Classification; fees

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-14-4

Sec. 5. (a) Classifications under which livestock dealer licenses will be issued ~~and the fees to be charged~~ are as follows:

(1) **A** market facility dealer ~~licenses for~~ **license issued to** stockyards, packers, concentration points, and livestock auction markets. ~~one hundred dollars ($100).~~

(2) **An** individual dealer license ~~for~~ **issued to** individual dealers ~~twenty-five dollars ($25).~~

~~(3) Combination licenses: a market facility license and an individual dealer license: one hundred twenty-five dollars ($125).~~ **market agencies not operating as a market facility.**

(b) The following requirements shall be used in determining license classifications:

(1) A person is operating a market facility at a location when more than one (1) auction that is not exempt under section 3 of this rule is conducted at that location in a twelve (12) month period. Separate licenses are required for each location a market facility is operated. **Even if a market facility license is not required for an auction, an individual dealer license may be required.**

(2) Any person who operates a licensed market facility and deals in livestock outside of said market facility must have an individual dealer license in addition to the market facility dealer license. ~~known as a combination license.~~

(3) Final determination of classifications will be made by the state veterinarian.

(c) Each license described in this section shall be valid ~~for a period of one (1) year.~~ **until such time as** the ~~state veterinarian shall select an annual renewal date at which time all licenses will be renewed. Fees for licenses issued at times other than~~ **license is voluntarily surrendered by** the ~~annual renewal date shall be as follows:~~

~~(1) Licenses issued after the annual renewal date and prior to the first day of the seventh month following the annual renewal date, the full amount of the annual fee.~~

~~(2) For licenses issued on~~ **licensee** or ~~after~~ **suspended or revoked by** the ~~first day of the seventh month following the annual renewal date, one-half (½) of the full amount of the annual fee.~~ **state veterinarian.**

(d) ~~Wherever scales are utilized by~~ **Applications for** a ~~dealer for the purpose of weighing livestock, an additional fee of twenty-five dollars ($25) per annum shall be charged as an inspection fee if the~~ license ~~fee provided in this section is less than fifty dollars ($50).~~ **shall be on a form supplied by the state veterinarian and must contain the information requested on the form. The state veterinarian may issue a license under this rule if the applicant submits a completed application, obtains the security required under section 8 of this rule, and meets all other requirements of IC 15-2.1-14 and this rule.**

(e) The ~~board will not~~ **state veterinarian may require that an applicant for a** license **for** a new facility **that is** intended to be used as a market facility ~~in Indiana unless the facility owner provides~~ **provide** proof to the board that the new facility will be constructed in conformance with local zoning ordinances and other laws governing the establishment and operation of such a business in Indiana. **The state veterinarian may refuse to issue a license until such proof is submitted.** *(Indiana State Board of Animal Health; 345 IAC 7-3.5-5; filed Jan 20, 1988, 4:01 p.m.: 11 IR 1752; errata, 11 IR 2901; filed Nov 20, 1997, 1997, 2:45 p.m.: 21 IR 1287; errata filed Mar 23, 1998, 10:05 a.m.: 21 IR 2990; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895; filed Dec 31, 2001, 10:02 a.m.: 25 IR 1610)*

SECTION 4. 345 IAC 7-3.5-5.5 IS ADDED TO READ AS FOLLOWS:

345 IAC 7-3.5-5.5 Annual report; license termination
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-14-6

Sec. 5.5. (a) A person holding a license under this rule shall submit to the state veterinarian an annual report of the licensee's livestock dealing. The report shall be filed with the state veterinarian not sooner than January 1 and not later than April 15 of each year and shall cover the previous year's business. The report shall be one (1) of the following:

(1) A report on a form prescribed by the state veterinarian that includes all information that the state veterinarian determines is required to ascertain the nature of the business enterprise, the amount of the bond or other security required under IC 15-2.1-14-6 and this rule, and compliance with the other provisions of IC 15-2.1-14-6 and this rule.

(2) A licensee that is registered with the United States Department of Agriculture Grain Inspection and Packers and Stockyards Administration (USDA–GIPSA) and holds a Packers and Stockyards bond or other USDA–GIPSA approved security may submit a copy of the most recent USDA–GIPSA annual report, as required under 9 CFR 201.97, for the licensee's business.

(b) A licensee shall notify the state veterinarian when the licensee ceases operating as a livestock dealer and no longer desires to be licensed as such. Said license shall be considered surrendered and no longer active as of the date of notification.

(c) If a licensee fails to comply with any provision of IC 15-2.1 or this rule, the state veterinarian may do the following:

(1) Suspend the licensee's license for a time certain or until such time as the violation has been corrected.

(2) Revoke the licensee's license.

(Indiana State Board of Animal Health; 345 IAC 7-3.5-5.5; filed Dec 31, 2001, 10:02 a.m.: 25 IR 1611)

SECTION 5. 345 IAC 7-3.5-6, AS READOPTED AT 24 IR 2895, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

345 IAC 7-3.5-6 Agents
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-14-5

Sec. 6. (a) All agents for market facilities and individual dealers must be listed on the license application. To add or delete an agent after a license has been issued, the principal must send a written request to the state veterinarian's office for approval. Any person whose dealer license has been suspended or revoked in any state may not be designated as an agent by any livestock dealer for a period of two (2) years from the date of such suspension or revocation. A licensee must request the deletion of an agent from its license immediately upon learning of the revocation of an agent's dealer's license by any state.

~~(b) Where the license fee charged the dealer is twenty-five dollars ($25), an additional fee of five dollars ($5) shall be charged for each agent designated in the excess of three (3) in number.~~

~~(c) Where the license fee charged the dealer is one hundred dollars ($100), an additional fee of five dollars ($5) shall be charged for each agent designated in the excess of twelve (12) in number.~~

~~(d) Where the combined license fee charged the dealer is one hundred twenty-five dollars ($125), an additional fee of five dollars ($5) shall be charged for each agent designated in the excess of fifteen (15) in number.~~

~~(c)~~ **(b)** An act or omission of any agent of an individual dealer or market facility that falls within the scope of that agency shall be deemed the act or omission of the principal dealer for the purposes of this rule. *(Indiana State Board of Animal Health; 345 IAC 7-3.5-6; filed Jan 20, 1988, 4:01 p.m.: 11 IR 1752; filed Apr 2, 1993, 5:00 p.m.: 16 IR 1942; filed Nov 20, 1997, 2:45 p.m.: 21 IR 1288; errata filed Dec 5, 1997, 9:15 a.m.: 21 IR 1349; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895; filed Dec 31, 2001, 10:02 a.m.: 25 IR 1611)*

SECTION 6. 345 IAC 7-3.5-8, AS READOPTED AT 24 IR 2895, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

345 IAC 7-3.5-8 Bond requirements
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-14-6

Sec. 8. (a) Every dealer, before engaging or continuing in the business of buying or selling livestock, must execute and maintain a bond **or other security** in the amount and in the form required by IC 15-2.1-14-6 and this section.

(b) Each dealer buying and selling livestock interstate shall obtain a U.S. Department of Agriculture, Packers and Stockyards bond **or other USDA approved security** where required by federal law. Where an applicant or licensee already has a bond **or other security** on file with the Packers and Stockyards Division, U.S. Department of Agriculture, further ~~bond coverage~~ **security** under this rule shall not be required if such ~~bond~~ **security** is **an** adequate amount and conditioned upon such terms so as to ~~meet~~ **provide at least as much protection as** the requirements of this rule.

(c) The surety on any ~~such~~ bond must be a surety company authorized to do business in Indiana, and the bond shall bear the seal of the surety company. The bonding company agent must attach a duly executed power of attorney form to such bond.

(d) Security in lieu of a bond must be in one (1) of the following forms:

(1) A trust fund agreement governing funds actually deposited or invested in fully negotiable obligations of the United States or federally insured deposits or accounts in the name of and readily convertible to currency by a trustee as provided in subsection (e).

(2) A trust fund agreement governing funds which may be drawn by a trustee as provided under subsection (e) under one (1) or more irrevocable, transferable, standby letters of credit issued by a federally insured bank or institution and physically received and retained by such trustee.

(e) A bond may be in favor of a trustee. The trustee shall be a financially responsible and disinterested person. Attorneys at law, banks, and trust companies are, without limitation, suitable trustees. If a trustee is not named in the bond, the state veterinarian may serve as trustee or designate a person to act as trustee in an action to recover damages for breach of the bond's conditions. The state veterinarian may agree to serve as trustee under 9 CFR 201.32 in actions under the jurisdiction of the United States Department of Agriculture, Grain Inspection and Packers and Stockyards Administration.

~~(d)~~ **(f)** Bond **and other security** coverage shall be annually adjusted for business transacted during the preceding twelve (12) month period. *(Indiana State Board of Animal Health; 345 IAC 7-3.5-8; filed Jan 20, 1988, 4:01 p.m.: 11 IR 1752; filed Apr 2, 1993, 5:00 p.m.: 16 IR 1942; filed Nov 20, 1997, 2:45 p.m.: 21 IR 1288; errata filed Dec 5, 1997, 9:15 a.m.: 21 IR 1349; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895; filed Dec 31, 2001, 10:02 a.m.: 25 IR 1612)*

SECTION 7. 345 IAC 7-3.5-8.5 IS ADDED TO READ AS FOLLOWS:

345 IAC 7-3.5-8.5 Claims
Authority: IC 15-2.1-3-19; IC 15-2.1-14-4
Affected: IC 15-2.1-3-13; IC 15-2.1-14-6

Sec. 8.5. (a) Each bond and bond equivalent filed pursuant to section 8 of this rule shall contain provisions substantially equivalent to the following:

(1) Any persons damaged by failure of the principal to comply with any condition of the bond or bond equivalent may maintain a suit to recover on the bond or bond equivalent even though such claimant is not a party named in the bond or bond equivalent.

(2) Any claim for recovery on the bond or bond equivalent must be filed in writing with:

(A) the surety, if any;

(B) the trustee, if any; or

(C) the state veterinarian.

Whichever party receives notice of the claim shall notify the other party or parties as soon as possible.

(b) The proceeds of the bond or bond equivalent shall not be used to pay fees, salaries, or other expenses of the surety or principal. *(Indiana State Board of Animal Health; 345 IAC 7-3.5-8.5; filed Dec 31, 2001, 10:02 a.m.: 25 IR 1612)*

LSA Document #01-166(F)
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Incorporated Documents Filed with Secretary of State: None

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #01-22(F)(2)

DIGEST

Amends 405 IAC 5-3-10 and 405 IAC 5-3-13 to revise prior authorization requirements for drugs covered by the Medicaid program. Adds 405 IAC 5-24-8.5 and 405 IAC 5-24-8.6 to set forth procedures and limits for imposing prior authorization for drugs covered by the Medicaid program. Adds 405 IAC 5-24-11 to set forth limitations that may be placed on drugs. Adds 405 IAC 5-24-12 to set forth risk-based managed care exception. Effective 30 days after filing with the secretary of state.

405 IAC 5-3-10	**405 IAC 5-24-8.6**
405 IAC 5-3-13	**405 IAC 5-24-11**
405 IAC 5-24-8.5	**405 IAC 5-24-12**

SECTION 1. 405 IAC 5-3-10 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-3-10 Providers who may submit prior authorization requests

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

Sec. 10. Prior authorization requests may be submitted by any of the following:

(1) Doctor of medicine.
(2) Doctor of osteopathy.
(3) Dentist.
(4) Optometrist.
(5) Podiatrist.
(6) Chiropractor.
(7) Psychologist endorsed as a health service provider in psychology (HSPP).
(8) Home health agency.
(9) Hospitals.
(10) For drugs subject to prior authorization, any provider with prescriptive authority under Indiana law.

Requests from other provider types will not be accepted except for transportation services. *(Office of the Secretary of Family and Social Services; 405 IAC 5-3-10; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3305; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Jan 7, 2002, 10:11 a.m.: 25 IR 1613)*

SECTION 2. 405 IAC 5-3-13, AS AMENDED AT 24 IR 14, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-3-13 Services requiring prior authorization

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

Sec. 13. (a) Medicaid reimbursement is available for the following services with prior authorization:

(1) Reduction mammoplasties.
(2) Rhinoplasty or bridge repair of the nose when related to a significant obstructive breathing problem.
(3) Intersex surgery.
(4) Blepharoplasties for a significant obstructive vision problem.
(5) Sliding mandibular osteotomies for prognathism or micrognathism.
(6) Reconstructive or plastic surgery.
(7) Bone marrow or stem cell transplants.
(8) All organ transplants covered by the Medicaid program.
(9) Plasmapheresis.
(10) Strabismus surgery for patients over ten (10) years of age.
(11) Home health services.
(12) Maxillofacial surgeries related to diseases and conditions of the jaws and contiguous structures.
(13) Temporomandibular joint surgery.
(14) Submucous resection of nasal septum and septoplasty when associated with significant obstruction.
(15) Hysterectomy.
(16) Tonsillectomy.
(17) Tonsillectomy and adenoidectomy.
(18) Cataract extraction.
(19) Surgical procedures involving the foot.
(20) Weight reduction surgery, including gastroplasty and related gastrointestinal surgery.
(21) Any procedure ordinarily rendered on an outpatient basis, when rendered on an inpatient basis.
(22) All dental admissions.
(23) Stress electrocardiograms except for medical conditions.
(24) Brand medically necessary drugs.
(25) Other drugs as specified in accordance with 405 IAC 5-24-8.5.
~~(25)~~ **(26)** Psychiatric inpatient admissions, including admissions for substance abuse.
~~(26)~~ **(27)** Rehabilitation inpatient admissions.
~~(27)~~ **(28)** As otherwise specified in this article.

If any of the surgeries listed in this section are performed during a hospital stay for another condition, prior authorization is required for the surgical procedure.

(b) Requests for prior authorization for the surgical procedures in this section will be reviewed for medical necessity on a case-by-case basis in accordance with this rule. *(Office of the Secretary of Family and Social Services; 405 IAC 5-3-13; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3306; filed Sep 1, 2000, 2:16 p.m.: 24 IR 14; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Jan 7, 2002, 10:11 a.m.: 25 IR 1613)*

SECTION 3. 405 IAC 5-24-8.5 IS ADDED TO READ AS FOLLOWS:

405 IAC 5-24-8.5 Prior authorization; other drugs

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2
Affected: IC 12-13-7-3; IC 12-15-13-6; IC 12-15-35

Sec. 8.5. (a) Except as provided in section 8.6 of this rule,

the office may, in compliance with all state and federal laws that may govern Medicaid prior authorization programs, establish prior authorization requirements for other drugs covered under Medicaid. Before any single source drug is placed on prior authorization in the fee for service program, the office will seek the advice of the drug utilization review board established under IC 12-15-35 at a public meeting held by the board. The single source drugs subsequently identified as subject to prior authorization under this section shall be published in a provider bulletin. Any provider bulletin described in this section shall be made effective no earlier than permitted under IC 12-15-13-6(a).

(b) The prior authorization number assigned to the approved request must be included on the prescription or drug order issued by the prescriber or relayed to the dispensing pharmacist by the prescriber if the prescription is orally transmitted. Prior authorization will be determined in accordance with the provisions of 405 IAC 5-3 and 42 U.S.C. 1396r-8(d)(5). *(Office of the Secretary of Family and Social Services; 405 IAC 5-24-8.5; filed Jan 7, 2002, 10:11 a.m.: 25 IR 1613)*

SECTION 4. 405 IAC 5-24-8.6 IS ADDED TO READ AS FOLLOWS:

405 IAC 5-24-8.6 Prior authorization limitations and other; antianxiety, antidepressant, or antipsychotic agents

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2
Affected: IC 12-13-7-3; IC 12-15-35

Sec. 8.6. (a) Central nervous system drugs classified by Drug Facts and Comparisons (published by Facts and Comparisons Division of J.B. Lippincott Company) as antianxiety, antidepressant, or antipsychotic agents, or any drugs cross-indicated (according to The American Psychiatric Press Textbook of Psychopharmacology, The Current Clinical Strategies for Psychiatry, Drug Facts and Comparison, or other publications of similar content and focus) to these classifications will not be placed on prior authorization in the fee for service Medicaid program. Drugs classified in any new category or classification of central nervous system agents (according to Drug Facts and Comparisons) created after the effective date of this rule, when prescribed for the treatment of mental illness (as defined in the latest edition of the Diganostic *[sic.]* **and Statistical Manual of Mental Disorders, published by the American Psychiatric Association), will not be placed on prior authorization in the fee for service Medicaid program. As used in this subsection, "cross-indicated" means a drug that is being used for a purpose generally held to be reasonable, appropriate, and within community standards of practice, even though the use is not included in the FDA-approved labeled indications for the drug.**

(b) Brand name multisource drugs described in subsection (a) shall not be subject to prior authorization under section 8 of this rule.

(c) A recipient enrolled in the fee for service Medicaid program shall have unrestricted access to the drugs described in this section except as provided in section 11 of this rule. *(Office of the Secretary of Family and Social Services; 405 IAC 5-24-8.6; filed Jan 7, 2002, 10:11 a.m.: 25 IR 1614)*

SECTION 5. 405 IAC 5-24-11 IS ADDED TO READ AS FOLLOWS:

405 IAC 5-24-11 Limitations on quantities dispensed and frequency of refills

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2
Affected: IC 12-13-7-3; IC 12-15-13-6; IC 12-15-35

Sec. 11. Nothing in this rule prohibits the office from placing limits on quantities dispensed or frequency of refills for any drug for purposes of preventing fraud, abuse, waste, overutilization, inappropriate utilization, or implementing disease management. In formulating any such limitations, the office will take into account quality of care and the best interests of Medicaid recipients. Before imposing any limits on quantities dispensed or frequency of refills for any drug, the office will seek the advice of the drug utilization review board established under IC 12-15-35 at a public meeting held by the board. Any limitations imposed shall be published in a provider bulletin. Any provider bulletin described in this subsection shall be made effective no earlier than permitted under IC 12-15-13-6(a). *(Office of the Secretary of Family and Social Services; 405 IAC 5-24-11; filed Jan 7, 2002, 10:11 a.m.: 25 IR 1614)*

SECTION 6. 405 IAC 5-24-12 IS ADDED TO READ AS FOLLOWS:

405 IAC 5-24-12 Risk-based managed care

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2
Affected: IC 12-13-7-3; IC 12-15-13-6; IC 12-15-35-46; IC 12-15-35-47

Sec. 12. The use of prior authorization programs or formularies in risk-based managed care shall be subject to IC 12-15-35-46 and IC 12-15-35-47 and are not governed by this rule. *(Office of the Secretary of Family and Social Services; 405 IAC 5-24-12; filed Jan 7, 2002, 10:11 a.m.: 25 IR 1614)*

LSA Document #01-22(F)(2)
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Incorporated Documents Filed with Secretary of State: None

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #01-7(F)

DIGEST

Adds 410 IAC 7-21 to safeguard public health and assure that food provided to consumers is safe, unadulterated, and honestly presented. The rule will establish minimum sanitary standards for the operation of wholesale food establishments, which include manufacturers, processors, repackagers, and distributors of food, excluding meat and poultry processors regulated under IC 15-2.1-24; dairy processors, regulated under IC 15-2.1-22, IC 15-2.1-23, and 345 IAC 8; and shell egg plants regulated under 370 IAC 1-10-1 and IC 16-42-11. Effective 120 days after filing with the secretary of state.

410 IAC 7-21

SECTION 1. 410 IAC 7-21 IS ADDED TO READ AS FOLLOWS:

Rule 21. Wholesale Food Establishment Sanitation Requirements

410 IAC 7-21-1 Applicability
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 1. The definitions in this rule apply throughout this rule. *(Indiana State Department of Health; 410 IAC 7-21-1; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1615, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-2 "Acid foods" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 2. "Acid foods" means foods that have a natural pH of 4.6 or below. *(Indiana State Department of Health; 410 IAC 7-21-2; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1615, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-3 "Acidified foods" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 3. (a) "Acidified foods" means low-acid foods to which acid or acid food is added; these foods include, but are not limited to:
(1) beans;
(2) cucumbers;
(3) cabbage;
(4) artichokes;
(5) cauliflower;
(6) puddings;
(7) peppers;
(8) tropical fruits; and
(9) fish;
singly or in any combination. They have a water activity (a_w) greater than eighty-five hundredths (0.85) and have a finished equilibrium pH of 4.6 or below. These foods may be called pickled, such as "pickled cauliflower".

(b) Excluded from the definition of acidified foods are:
(1) carbonated beverages;
(2) jams;
(3) jellies;
(4) preserves; and
(5) acid foods;
(including such foods as standardized and nonstandardized food dressings and condiment sauces) that contain small amounts of low-acid food and have a resultant finished equilibrium pH that does not significantly differ from that of the predominant acid or acid food, and foods that are stored, distributed, and retailed under refrigeration. *(Indiana State Department of Health; 410 IAC 7-21-3; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1615, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-4 "Adequate" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 4. "Adequate" means that which is needed to accomplish the intended purpose in keeping with good public health practice. *(Indiana State Department of Health; 410 IAC 7-21-4; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1615, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-5 "Adulterated" defined
Authority: IC 16-42-5-5
Affected: IC 16-42

Sec. 5. "Adulterated" has the meaning set forth under IC 16-42-1 through IC 16-42-4. *(Indiana State Department of Health; 410 IAC 7-21-5; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1615, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-6 "Allergen" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 6. "Allergen" means foods that are commonly known to cause serious allergenic responses, including, but not limited to, the following:
(1) Milk.
(2) Eggs.
(3) Fish.
(4) Crustacea.
(5) Mollusks.
(6) Tree nuts.
(7) Wheat.

(8) Legumes, particularly peanuts and soybeans.
(Indiana State Department of Health; 410 IAC 7-21-6; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1615, eff one hundred twenty (120) days after filing with secretary of state)

410 IAC 7-21-7 "Batter" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 7. "Batter" means a semifluid substance, usually composed of flour and other ingredients, into which principal components of food are dipped or with which they are coated, or which may be used directly to form bakery foods. *(Indiana State Department of Health; 410 IAC 7-21-7; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1616, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-8 "Blanching" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 8. "Blanching", except for tree nuts and peanuts, means a prepackaging heat treatment of foodstuffs for a sufficient time and at a sufficient temperature to partially or completely inactivate the naturally occurring enzymes and to affect other physical or biochemical changes in the food. *(Indiana State Department of Health; 410 IAC 7-21-8; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1616, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-9 "Bottled drinking water" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 9. "Bottled drinking water" means water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water. *(Indiana State Department of Health; 410 IAC 7-21-9; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1616, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-10 "CFR" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 10. "CFR" means the Code of Federal Regulations. *(Indiana State Department of Health; 410 IAC 7-21-10; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1616, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-11 "CIP system" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 11. "CIP" means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning. The term does not include the cleaning of equipment, such as band saws, slicers, or mixers that are subjected to in-place manual cleaning without the use of a CIP system. *(Indiana State Department of Health; 410 IAC 7-21-11; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1616, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-12 "Critical control point" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 12. "Critical control point" means a point or procedure in a specific food process where loss of control may result in an unacceptable health risk. *(Indiana State Department of Health; 410 IAC 7-21-12; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1616, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-13 "Department" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 13. "Department" means the Indiana state department of health or its authorized representative. *(Indiana State Department of Health; 410 IAC 7-21-13; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1616, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-14 "Drinking water" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 14. "Drinking water" means water that meets the requirements of 327 IAC 8. The term is traditionally known as potable water. The term includes water, except where the term used connotes that the water is not potable, such as boiler water, mop water, wastewater, and nondrinking water. *(Indiana State Department of Health; 410 IAC 7-21-14; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1616, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-15 "Food" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 15. "Food" means the following:
(1) All articles used for food, drink, confectionery, or condiment whether simple, mixed, or compound.
(2) All substances or ingredients used in the preparation of the items described in subdivision (1).
(Indiana State Department of Health; 410 IAC 7-21-15; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1616, eff one hundred twenty (120) days after filing with secretary of state)

410 IAC 7-21-16 "Food-contact surface" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 16. "Food-contact surface" means a surface of equipment or a utensil:
(1) with which food normally comes into contact; or

(2) from which food may drain, drip, or splash into a food, or onto a surface normally in contact with food.
(Indiana State Department of Health; 410 IAC 7-21-16; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1616, eff one hundred twenty (120) days after filing with secretary of state)

410 IAC 7-21-17 "Food employee" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 17. "Food employee" means an individual working with food, food equipment or utensils, or food-contact surfaces. *(Indiana State Department of Health; 410 IAC 7-21-17; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1617, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-18 "HACCP plan" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 18. "HACCP plan" means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by the National Advisory Committee on Microbiological Criteria for Foods. *(Indiana State Department of Health; 410 IAC 7-21-18; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1617, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-19 "Lot" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 19. "Lot" means the food produced during a period of time indicated by a specific code. *(Indiana State Department of Health; 410 IAC 7-21-19; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1617, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-20 "Low-acid food" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 20. "Low-acid food" means any food, other than alcoholic beverages, with a finished equilibrium pH greater than 4.6 and a water activity (a_w) greater than eighty-five hundredths (0.85). *(Indiana State Department of Health; 410 IAC 7-21-20; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1617, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-21 "Micro-organisms" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 21. "Micro-organisms" means yeasts, molds, bacteria, protozoa, and viruses and includes, but is not limited to, species having public health significance. The term "undesirable micro-organisms" includes those micro-organisms that are of public health significance and those of nonpublic health significance that result in food spoilage or that indicate that food is contaminated with filth, or that otherwise may cause food to be adulterated. "Microbial" is used in some instances instead of using an adjectival phrase containing the word micro-organism. *(Indiana State Department of Health; 410 IAC 7-21-21; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1617, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-22 "Pest" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 22. "Pest" refers to any objectionable animals or insects, including, but not limited to, the following:
(1) Birds.
(2) Rodents.
(3) Flies.
(4) Larvae.
(Indiana State Department of Health; 410 IAC 7-21-22; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1617, eff one hundred twenty (120) days after filing with secretary of state)

410 IAC 7-21-23 "pH" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 23. "pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between zero (0) and seven (7) indicate acidity, and values between seven (7) and fourteen (14) indicate alkalinity. The value for pure distilled water is seven (7), which is considered neutral. *(Indiana State Department of Health; 410 IAC 7-21-23; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1617, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-24 "Plant" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 24. "Plant" means the building or facility or parts thereof, used for or in connection with the manufacturing, packaging, labeling, holding, or storing of human food. *(Indiana State Department of Health; 410 IAC 7-21-24; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1617, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-25 "Potentially hazardous food" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 25. (a) "Potentially hazardous food" means a natural or synthetic food and requires temperature control because it is in a form capable of supporting any of the following:
(1) The rapid and progressive growth of infectious or toxigenic micro-organisms.
(2) The growth and toxin production of Clostridium botulinum.
(3) In raw shell eggs, the growth of Salmonella enteritidis.

(b) The term includes the following:
(1) A food of animal origin that is raw or heat-treated.
(2) A food of plant origin that is heat-treated or consists of raw seed sprouts.
(3) Cut melons.
(4) Garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth as specified under subsection (a).

(c) The term does not include any of the following:
(1) An air-cooled hard-boiled egg with shell intact.
(2) A food with a water activity (a_w) value of eighty-five hundredths (0.85) or less.
(3) A food with a pH level of four and six-tenths (4.6) or below when measured at seventy-five (75) degrees Fahrenheit.
(4) A food, in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution.
(5) A food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic micro-organisms or the growth of Salmonella enteritidis in eggs or Clostridium botulinum cannot occur, such as a food that:
(A) has an a_w and a pH that are above the levels specified under subdivisions (2) and (3); and
(B) may contain a preservative, other barrier to the growth of micro-organisms, or a combination of barriers that inhibit the growth of micro-organisms.
(6) A food that may contain an infectious or toxigenic micro-organism or chemical or physical contaminant at a level sufficient to cause illness, but that does not support the growth of micro-organisms as specified under subsection (a).

(Indiana State Department of Health; 410 IAC 7-21-25; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1617, eff one hundred twenty (120) days after filing with secretary of state)

410 IAC 7-21-26 "Public health significance" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 26. "Public health significance" means:
(1) the potential for causing diseases with symptoms, such as, but not limited to:
(A) diarrhea;
(B) fever;
(C) jaundice;
(D) vomiting or sore throat with fever; or
(E) boils; or
(2) for diseases such as, but not limited to:
(A) Salmonella spp.;
(B) Shigella spp.;
(C) Escherichia coli 0157:H7; or
(D) Hepatitis A virus associated with foodborne or waterborne transmission that are reportable according to 410 IAC 1-2.3.

(Indiana State Department of Health; 410 IAC 7-21-26; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1618, eff one hundred twenty (120) days after filing with secretary of state)

410 IAC 7-21-27 "Quality control operation" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-2-2; IC 16-42-5

Sec. 27. "Quality control operation" means a planned and systematic procedure for taking all actions necessary to prevent food from being adulterated as defined under IC 16-42-2-2. *(Indiana State Department of Health; 410 IAC 7-21-27; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1618, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-28 "Reduced oxygen packaging" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 28. (a) "Reduced oxygen packaging" means the following:
(1) The reduction of the amount of oxygen in a package by:
(A) removing oxygen;
(B) displacing oxygen and replacing it with another gas or combination of gases; or
(C) otherwise controlling the oxygen content to a level below that normally found in the surrounding twenty-one percent (21%) oxygen atmosphere.
(2) A process as specified in subdivision (1) that involves a food for which Clostridium botulinum is identified as a microbiological hazard in the final packaged form.

(b) The term includes the following:
(1) Vacuum packaging in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package, such as sous vide.
(2) Modified atmosphere packaging in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes any of the following:
(A) Reduction in the proportion of oxygen.
(B) Total replacement of oxygen.
(C) An increase in the proportion of other gases, such as carbon dioxide or nitrogen.
(3) Controlled atmosphere packaging in which the atmosphere of a package of food is modified so that, until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained as such by using oxygen scavengers or a combination of total replacement of oxygen, nonrespiring food, and impermeable packaging material.

(Indiana State Department of Health; 410 IAC 7-21-28; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1618, eff one hundred twenty (120) days after filing with secretary of state)

410 IAC 7-21-29 "Restricted use pesticide" defined
Authority: IC 16-42-5-5
Affected: IC 15-3-3.5-2; IC 16-42-5

Sec. 29. "Restricted use pesticide" has the same meaning as defined in IC 15-3-3.5-2(27). *(Indiana State Department of Health; 410 IAC 7-21-29; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1619, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-30 "Rework" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 30. "Rework" means clean, unadulterated food that has been removed from processing for reasons other than insanitary conditions or that has been successfully reconditioned by reprocessing and that is suitable for use as food. *(Indiana State Department of Health; 410 IAC 7-21-30; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1619, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-31 "Sanitization" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 31. "Sanitization" means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of five (5) logs, which is equal to a ninety-nine and nine hundred ninety-nine thousandths percent (99.999%) reduction of representative disease-causing micro-organisms of public health significance. *(Indiana State Department of Health; 410 IAC 7-21-31; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1619, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-32 "Scheduled process" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 32. "Scheduled process" means the process selected by a processor as adequate for use under food manufacturing conditions to achieve and maintain a food that will not permit the growth of micro-organisms having a public health significance. The term includes control of pH and other critical factors equivalent to the process established by a competent processing authority. *(Indiana State Department of Health; 410 IAC 7-21-32; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1619, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-33 "Water activity" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 33. "Water activity" indicated by the symbol a_w means water activity that is a measure of the free moisture in a food and the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature. *(Indiana State Department of Health; 410 IAC 7-21-33; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1619, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-34 "Wholesale food establishment" defined
Authority: IC 16-42-5-5
Affected: IC 15-2.1-23; IC 15-2.1-24; IC 16-42-11

Sec. 34. (a) "Wholesale food establishment" means any establishment within Indiana that manufactures, packages, stores, repackages, or transports human food products for distribution to another entity for resale or redistribution.

(b) The term does not include the following:
(1) A residential kitchen in a private home.
(2) Bed and breakfast establishments subject to 410 IAC 7-15.5.
(3) An establishment engaged solely in the harvesting, storage, or distribution of one (1) or more raw agricultural commodities, that is not ordinarily cleaned, prepared, treated, or otherwise processed before being marketed to the consuming public.
(4) Meat and poultry processing plants subject to IC 15-2.1-24; dairy processing plants subject to IC 15-2.1-23 and 345 IAC 8; or shell egg plants subject to 370 IAC 1-10-1 and IC 16-42-11.
(5) Any establishments as defined in 410 IAC 7-20-70, except when engaged in activities under subsection (a) or when producing acidified foods in hermetically sealed containers.

(Indiana State Department of Health; 410 IAC 7-21-34; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1619, eff one hundred twenty (120) days after filing with secretary of state; errata filed Jan 9, 2002, 12:50 p.m.: 25 IR 1644)

410 IAC 7-21-35 Personnel health
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 35. (a) The plant management shall take all reasonable measures and precautions to ensure compliance with the following:
(1) Any person who, by medical examination or supervisory observation, is shown to have, or appears to have:
(A) an illness;
(B) an open lesion, including:
(i) boils;
(ii) sores; or
(iii) infected wounds; or
(C) any other abnormal source of microbial contamination;

by which there is a reasonable possibility of food, food-contact surfaces, or food-packaging materials becoming contaminated shall be excluded or restricted from any operations, which may result in contamination until the condition is corrected. Personnel shall be instructed to report such health conditions to supervisory personnel.

(2) An exclusion shall be applied if a food employee is diagnosed with an illness due to Salmonella spp., Shigella spp., Escherichia coli 0157:H7, or Hepatitis A virus. A food employee shall be restricted from working with exposed food, food-contact surfaces, clean equipment, and utensils or food-packaging materials if the food employee:

(A) has a symptom caused by illness, infection, or other source that is associated with an acute gastrointestinal illness, such as diarrhea, fever, vomiting, jaundice, or sore throat with fever;

(B) has a lesion containing pus, such as a boil or infected wound that is open or draining and is:

(i) on the hands or wrists unless an impermeable cover, such as a finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover;

(ii) on exposed portions of the arms unless the lesion is protected by an impermeable cover; or

(iii) on the other parts of the body unless the lesion is covered by a dry, durable, tight-fitting bandage; or

(C) is not experiencing a symptom of acute gastroenteritis as specified in this subdivision, but has a stool that yields a specimen culture that is positive for Salmonella spp., Shigella spp., or Escherichia coli 0157:H7.

(3) An exclusion may be removed when supervisory personnel obtains from the excluded person written medical documentation from a physician, a nurse practitioner, or a physician assistant that the excluded person may work in an unrestricted capacity.

(4) A restriction may be removed by supervisory personnel when the restricted person:

(A) is free of the symptoms of illness specified in subdivision (2) and no foodborne illness occurs that may have been caused by the restricted person;

(B) is suspected of causing foodborne illness but:

(i) is free of the symptoms specified under subdivision (2)(A); and

(ii) provides written medical documentation from a physician, a nurse practitioner, or a physician assistant stating that the restricted person is free of the infectious agent that is suspected of causing the person's symptoms or causing foodborne illness; or

(C) provides written medical documentation from a physician, a nurse practitioner, or a physician assistant stating that the symptoms experienced result from a chronic noninfectious condition, such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis.

(b) The department may issue an order of restriction or exclusion to a wholesale food establishment without prior warning, notice of a hearing, or a hearing if the order states the following:

(1) The reasons for the restriction or exclusion that is ordered.

(2) The evidence that the wholesale food establishment shall provide in order to demonstrate that the reasons for the restriction or exclusion has been eliminated.

(3) That a suspected food employee or the wholesale food establishment may request an appeal hearing by submitting a timely request as provided in law.

(4) The name and address of the department's representative to whom a request for an appeal hearing may be made.

(Indiana State Department of Health; 410 IAC 7-21-35; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1619, eff one hundred twenty (120) days after filing with secretary of state)

410 IAC 7-21-36 Personnel hygienic practices

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 36. All persons working in direct contact with food, food-contact surfaces, and food-packaging materials shall conform to good hygienic practices while on duty. The methods for maintaining good hygiene include, but are not limited to, the following:

(1) Wearing clean outer garments suitable to the operation in a manner that protects against the contamination of food, food-contact surfaces, or food-packaging materials.

(2) Maintaining adequate personal cleanliness, including:

(A) keeping fingernails clean and neatly trimmed; and

(B) not wearing fingernail polish or artificial fingernails;

while working with exposed food.

(3) Washing hands thoroughly in an adequate hand washing facility as follows:

(A) Before starting work.

(B) After each absence from the work station.

(C) After touching bare human body parts other than clean hands and clean, exposed portions of arms.

(D) After using the toilet room.

(E) After caring for or handling service animals or aquatic animals.

(F) After coughing, sneezing, or using a handkerchief or disposable tissue.

(G) After drinking, unless the handling of the container allows for no direct contamination, and after eating or using tobacco.

(H) After handling soiled surfaces, equipment, or utensils.

(I) During food preparation, as often as necessary to remove soil and contamination and to prevent cross-contamination when changing tasks.

(J) When switching between working with raw food and working with ready-to-eat food.

(K) Directly before touching ready-to-eat food or food-contact surfaces.

(L) At any other time when the hands may have become soiled or contaminated.

(4) Wearing no jewelry while preparing food. If hand jewelry cannot be removed or if approval is given by supervisory personnel for the wearing of a wedding band, it may be covered by an impermeable cover, such as a glove, that can be maintained in an intact, clean, and sanitary condition and that protects against contamination.

(5) Maintaining gloves in an intact, clean, and sanitary condition if they are used in direct contact with food. The gloves shall be made of an impermeable material.

(6) Wearing hair restraints, such as nets, hats, beard restraints, and clothing that covers body hair, which are designed and worn effectively to keep hair from contacting exposed food, clean food-contact equipment, and utensils.

(7) Storing employees' food and personal belongings in a designated location separate from food processing, storage, and packaging areas.

(8) Confining the following to areas other than where food and food processing equipment may be exposed or where equipment or utensils are washed and stored:

(A) eating food;

(B) chewing gum;

(C) drinking beverages; or

(D) using tobacco.

(9) Taking any other necessary precautions to protect against contamination of food, food-contact surfaces, or food-packaging materials with micro-organisms or foreign substances, including, but not limited to, the following:

(A) Perspiration.

(B) Hair.

(C) Cosmetics.

(D) Tobacco.

(E) Chemicals.

(F) Medicines applied to the skin.

(Indiana State Department of Health; 410 IAC 7-21-36; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1620, eff one hundred twenty (120) days after filing with secretary of state)

410 IAC 7-21-37 Personnel training

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 37. (a) Personnel responsible for identifying sanitation failures or food contamination shall have an educational background or experience, or a combination thereof, to provide a level of competency necessary for production of unadulterated, honestly presented, safe food. Food employees and supervisory personnel involved in food processing shall receive appropriate training in proper food-handling techniques, foodborne illness prevention, and food protection principles and be informed of the danger of poor personal hygiene and insanitary practices.

(b) Competent supervisory personnel shall be clearly assigned responsibility for assuring compliance by all food employees engaged in food processing with all requirements. Supervisory personnel shall hold a certification or be trained at a minimum on the following areas of knowledge as are applicable to the operations conducted at the wholesale food establishment:

(1) The relationship between the prevention of foodborne disease and the personal hygiene of a food employee.

(2) Responsibility of supervisory personnel for preventing the transmission of foodborne disease by a food employee who has an illness or medical condition that may cause foodborne disease.

(3) Symptoms associated with the diseases that are transmissible through food.

(4) Required food temperatures and times for safe cooking, cooling and reheating of potentially hazardous foods, and refrigerated storage temperatures include those for meat, poultry, eggs, and fish.

(5) The relationship between the prevention of foodborne illness and the management and control of the following:

(A) Cross-contamination.

(B) Hand contact with ready-to-eat foods.

(C) Hand washing.

(D) Maintaining the wholesale food establishment in a clean condition and in good repair.

(6) The correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment.

(7) Poisonous or toxic materials identification and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to law.

(8) Knowledge of important processing points in the operation from purchasing through sale or service.

(9) The principles and details of a HACCP plan, if used, or if required by federal or state law, or if an agreement between the department and the establishment exists.

(10) Water sources identification and measures taken to ensure that it remains protected from contamination, such as providing protection from backflow and precluding the creation of cross-connections.

(Indiana State Department of Health; 410 IAC 7-21-37; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1621, eff one hundred twenty (120) days after filing with secretary of state)

410 IAC 7-21-38 Physical facilities and grounds

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 38. (a) The grounds surrounding a food plant under the control of the operator shall be kept in a condition that

will protect against the contamination of food. The methods for adequate maintenance of grounds include, but are not limited to, the following:

(1) Properly storing or removing unnecessary equipment, removing litter and waste, and cutting weeds or grass within the immediate vicinity of the physical facility that may constitute an attractant, breeding place, or harborage for pests.

(2) Maintaining roads and parking lots so that they do not constitute a source of contamination in areas where food is exposed.

(3) Adequately draining areas that may contribute contamination to food by seepage, footborne filth, or providing a breeding place for pests.

(4) Operating systems for waste treatment and removal of liquid and solid waste at such a frequency that the waste does not constitute a source of contamination in areas where food is exposed.

(5) Constructing, if needed, an outdoor storage surface of nonabsorbent material, such as concrete or asphalt that shall be smooth, durable, and sloped to drain for refuse, recyclables, and returnables. Refuse, recyclables, and returnables shall be handled by:

(A) storing them in receptacles or waste handling units so that they are inaccessible to insects and rodents;

(B) keeping receptacles and waste handling units for refuse, recyclables, and returnables covered with tight-fitting lids or doors; and

(C) locating receptacles and waste handling equipment at a distance from the building that minimizes the entrance of pests and other vermin.

(b) If the wholesale food establishment grounds are bordered by grounds not under the operator's control and not maintained in the manner described in subsection (a)(1) through (a)(3), care shall be exercised in the plant by inspection, extermination, or other means to exclude pests, dirt, and filth that may be a source of food contamination.

(c) Physical facilities shall be adequate in size, construction, and design to facilitate maintenance and sanitary operations for food manufacturing purposes. Methods for maintaining a sanitary operation include, but are not limited to, the following:

(1) Providing sufficient space for placement of equipment and storage of materials.

(2) Taking precautions to reduce the potential for contamination of food, food-contact surfaces, or food-packaging materials with micro-organisms, chemicals, filth, or other extraneous material. The potential for contamination shall be reduced by adequate food safety controls and operating practices or effective design, including the separation of operations in which contamination is likely to occur, by one (1) or more of the following means:

(A) Location.

(B) Time.

(C) Partition.

(D) Air flow.

(E) Enclosed systems.

(F) Other effective means.

(3) Locating areas designated for employees to eat, drink, and use tobacco so that food and equipment are protected from contamination.

(4) Prohibiting a person from living or sleeping in a room used for food-handling or in a room opening directly into a wholesale food establishment. If living or sleeping quarters are located on the premises, such as those provided for security personnel, it shall be separated from rooms and areas used for wholesale food establishment operations by complete partitioning and solid self-closing doors.

(5) Protecting food in outdoors bulk fermentation vessels by any effective means, including, but not limited to, the following:

(A) Using protective coverings.

(B) Controlling areas over and around the vessels to eliminate harborages for pests.

(C) Checking on a regular basis for pests and pest infestation.

(D) Skimming the fermentation vessels, when necessary.

(6) Constructing facility in such a manner that:

(A) floors, walls, and ceilings may be adequately cleaned and maintained in good repair;

(B) drip or condensate from fixtures, ducts, and pipes does not contaminate food, food-contact surfaces, or food-packaging materials; and

(C) aisles or working spaces are provided between equipment and walls and food products and walls and are adequately unobstructed and have adequate width to permit employees to perform their duties and to protect against contaminating food or food-contact surfaces with clothing or personal contact.

(7) Providing sufficient lighting in hand washing areas, dressing and locker rooms, toilet rooms, and all areas where food is examined, processed, or stored and where equipment or utensils are cleaned. Light bulbs shall be protected in the following manner:

(A) Shielded, coated, or otherwise shatter-resistant in areas suspended over exposed food in any step of preparation and over clean equipment, utensils, and linens.

(B) Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages if:

(i) the integrity of the packages cannot be affected by broken glass falling onto them; and

(ii) the packages are capable of being cleaned of debris from broken bulbs before the packages are opened.

(8) Providing adequate ventilation or control equipment to minimize odors and vapors, including steam and noxious fumes, in areas where they may contaminate food, and locate and operate fans and other air blowing equipment in a manner that minimizes the potential for contaminating food, food-packaging materials, and food-contact surfaces. To comply:

(A) intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials; and

(B) ventilation systems may not create a public health hazard or nuisance or unlawful discharge, if vented to the outside.

(9) Protecting outer openings against the entry of insects, rodents, or other vermin by:

(A) filling or closing holes and other gaps along floor, walls, and ceilings;

(B) closed, tight-fitting windows;

(C) solid, self-closing, and tight-fitting doors, except emergency exit and dock doors do not need to be self-closing; and

(D) using screening, air curtains, or other effective means, when appropriate.

(Indiana State Department of Health; 410 IAC 7-21-38; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1621, eff one hundred twenty (120) days after filing with secretary of state)

410 IAC 7-21-39 Sanitary operations; general maintenance

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 39. (a) The plant shall be:

(1) maintained in a sanitary condition; and

(2) kept in repair sufficient to prevent food from becoming adulterated.

Cleaning and sanitizing of utensils and equipment shall be conducted in a manner that protects against contamination of food, food-contact surfaces, or food-packaging materials.

(b) Food-contact surfaces, utensils, and equipment shall be cleaned as frequently as necessary to protect against contamination of food by performing the following:

(1) Food-contact surfaces of equipment and utensils used for manufacturing or holding low moisture food shall be in a dry, clean, and sanitary condition at the time of use. When the food-contact surfaces are wet cleaned, they shall be sanitized and thoroughly dried before subsequent use.

(2) In wet processing, when cleaning is performed to protect against the introduction of micro-organisms into food, food-contact surfaces shall be cleaned and sanitized before use and after any interruption during which the food-contact surfaces may have become contaminated.

(3) Where equipment and utensils are used in a continuous production operation, food-contact surfaces of the equipment shall be cleaned and sanitized as necessary to prevent contamination.

(4) Nonfood-contact surfaces of equipment used in the operation of food plants should be cleaned as frequently as necessary to protect against contamination of food.

(5) Single-service articles, such as utensils intended for one-time use, paper cups, and paper towels, should be stored in appropriate containers and shall be handled, dispensed, used, and disposed of in a manner that protects against contamination of food or food-contact surfaces.

(6) Cleaned and sanitized portable equipment with food-contact surfaces and utensils shall be stored in a location and manner that protects food-contact surfaces from contamination.

(7) Sanitizing agents shall be effective and safe under conditions of use. Any facility, procedure, or machine is acceptable for cleaning and sanitizing equipment and utensils if it is established that the facility, procedure, or machine will routinely render equipment and utensils clean and sanitized.

(8) Chemical sanitizers and other chemical antimicrobials applied to food-contact surfaces shall meet the requirements specified in 21 CFR 178.1010.

(Indiana State Department of Health; 410 IAC 7-21-39; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1623, eff one hundred twenty (120) days after filing with secretary of state)

410 IAC 7-21-40 Toxic and poisonous substances; pest control

Authority: IC 16-42-5-5
Affected: IC 15-3-3.6; IC 16-42-5

Sec. 40. (a) Cleaning compounds and sanitizing agents used in cleaning and sanitizing procedures shall be free from undesirable micro-organisms and shall be safe and adequate under the conditions of use. Compliance with this requirement may be verified by an effective means, including, but not limited to, purchase of substances under a supplier's guarantee or certification, or examination of the substances for contamination.

(b) Only the following toxic materials may be used or stored in a plant where food is processed or exposed:

(1) Chemicals required for maintaining clean and sanitary conditions.

(2) Chemicals necessary for use in laboratory testing procedures.

(3) Chemicals necessary for plant and equipment maintenance and operation.

(4) Chemicals necessary for use in the plant's operations.

(c) Toxic cleaning compounds, sanitizing agents, and pesticide chemicals shall be identified, held, and stored in a manner that protects against contamination of food, food-contact surfaces, or food-packaging materials. Poisonous or toxic materials shall be stored and transported according to the following:

(1) Separating the poisonous or toxic materials by spacing or partitioning.

(2) Locating the poisonous or toxic materials in an area that is not above food, equipment, linens, or food-contact surfaces.

(d) Poisonous or toxic materials shall be applied and used according to all relevant regulations promulgated by other federal, state, and local government agencies and according to the following:

(1) Manufacturers' use directions on the label.

(2) The conditions of certification for use of the pest control materials.

(3) Applied in a manner that does not constitute a hazard to personnel or does not contaminate by drip, drain, fog, splash, or spray any food, equipment, utensils, linens, or other food-contact surface. For pesticide use, this is achieved by:

(A) removing the items;

(B) covering the items with impermeable covers; or

(C) taking other appropriate preventive action and cleaning and sanitizing equipment, utensils, and food-contact surfaces after application.

(4) Chemicals used to wash or peel whole fruits and vegetables shall meet the requirements specified in 21 CFR 173.315.

(5) Chemicals used as boiler water additives shall meet the requirements as specified in 21 CFR 173.310.

(6) A restricted use pesticide shall be applied only by an applicator certified according to 312 IAC 15-3-3.6 or a person under the direct supervision of a certified applicator.

(e) Pests shall not be allowed in any area of a wholesale food establishment. Effective measures shall be taken to exclude pests from the processing areas and to protect against the contamination of food on the premises by pests. The use of insecticides or rodenticides is permitted only under precautions and restrictions that protect against the contamination of food, food-contact surfaces, and food-packaging materials, such as the following:

(1) Rodent bait shall be contained in a covered, tamper-resistant bait station.

(2) Toxic tracking powder pesticide may not be used in wholesale food establishments.

(f) Guard dogs and service animals may be allowed in some areas of a plant if the presence of the animals cannot result in contamination of food, food-contact surfaces, or food-packaging materials. *(Indiana State Department of Health; 410 IAC 7-21-40; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1623, eff one hundred twenty (120) days after filing with secretary of state; errata filed Jan 9, 2002, 12:50 p.m.: 25 IR 1645)*

410 IAC 7-21-41 Plumbing and sewage systems

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 41. Each facility shall be equipped with effective plumbing and sewage facilities and adequate accommodations, including, but not limited to, the following:

(1) The water supply shall be sufficient for the operations intended and shall be derived from an approved source. Drinking water and water used for food processing operations shall meet bacteriological and chemical quality standards specified in 327 IAC 8-2. Running water at a suitable temperature and under pressure as needed shall be provided in all areas where required for the processing of food, for the cleaning of equipment, utensils, and food-packaging materials, or for employee sanitary facilities.

(2) If a food processing plant obtains water from a water system not subject to 327 IAC 8-2 for its operations, the operator shall sample the water at least annually for bacterial analysis by a certified laboratory, maintain records of analyses of sample results for three (3) years, and provide such records to the department upon request.

(3) A plumbing system shall be of sufficient size and shall be designed, constructed, installed, and maintained according to the applicable Indiana plumbing code, 675 IAC 16-1.3, to do the following:

(A) Carry sufficient quantities of water to required locations throughout the facility.

(B) Properly convey sewage and liquid disposable waste from the facility.

(C) Avoid constituting a source of contamination to food, water supplies, equipment, and utensils or creating an unsanitary condition.

(D) Provide sufficient floor drainage in all areas where floors are subject to flooding-type cleaning or where normal operations release or discharge water or other liquid waste on the floor.

(E) Prevent backflow or backsiphonage from, or cross-connection between, piping systems that discharge wastewater or sewage and piping systems that carry water for food or food manufacturing. This shall be accomplished by the following:

(i) Installing a backflow or backsiphonage prevention device on a water supply system which meets the standards in 675 IAC 16-1.3 for construction, installation, maintenance, inspection, and testing for that specific application and type of approved device.

(ii) Using an air gap, if necessary, between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment. It shall be at least twice the diameter of the water supply inlet and may not be less than one (1) inch.

It shall be a minimum of two (2) pipe diameters of the pipe or six (6) inches, whichever is the lesser.

(4) Sewage disposal shall be conveyed into an approved sanitary sewerage system or other system, including the use of sewage transport vehicles, pumps, hoses, and connections that are constructed, maintained, and operated according to law.

(Indiana State Department of Health; 410 IAC 7-21-41; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1624, eff one hundred twenty (120) days after filing with secretary of state)

410 IAC 7-21-42 Sanitary facilities and controls
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 42. (a) Each facility shall provide its employees with adequate, readily accessible toilet facilities. Compliance with this requirement shall be accomplished by, but not limited to, the following:

(1) Maintaining the facilities in a sanitary condition.

(2) Keeping the facilities in good repair at all times.

(3) Providing self-closing doors.

(4) Providing doors that do not open into areas where food is exposed to airborne contamination, except where alternate means have been taken to protect against contamination, such as double doors or positive airflow systems.

(b) Each facility shall provide its employees with hand washing facilities that are adequate, readily accessible, and convenient. Compliance with this requirement shall be accomplished by providing the following:

(1) Hand washing facilities at each location in the plant where good sanitary practices require employees to wash their hands. Each hand washing facility shall be:

(A) furnished with hot and cold running water tempered by means of a mixing valve or combination faucet; and

(B) capable of reaching a minimum water temperature of eighty-five (85) degrees Fahrenheit within sixty (60) seconds.

(2) Effective hand-cleaning preparations.

(3) Sanitary towel service, paper towels, or suitable drying devices.

(4) Devices or fixtures, such as water control valves, designed and constructed to protect against recontamination of clean hands.

(5) Signs directing food employees handling unprotected food, unprotected food-packaging materials, and food-contact surfaces to wash and, where appropriate, sanitize their hands. These signs should be posted in the processing room and in all other areas where employees handle food, food-packaging materials, or food-contact surfaces. If necessary, the signs should be multilingual.

(c) If mops or similar wet floor cleaning tools are used, at least one (1) service sink or one (1) curbed cleaning facility equipped with a floor drain and supplied with hot and cold water under pressure shall be provided and conveniently located.

(d) Receptacles and waste handling units for refuse, recyclables, and returnables and for use with materials containing food residue shall be durable, cleanable, insect-resistant, rodent-resistant, leakproof, nonabsorbent, and maintained in good repair.

(e) Rubbish and any offal shall be so conveyed, stored, and disposed of as to minimize the development of odor, minimize the potential for the waste becoming an attractant and harborage or breeding place for pests, and protect against contamination of food, food-contact surfaces, water supplies, and ground surfaces. *(Indiana State Department of Health; 410 IAC 7-21-42; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1625, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-43 Equipment and utensils
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 43. (a) All processing equipment and utensils shall be so designed and of such material and workmanship as to be effectively cleanable and shall be properly maintained. The design, construction, and use of equipment and utensils shall preclude the adulteration of food with lubricants, fuel, metal fragments, contaminated water, or any other contaminants. All equipment shall be so installed and maintained as to facilitate the cleaning of the equipment and of all adjacent spaces. Food-contact surfaces shall be corrosion-resistant when in contact with food. They shall be made of nontoxic materials and designed to withstand the environment of their intended use and the action of food and, if applicable, cleaning compounds and sanitizing agents. Food-contact surfaces shall be maintained to protect food from being contaminated by any source, including unlawful indirect food additives by the following means:

(1) Seams on food-contact surfaces shall be smoothly bonded or maintained so as to minimize accumulation of food particles, dirt, and organic matter and thus minimize the opportunity for growth of micro-organisms.

(2) Equipment that is in the manufacturing or food-handling area and that does not come into contact with food shall be so constructed that it can be maintained in a clean condition.

(3) Holding, conveying, and manufacturing systems, including gravimetric, pneumatic, closed, and automated systems, shall be of a design and construction that enables them to be maintained in an appropriate sanitary condition.

(b) Each freezer and refrigeration unit, including transportation vehicles, used to store, hold, or transport food capable of supporting growth of micro-organisms shall be fitted with an indicating thermometer, temperature measuring device, or temperature recording device so installed as to show the temperature accurately within the compartment and should be fitted with an automatic control for regulating temperature or with an automatic alarm system

to indicate a significant temperature change in a manual operation. The operator shall do the following:

(1) Record the temperature shown by each measuring device installed in the unit, with the date on which the temperature reading was taken. Temperature shall be monitored and recorded at least weekly.

(2) Retain and have available for inspection the temperature records for the last six (6) months.

(c) Instruments and controls used for measuring, regulating, or recording temperatures, pH, acidity, water activity, or other conditions that control or prevent the growth of undesirable micro-organisms in food shall be accurate and adequately maintained, sufficient in number for their designated uses, and calibrated at the frequency recommended by the manufacturer of the device. The ambient air temperature measuring devices that are scaled in Fahrenheit shall be accurate to plus or minus three (3) degrees Fahrenheit in the intended range of use.

(d) The amount of food stored in a refrigerator or frozen food storage unit shall not exceed the designed capacity of that unit.

(e) Compressed air or other gases mechanically introduced into food or used to clean food-contact surfaces or equipment shall be treated in such a way that food is not contaminated with unlawful indirect food additives. *(Indiana State Department of Health; 410 IAC 7-21-43; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1625, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-44 Raw materials; production and process controls

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 44. (a) All operations in the receiving, inspecting, transporting, segregating, preparing, manufacturing, packaging, and storing of food shall be conducted in accordance with current sanitation principles as follows:

(1) Appropriate quality control operations shall be employed to ensure that food is suitable for human consumption and that food-packaging materials are safe and suitable.

(2) Overall sanitation of the plant shall be under the supervision of one (1) or more competent individuals assigned responsibility for this function.

(3) All reasonable precautions shall be taken to ensure that production procedures do not contribute contamination from any source by adhering to the following:

(A) Chemical, microbial, or extraneous material testing procedures shall be used where necessary to identify sanitation failures or possible food contamination.

(B) All food that has become contaminated to the extent that it is adulterated shall be rejected or, if permissible, treated or processed to eliminate the contamination.

(b) Raw materials and other ingredients shall be inspected and segregated or otherwise handled as necessary to ensure that they are clean and suitable for processing into food and shall be stored under conditions that will protect against contamination and minimize deterioration by the following:

(1) Washing or cleaning raw materials as necessary to remove soil or other contamination.

(2) Using water for washing, rinsing, or conveying food that is safe and meets the quality standards specified in 327 IAC 8-2.

(3) Reusing water for washing, rinsing, or conveying food if it does not increase the level of contamination of the food.

(4) Inspecting on receipt containers and carriers of raw materials to ensure that their condition has not contributed to the contamination or deterioration of food.

(c) Raw materials and other ingredients shall not contain levels of micro-organisms that may produce foodborne illness or other disease in humans. If the potential for high levels of disease-causing micro-organisms is present, food shall be pasteurized or otherwise treated during manufacturing operations so that the food no longer contains levels that would cause the product to be adulterated. Compliance with this requirement may be verified by any effective means, such as with a HACCP plan or purchasing raw materials and other ingredients under a supplier's guarantee or certification.

(d) Raw materials and other ingredients susceptible to contamination with aflatoxin or other natural toxins shall comply with current state and federal regulations, guidelines, and action levels for poisonous or deleterious substances before these materials or ingredients are incorporated into finished food. Compliance with this requirement may be accomplished by:

(1) purchasing raw materials and other ingredients under a supplier's guarantee or certification; or

(2) verifying by analyzing these materials and ingredients for aflatoxins and other natural toxins.

(e) Raw materials, other ingredients, and rework susceptible to contamination with pests, undesirable micro-organisms, or extraneous material shall comply with applicable state and federal regulations, guidelines, and defect action levels for natural or unavoidable defects, as specified in 21 CFR 110.110, if a manufacturer wishes to use the materials in manufacturing food. Compliance with this requirement may be verified by any effective means, such as:

(1) purchasing the materials under a supplier's guarantee or certification; or

(2) examination of these materials for contamination.

(f) Raw materials, other ingredients, and rework shall be

held in bulk, or in containers designed and constructed to protect against contamination and shall be held at proper temperature and relative humidity and in such a manner as to prevent the food from becoming adulterated. Material scheduled for rework shall be identified as such.

(g) Liquid or dry raw materials and other ingredients received and stored in bulk form shall be stored in a manner that protects against contamination.

(h) Frozen raw materials and other ingredients shall be kept frozen. If thawing is required prior to use, it shall be done in a manner that prevents the raw materials and other ingredients from becoming adulterated.

(i) Food may not contain unapproved food additives or additives that exceed amounts specified in 21 CFR 170 through 21 CFR 180 relating to food additives generally recognized as safe, or prior sanctioned substances that exceed amounts specified in 21 CFR 181, 21 CFR 182, 21 CFR 184, and 21 CFR 186. *(Indiana State Department of Health; 410 IAC 7-21-44; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1626, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-45 Manufacturing operations

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 45. (a) Equipment and utensils and finished food containers shall be maintained in an acceptable condition through appropriate cleaning and sanitizing and when necessary the following:

(1) Equipment shall be taken apart for thorough cleaning and sanitizing.

(2) A CIP system may be used when the design of the equipment requires the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution.

(b) All food manufacturing, including packaging and storage, shall be conducted under conditions and controls as necessary to minimize the potential for the growth of micro-organisms or the contamination of food. Compliance with this subsection may require careful monitoring of physical factors, such as time, temperature, humidity, water activity (a_w), pH, pressure, flow rate, and manufacturing operations, such as freezing, dehydration, heat processing, acidification, and refrigeration to ensure that mechanical breakdowns, time delays, temperature fluctuations, and other factors do not contribute to the decomposition or contamination of food.

(c) Food that can support the rapid growth of undesirable micro-organisms, particularly those of public health significance, shall be held in a manner that prevents the food from becoming adulterated. Compliance with this subsection shall be accomplished by an effective means, including, but not limited to, the following:

(1) Maintaining cold, potentially hazardous foods at forty-one (41) degrees Fahrenheit or below. Exceptions to this requirement are when the receiving and storage temperatures are specified in another law, such as laws governing milk, molluscan shellfish, and shell eggs. These foods may be received and stored at the temperature specified in law.

(2) Maintaining hot, potentially hazardous foods at one hundred forty (140) degrees Fahrenheit or above.

(3) Heat treating acid or acidified foods to destroy mesophilic micro-organisms when those foods are to be held in hermetically sealed containers at ambient temperatures.

(d) Frozen foods shall be maintained in a frozen state and should be stored at zero (0) degrees Fahrenheit or below. Frozen foods shall not be refrozen after having been thawed unless the products are to be further processed by the processor, as necessary to control microbial growth.

(e) Frozen foods during transportation shall remain frozen and should be at zero (0) degrees Fahrenheit or below. Refrigerated foods during transportation shall be at forty-one (41) degrees Fahrenheit or below unless law governing their distribution applies, such as temperature requirements for shell eggs.

(f) Measures such as sterilizing, irradiating, pasteurizing, freezing, refrigerating, controlling pH, or controlling a_w that is taken to destroy or prevent the growth of undesirable micro-organisms, particularly those of public health significance, shall be effective under the conditions of manufacturing, handling, and distribution to prevent food from being adulterated.

(g) Work-in-process shall be handled in a manner that protects against contamination.

(h) Effective measures shall be taken to protect finished food from contamination by raw materials, other ingredients, including potential food allergens, or refuse in the following manner:

(1) When raw materials, other ingredients, or refuse are unprotected, they shall not be handled simultaneously in receiving, loading, or shipping areas if that handling could result in contaminated food.

(2) Food transported by conveyor shall be protected against contamination as necessary.

(i) Equipment, containers, and utensils used to convey, hold, or store raw materials, work-in-process, rework, or food shall be of a food grade quality and constructed, handled, and maintained during manufacturing or storage in a manner that protects against contamination.

(j) Effective measures shall be taken to protect against the inclusion of metal or other extraneous material in food. Compliance with this subsection shall be accomplished by using sieves, traps, magnets, and electronic metal detectors, or other effective means. If lubricants are used on food-contact surfaces, on bearings and gears located on or within food-contact surfaces, or on bearings and gears that are located so that lubricants may leak, drip, or be forced into food or onto food-contact surfaces, they shall meet the requirements specified in 21 CFR 178.3570.

(k) Food, raw materials, and other ingredients that are adulterated shall be disposed of in a manner that protects against the contamination of other food. If the adulterated food is capable of being reconditioned, it shall be reconditioned using a method that has been proven to be effective or it shall be reexamined and found not to be adulterated before being incorporated into other food.

(l) Mechanical manufacturing steps, such as washing, peeling, trimming, cutting, sorting, and inspecting, mashing, dewatering, cooling, shredding, extruding, drying, whipping, defatting, and forming shall be performed so as to protect food against contamination. Compliance with this subsection shall be accomplished by providing adequate physical protection of food from contaminants that may drip, drain, or be drawn into the food. Protection shall be provided by adequate cleaning and sanitizing of all food-contact surfaces and by using time and temperature controls at and between each manufacturing step.

(m) Heat blanching, when required in the preparation of food, should be effected by heating the food to the required temperature, holding it at this temperature for the required time, and then either rapidly cooling the food or passing it to subsequent manufacturing without delays. Thermophilic growth and contamination in blanchers should be minimized by the use of effective operating temperatures and by periodic cleaning. Where the blanched food is washed prior to filling, water used shall be safe and meet the quality standards specified in 327 IAC 8-2.

(n) Batters, breading, sauces, gravies, dressings, and other similar preparations shall be treated or maintained in such a manner that they are protected against contamination. If the products are potentially hazardous they shall be held at forty-one (41) degrees Fahrenheit or below or at one hundred forty (140) degrees Fahrenheit or above. Compliance with this subsection shall be accomplished by an effective means, including one (1) or more of the following:

(1) Using ingredients free of contamination.

(2) Employing adequate heat processes where applicable.

(3) Using adequate time and temperature controls.

(4) Providing effective physical protection of food or equipment from contaminants that may drip, drain, or be drawn into them.

(5) Rapid cooling to a storage temperature of forty-one (41) degrees Fahrenheit or below.

(6) Disposing of batters at appropriate intervals to protect against the growth of micro-organisms.

(o) Filling, assembling, packaging, and other operations shall be performed in a way that the food is protected against contamination. Compliance with this subsection shall be accomplished by the following:

(1) Using a quality control operation in which the critical control points are identified and controlled during manufacturing, if applicable.

(2) Adequate cleaning and sanitizing of all food-contact surfaces and food containers.

(3) Using materials for food containers and food-packaging materials that are safe and intended for food use.

(4) Providing effective physical protection from contamination, particularly airborne contamination.

(5) Using sanitary handling procedures.

(6) Utilizing adequate control procedures to prevent allergen cross contact.

(p) Food, such as, but not limited to, dry mixes, nuts, intermediate moisture food, and dehydrated food, that relies on the control of a_w for preventing the growth of undesirable micro-organisms shall be processed to and maintained at a safe moisture level of eighty-five hundredths (0.85) or less. Compliance with this subsection shall be accomplished by any effective means, including the employment of one (1) or more of the following practices:

(1) Monitoring the a_w of food.

(2) Controlling the soluble solids/water ratio in finished food.

(3) Protecting finished food from moisture pick-up by use of a moisture barrier or by other means so that the a_w of the food does not increase to an unsafe level.

(q) When ice is used as an ingredient or in contact with food, it shall be made from water that is safe and meets the quality standards specified in 327 IAC 8-2. It shall be used only if it has been manufactured in accordance with this rule.

(r) Bottled drinking water, manufactured, used, or sold, shall meet the requirements of 21 CFR 129 and 21 CFR 165.

(s) Food-manufacturing areas and equipment used for manufacturing human food should not be used to manufacture nonhuman food-grade animal feed or inedible products unless there is no reasonable possibility for the contamination of the human food.

(t) The operator of a wholesale food establishment that manufactures ready-to-eat, potentially hazardous foods shall report to the department the results of any microbiological test or other laboratory analysis, which shows a

likelihood that any ready-to-eat food produced by that operator contains pathogenic organisms, undeclared allergens, or other health hazards. The operator shall report to the department within twenty-four (24) hours after receiving positive test results. The operator may report orally, electronically, or in writing, except as specified in the following:

(1) A wholesale food establishment operator is not required to report test results if the following conditions apply:

(A) A product code or production date identifies the ready-to-eat food lot number.

(B) The wholesale food establishment operator has not sold or distributed any of the food represented by the product code or production lot number as specified under clause (A).

(2) The department shall be notified in a timely manner if the wholesale food establishment initiates a recall and if positive testing results in the disposition of products.

(Indiana State Department of Health; 410 IAC 7-21-45; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1627, eff one hundred twenty (120) days after filing with secretary of state; errata filed Jan 9, 2002, 12:50 p.m.: 25 IR 1645)

410 IAC 7-21-46 Reduced oxygen packaging

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 46. (a) A wholesale food establishment that packages food using a reduced oxygen packaging method, with Clostridium botulinum identified as a microbiological hazard in the final packaged form, shall ensure that there are at least two (2) barriers in place to control the growth and toxin formation of Clostridium botulinum. These controls may include refrigeration, pH, and water activity.

(b) An establishment that packages food using a reduced oxygen packaging method, with Clostridium botulinum identified as a microbiological hazard in the final packaged form, shall have a HACCP plan that does the following:

(1) Contains a flow diagram by specific food or category type identifying critical control points and providing information on the following:

(A) Ingredients, materials, and equipment used in the preparation of that food.

(B) Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved.

(2) Contains a statement of standard operating procedures for the plan that clearly identifies the following:

(A) Each critical control point.

(B) The critical limits for each critical control point.

(C) The method and frequency for monitoring and controlling each critical control point by the food employee designated by supervisory personnel.

(D) The method and frequency for supervision to routinely verify that the food employee is following standard operating procedures and monitoring critical control points.

(E) Action to be taken by supervision if the critical limits for each critical control point is not met.

(F) Records to be maintained by supervision to demonstrate that the HACCP plan is properly operated and managed.

(3) Identifies the food to be packaged.

(4) Limits the food packaged to a food that does not support the growth of Clostridium botulinum because it meets with one (1) of the following criteria:

(A) Has an a_w of ninety-one hundredths (0.91) or less.

(B) Has a pH of four and six-tenths (4.6) or less.

(C) Is a meat or poultry product cured at a food processing plant regulated by the United States Department of Agriculture and is received in an intact package.

(D) Is a food with a high level of competing organisms, such as raw meat or raw poultry.

(5) Specifies methods for maintaining food at forty-one (41) degrees Fahrenheit or below.

(6) Describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:

(A) maintain the food at forty-one (41) degrees Fahrenheit or below; and

(B) discard the food if within fourteen (14) calendar days of its packaging it is not sold for consumption.

(7) Limits the shelf life to no more than fourteen (14) calendar days from packaging to consumption or the original manufacturer's "sell by" or "use by" date, whichever occurs first.

(8) Includes operational procedures that:

(A) prohibit contacting food with bare hands;

(B) identify a designated area and the method by which:

(i) physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination; and

(ii) access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation; and

(C) delineate cleaning and sanitization procedures for food-contact surfaces.

(9) Describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the:

(A) concepts required for a safe operation;

(B) equipment and facilities; and

(C) procedures specified under subdivisions (2) and (8).

(Indiana State Department of Health; 410 IAC 7-21-46; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1629, eff one hundred twenty (120) days after filing with secretary of state)

410 IAC 7-21-47 Acidified foods

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 47. A wholesale food establishment that processes acidified foods shall employ appropriate quality control procedures to ensure that finished foods do not present a health hazard as follows:

(1) All operators of processing and packaging systems shall be under the operating supervision of a person who has:

(A) attended a school giving instruction in food-handling techniques, food-protection principles, personal hygiene and plant sanitation practices, pH controls, and critical factors in acidification; and

(B) been identified by that school as having satisfactorily completed the prescribed course of instruction.

A United States Food and Drug Administration (FDA) sponsored Better Processing Control School is an approved school. Other equivalent schools approved by the department may be attended. The department shall consider students who have satisfactorily completed required portions of the school to be in compliance with the requirement of this subdivision.

(2) Acidified foods shall be manufactured, processed, and packaged so that a finished equilibrium pH value of 4.6 or lower is achieved within the time designated in the scheduled process and maintained in all finished foods. Manufacturing shall be in accordance with the scheduled process. Acidified foods shall be thermally processed to an extent that is sufficient to destroy the vegetative cells of micro-organisms of public health significance and those of nonhealth significance, such as yeast and mold, capable of reproducing in the food under the conditions in which the food is stored, distributed, retailed, and held by the user. FDA approved preservatives may be used to inhibit reproduction of micro-organisms of nonhealth significance in lieu of thermal processing.

(3) Sufficient control, including frequent testing and recording of results, shall be exercised so that the finished equilibrium pH values for acidified foods are not higher than 4.6. Measurement of acidity of foods in process may be made by potentiometric methods, titratable acidity, or colorimetric methods. If the finished equilibrium pH of the food is above 4.0, the measurement of the finished equilibrium pH shall be by a potentiometric method, and the in-process measurements by titration or colorimetry shall be related to the finished equilibrium pH. If the finished equilibrium pH is 4.0 or below, then the measurement of acidity of the final product may be made by any suitable method. When food ingredients have been subjected to lye, lime, or similar high pH materials, they may alter the pH of the product.

(4) Procedures for acidification to attain acceptable equilibrium pH levels in the final food include, but are not limited to, the following:

(A) Blanching of the food ingredients in acidified aqueous solutions.

(B) Immersion of the blanched food in acid solutions. Although immersion of food in an acid solution is a satisfactory method for acidification, process controls must be taken to ensure that the acid concentration is properly maintained.

(C) Direct batch acidification, which can be achieved by adding a known amount of an acid solution to a specified amount of food during acidification.

(D) Direct addition of a predetermined amount of acid to individual containers during production. Liquid acids are generally more effective than solid or pelleted acids. Process controls must be taken to ensure that the proper amount of acid is added to each container.

(E) Addition of acid foods to low-acid foods in controlled proportions to conform to specific formulations.

(5) Testing and examinations of containers shall occur often enough to ensure that the container suitably protects the food from leakage or contamination.

(6) pH meters shall be standardized to get an accurate pH measurement. The directions for standardization and storage supplied by the manufacturer of the equipment shall be followed.

(7) Each container or product shall be marked with an identifying code permanently visible to the naked eye. If the container does not permit the code to be embossed or inked, the label may be legibly perforated or otherwise marked, as long as the label is securely affixed to the product container. The required identification shall specify in code the wholesale food establishment where the product was packed, the product contained therein, and the year, day, and period during which it was packed. The packing period code shall be changed often enough to enable ready identification of lots during their sale and distribution. Codes may be changed periodically on one (1) of the following bases:

(A) Intervals of four (4) to five (5) hours.

(B) Personnel shift changes.

(C) Batches, as long as the containers constituting the batch do not represent those processed during more than one (1) personnel shift.

(8) A qualified person who has expert knowledge acquired through appropriate training and experience in the acidification and processing of acidified foods shall establish the scheduled process and be considered a processing authority. A written document or published paper prepared by experts in acidified food processing, such as the "Ball Canning Book", may qualify. Any modifications to a process listed in a document or paper shall be substantiated by a qualified person, and that person shall be listed as the processing authority. Copies of the scheduled process shall be kept at the facility.

(9) Whenever any process operation deviates from the scheduled process for any acidified food and/or the equilibrium pH of the finished product is higher than 4.6, the commercial processor of the acidified food shall do any of the following:

(A) Fully reprocess that portion of the food by a process established by a competent processing authority as effective to ensure a safe product.

(B) Thermally process the food as a low-acid food under 21 CFR 113.

(C) Set aside that portion of the food involved for further evaluation as to any potential public health significance. The evaluation shall be made by a competent processing authority and shall be in accordance with procedures recognized by competent processing authorities as being adequate to detect any potential hazard to public health. Unless the evaluation demonstrates that the food has undergone a process that has rendered it safe the food set aside shall either be fully reprocessed to render it safe or be destroyed. A record shall be made of the procedures used in the evaluation and the results. Either upon completion of full reprocessing and the attainment of a safe food, or after the determination that no significant micro-organisms for public health hazard exists, that portion of the food involved may be shipped in normal distribution. Otherwise, the portion of the food involved shall be destroyed.

(10) Records shall be maintained of examinations of raw materials, packaging materials, and finished products and of suppliers' guarantees or certifications that verify compliance with this rule.

(11) Processing and production records showing adherence to scheduled processes, including records of pH measurements and other critical factors intended to ensure a safe product, shall be maintained and shall contain sufficient additional information, such as product code, date, container size, and product, to permit a public health hazard evaluation of the processes applied to each lot, batch, or other portion of production.

(12) Records shall be kept of all departures from scheduled processes having a possible bearing on public health or the safety of the food. The records shall delineate the action taken and the final disposition of the product involved.

(13) Records shall be maintained identifying initial distribution of the finished product to facilitate, when necessary, the segregation of specific food lots that may have become contaminated or otherwise unfit for their intended use.

(14) If a processor makes an electronic record of pH by connection of the pH meter to a computer or by manually keying the pH values into a computer as the primary record, then that record is subject to 21 CFR 11.

(15) Copies of all records provided for in subdivisions (10) through (14) shall be retained at the processing plant or other reasonable, accessible location for a period of three (3) years from the date of manufacture.

(Indiana State Department of Health; 410 IAC 7-21-47; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1630, eff one hundred twenty (120) days after filing with secretary of state)

410 IAC 7-21-48 Warehousing and distribution

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 48. Storage and transportation of finished food shall be under conditions that will protect food against physical, chemical, and microbial contamination as well as against deterioration of the food and the container. Potentially hazardous foods shall be transported at the temperatures as specified in section 45(c)(1) of this rule and sections 45(d) through 45(e) of this rule *[section 45(c)(1) and 45(d) through 45(e) of this rule]***.** *(Indiana State Department of Health; 410 IAC 7-21-48; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1631, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-49 Accurate representation of packaged food using standards of identity, honest presentation of food, and food labels

Authority: IC 16-42-5-5
Affected: IC 16-42-1; IC 16-42-2

Sec. 49. (a) Packaged food shall comply with standard of identity requirements in 21 CFR 130 through 21 CFR 169.

(b) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.

(c) Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of the food.

(d) Food packaged or stored in a wholesale food establishment shall be labeled as specified in law, including the following:

(1) IC 16-42-1.
(2) IC 16-42-2.
(3) 410 IAC 7-5.
(4) 21 CFR 101.

(e) Label information shall include the following:

(1) The common name of the food or, absent a common name, an adequately descriptive identity statement.

(2) If made from two (2) or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food.

(3) An accurate declaration of the quantity of contents as required in 410 IAC 12-1.

(4) The name and place of business of the manufacturer, packer, or distributor.

(Indiana State Department of Health; 410 IAC 7-21-49; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1631, eff one hundred twenty (120) days after filing with secretary of state)

410 IAC 7-21-50 Public health protection; access; reporting imminent health hazards

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 50. (a) The department shall uniformly apply this rule to all wholesale food establishments in a reasonable manner that promotes its underlying purpose of safeguarding public health and ensuring that food is safe, not misbranded, unadulterated, and honestly presented when offered to the consumer.

(b) Facilities and equipment that were installed prior to the effective date of this rule, that do not fully meet all of the design and fabrication requirements, shall be deemed acceptable in that wholesale food establishment if it is in good repair, capable of being maintained in a sanitary condition, and the food-contact surfaces are nontoxic.

(c) After the department presents official credentials and expresses an intent to inspect, investigate, or collect food samples, the supervisory personnel shall allow the department access to the establishment during the establishment's hours of operation and other reasonable times. Information and records to which the department is entitled according to law and are specified in this rule shall be provided upon request.

(d) A wholesale food establishment shall immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist because of an emergency, such as:

(1) a fire;
(2) a flood;
(3) an extended interruption of electrical or water service;
(4) a sewage backup;
(5) a misuse of poisonous or toxic materials;
(6) an onset of an apparent foodborne illness outbreak;
(7) a gross unsanitary occurrence or condition; or
(8) other circumstance that may endanger public health.

(e) Operation need not be discontinued in an area of a wholesale food establishment that is unaffected by the imminent health hazard.

(f) If operations are discontinued as specified under this subsection or otherwise according to law, the wholesale food establishment shall obtain approval from the department before resuming operations. *(Indiana State Department of Health; 410 IAC 7-21-50; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1632, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-51 Registration of a wholesale food establishment

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 51. (a) A wholesale food establishment that maintains a place of business in Indiana shall file with the department, on forms to be furnished by the department, a written statement of the name and address of the owner, the name of the business, the character of the business, and the business address of each place of business in Indiana.

(b) A new wholesale food establishment shall not be established in Indiana until the place of business has been registered as provided in this subsection. The department shall be notified of intent to operate at least thirty (30) days prior to beginning operations.

(c) If ownership of a registered place of business changes, the new owner shall register the place of business before operating the same.

(d) If the name of the business or the address of a registered place of business changes, the owner shall register the change. *(Indiana State Department of Health; 410 IAC 7-21-51; filed Jan 7, 2002, 10:16 a.m.: 25 IR 1632, eff one hundred twenty (120) days after filing with secretary of state)*

410 IAC 7-21-52 Incorporation by reference

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 52. (a) The following are hereby incorporated by reference:

(1) 21 CFR 11 (April 1, 2001 Edition).
(2) 21 CFR 110.110 (April 1, 2001 Edition).
(3) 21 CFR 101 (April 1, 2001 Edition).
(4) 21 CFR 113 (April 1, 2001 Edition).
(5) 21 CFR 129 (April 1, 2001 Edition).
(6) 21 CFR 130 through 21 CFR 169 (April 1, 2001 Edition).
(7) 21 CFR 170 through 21 CFR 180 (April 1, 2001 Edition).
(8) 21 CFR 181 through 21 CFR 182, 21 CFR 184, and 21 CFR 186 (April 1, 2001 Edition).
(9) 21 CFR 173.310 (April 1, 2001 Edition).
(10) 21 CFR 173.315 (April 1, 2001 Edition).
(11) 21 CFR 178.1010 (April 1, 2001 Edition).
(12) 21 CFR 178.3570 (April 1, 2001 Edition).

(b) Federal rules, which have been incorporated by reference, do not include any later amendments than those specified in the incorporated citation. Sales of the Code of Federal Regulations are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. *(Indiana State Department of Health; 410 IAC 7-21-52; filed Jan 7, 2002, 10:16 a.m.: 25 IR*

1632, eff one hundred twenty (120) days after filing with secretary of state)

SECTION 2. **SECTION 1 of this document takes effect one hundred twenty (120) days after filing with the secretary of state.**

LSA Document #01-7(F)
Notice of Intent Published: 24 IR 1378
Proposed Rule Published: June 1, 2001; 24 IR 2809
Hearing Held: July 10, 2001
Approved by Attorney General: December 21, 2001
Approved by Governor: January 2, 2002
Filed with Secretary of State: January 7, 2002, 10:16 a.m.
Incorporated Documents Filed with Secretary of State: 21 CFR 11 (April 1, 2001 Edition); 21 CFR 110.110 (April 1, 2001 Edition); 21 CFR 101 (April 1, 2001 Edition); 21 CFR 113 (April 1, 2001 Edition); 21 CFR 129 (April 1, 2001 Edition); 21 CFR 130 through 21 CFR 169 (April 1, 2001 Edition); 21 CFR 170 through 21 CFR 180 (April 1, 2001 Edition); 21 CFR 181 through 21 CFR 182, 21 CFR 184, and 21 CFR 186 (April 1, 2001 Edition); 21 CFR 173.315 (April 1, 2001 Edition); 21 CFR 173.310 (April 1, 2001 Edition); 21 CFR 178.1010 (April 1, 2001 Edition); 21 CFR 178.3570 (April 1, 2001 Edition).

TITLE 839 SOCIAL WORKER, MARRIAGE AND FAMILY THERAPIST, AND MENTAL HEALTH COUNSELOR BOARD

LSA Document #01-160(F)

DIGEST

Adds 839 IAC 1-1-3.2 to define "graduate". Adds 839 IAC 1-1-3.3 to define "graduate accumulating experience". Adds 839 IAC 1-2-2.1 to establish requirements for licensure retirement and licensure reinstatement. Adds 839 IAC 1-3-5 to establish examination requirements for social workers and clinical social workers. Repeals 839 IAC 1-2-4, 839 IAC 1-5-6, and 839 IAC 1-6-6. Effective 30 days after filing with the secretary of state.

839 IAC 1-1-3.2
839 IAC 1-1-3.3
839 IAC 1-2-2.1
839 IAC 1-2-4
839 IAC 1-3-5
839 IAC 1-5-6
839 IAC 1-6-6

SECTION 1. 839 IAC 1-1-3.2 IS ADDED TO READ AS FOLLOWS:

839 IAC 1-1-3.2 "Graduate" defined
Authority: IC 25-23.6-2-8
Affected: IC 25-23.6-4-2; IC 25-23.6-5-2; IC 25-23.6-6-2

Sec. 3.2. "Graduate" means an applicant who has obtained the required degree for social worker, clinical social worker, marriage and family therapist, or mental health counselor licensure. *(Social Worker, Marriage and Family Therapist, and Mental Health Counselor Board; 839 IAC 1-1-3.2; filed Dec 18, 2001, 9:11 a.m.: 25 IR 1633)*

SECTION 2. 839 IAC 1-1-3.3 IS ADDED TO READ AS FOLLOWS:

839 IAC 1-1-3.3 "Graduate accumulating experience" defined
Authority: IC 25-23.6-2-8
Affected: IC 25-23.6-4-2; IC 25-23.6-5-2; IC 25-23.6-6-2

Sec. 3.3. A "graduate accumulating experience" required for licensure includes applicants who have failed the required examination. *(Social Worker, Marriage and Family Therapist, and Mental Health Counselor Board; 839 IAC 1-1-3.3; filed Dec 18, 2001, 9:11 a.m.: 25 IR 1633)*

SECTION 3. 839 IAC 1-2-2.1 IS ADDED TO READ AS FOLLOWS:

839 IAC 1-2-2.1 Licensure retirement
Authority: IC 25-23.6-2-8
Affected: IC 25-23.6-8-9

Sec. 2.1. (a) An individual who is licensed to practice social work, clinical social work, marriage and family therapy, or mental health counseling, and who would like to retire the license, shall notify the board, in writing, when the individual retires from practice. Upon receipt of notice, the board shall release the individual from further payment of renewal fees and continuing education requirements while the license is in retirement.

(b) An individual who is licensed to practice social work, clinical social work, marriage and family therapy, or mental health counseling, and would like to reinstate the retired license shall do the following:

(1) Notify the board in writing.

(2) Submit proof of continuing education requirements, as outlined by the board, depending on the number of years the license has been in retirement as follows:

(A) Zero (0) to three (3) years, no continuing education shall be required.

(B) Three (3) to six (6) years, one (1) year of continuing education shall be required and must be completed within twelve (12) months prior to the petition for reinstatement.

(C) Six (6) to ten (10) years, two (2) years of continuing education shall be required and must be completed within twenty-four (24) months prior to the petition for reinstatement.

(D) Ten (10) years or more shall require board determination of the continuing education needed and may require a personal appearance before the board, prior to reinstatement.

(E) Retirement years shall be calculated from the receipt of request until reinstatement.

(Social Worker, Marriage and Family Therapist, and Mental Health Counselor Board; 839 IAC 1-2-2.1; filed Dec 18, 2001, 9:11 a.m.: 25 IR 1633)

SECTION 4. 839 IAC 1-3-5 IS ADDED TO READ AS FOLLOWS:

839 IAC 1-3-5 Examination requirements
Authority: IC 25-23.6-2-8
Affected: IC 25-23.6-5-1

Sec. 5. (a) An applicant applying for licensure by examination as a clinical social worker or a social worker, approved by the board to sit for the examination, shall sit for that examination within one (1) year from the date of the initial board approval. If the exam applicant has not taken the examination within one (1) year from the date of the initial board approval, the initial board approval will be invalid and the applicant must file a new application.

(b) The board will notify the applicant in writing of examination results.

(c) Applicants determined by the board to have failed the examination, who wish to retake the examination, shall submit a repeat examination application, fees, and other requirements as stated in 839 IAC 1-2-1.

(d) Applicants who fail the examination three (3) times may be required to personally appear before the board prior to retaking the examination. *(Social Worker, Marriage and Family Therapist, and Mental Health Counselor Board; 839 IAC 1-3-5; filed Dec 18, 2001, 9:11 a.m.: 25 IR 1634)*

SECTION 5. THE FOLLOWING ARE REPEALED: 839 IAC 1-2-4; 839 IAC 1-5-6; 839 IAC 1-6-6.

LSA Document #01-160(F)
Notice of Intent Published: 24 IR 2727
Proposed Rule Published: September 1, 2001; 24 IR 4185
Hearing Held: October 22, 2001
Approved by Attorney General: December 3, 2001
Approved by Governor: December 13, 2001
Filed with Secretary of State: December 18, 2001, 9:11 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 840 INDIANA STATE BOARD OF HEALTH FACILITY ADMINISTRATORS

LSA Document #01-244(F)

DIGEST

Adds 840 IAC 1-3-2 to establish new fees charged and collected by the board. Repeals 840 IAC 1-3-1. Effective 30 days after filing with the secretary of state.

840 IAC 1-3-1
840 IAC 1-3-2

SECTION 1. 840 IAC 1-3-2 IS ADDED TO READ AS FOLLOWS:

840 IAC 1-3-2 Fees
Authority: IC 25-1-8-2; IC 25-19-1-8; IC 25-19-1-12
Affected: IC 25-19-1-5; IC 25-19-1-9

Sec. 2. (a) The board shall charge and collect the following fees:

Application for licensure	**$100**
Application to repeat jurisprudence examination	**$100**
Application to repeat national examination	**$50**
License renewal	**$100 biennially**
Provisional license	**$100**
Preceptor application	**$50**
Temporary permit	**$50**
Verification of licensure	**$10**
Duplicate wall license	**$10**
Application for continuing education sponsorship	**$100**
Continuing education sponsorship renewal	**$100 annually**

(b) Applicants required to take the national examination for licensure shall pay a fee directly to a professional examination service in the amount set by the examination service. *(Indiana State Board of Health Facility Administrators; 840 IAC 1-3-2; filed Dec 26, 2001, 2:47 p.m.: 25 IR 1634)*

SECTION 2. 840 IAC 1-3-1 IS REPEALED.

LSA Document #01-244(F)
Notice of Intent Published: 24 IR 3661
Proposed Rule Published: November 1, 2001; 25 IR 500
Hearing Held: December 4, 2001
Approved by Attorney General: December 14, 2001
Approved by Governor: December 21, 2001
Filed with Secretary of State: December 26, 2001, 2:47 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 844 MEDICAL LICENSING BOARD OF INDIANA

LSA Document #01-235(F)

DIGEST

Adds 844 IAC 11-3-3.1 to establish licensure by credentials for

respiratory care practitioners. Adds 844 IAC 11-3-4.1 to establish temporary permits by examination for respiratory care practitioners. Effective 30 days after filing with the secretary of state.

844 IAC 11-3-3.1
844 IAC 11-3-4.1

SECTION 1. 844 IAC 11-3-3.1 IS ADDED TO READ AS FOLLOWS:

844 IAC 11-3-3.1 Licensure by credentials
Authority: IC 25-34.5-2-7
Affected: IC 25-34.5-2-6

Sec. 3.1. The committee may issue a license by credentials to an applicant who completes the following:

(1) Applies to the committee in the form and manner required by the board.

(2) Submits the fee required under 844 IAC 11-2-1.

(3) Submits two (2) recent passport-quality photographs of the applicant, no smaller that two (2) inches by two (2) inches, each signed by the applicant at the bottom in black ink.

(4) Submits an official transcript of grades from the school or program from which the applicant obtained the applicant's degree, which shows that all requirements for graduation have been met by the applicant, that meets the standards set by the board under 844 IAC 11-1-2.

(5) Submits an official credentials report, which verifies passing a respiratory care practitioner examination, approved by the board.

(6) If five (5) years have elapsed since the successful completion of the examination, required by the board, the applicant must take and successfully complete an examination approved by board within six (6) months of the date of application for licensure.

(7) Otherwise meets the requirements of IC 25-34.5-2.

(Medical Licensing Board of Indiana; 844 IAC 11-3-3.1; filed Jan 7, 2002, 10:07 a.m.: 25 IR 1635)

SECTION 2. 844 IAC 11-3-4.1 IS ADDED TO READ AS FOLLOWS:

844 IAC 11-3-4.1 Temporary permits by examination
Authority: IC 25-34.5-2-6; IC 25-34.5-2-7
Affected: IC 25-34.5-2-10.1

Sec. 4.1. (a) An applicant for a temporary permit by examination under IC 25-34.5-2-10.1(a)(3) will be required to take the examination for licensure within six (6) months after graduation.

(b) The temporary permit by examination will expire six (6) months after graduation.

(c) If the applicant fails to take the examination within the six (6) month period and presents an explanation to the committee in writing, which shows good cause for not taking the examination, the committee may allow the applicant to renew their temporary permit.

(d) The committee shall not issue or renew a temporary permit to an applicant who has failed the examination.

(Medical Licensing Board of Indiana; 844 IAC 11-3-4.1; filed Jan 7, 2002, 10:07 a.m.: 25 IR 1635)

LSA Document #01-235(F)
Notice of Intent Published: 24 IR 3661
Proposed Rule Published: October 1, 2001; 25 IR 178
Hearing Held: October 25, 2001
Approved by Attorney General: December 20, 2001
Approved by Governor: January 4, 2002
Filed with Secretary of State: January 7, 2002, 10:07 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 844 MEDICAL LICENSING BOARD OF INDIANA

LSA Document #01-248(F)

DIGEST

Adds 844 IAC 11-2-1.1 concerning fees for respiratory care practitioners. Repeals 844 IAC 11-2-1. Effective 30 days after filing with the secretary of state.

844 IAC 11-2-1
844 IAC 11-2-1.1

SECTION 1. 844 IAC 11-2-1.1 IS ADDED TO READ AS FOLLOWS:

844 IAC 11-2-1.1 Fees
Authority: IC 25-1-8-2; IC 25-34.5-2-7
Affected: IC 25-34.5-2

Sec. 1. The board shall charge and collect the following fees:

Application for licensure	**$50**
Biennial renewal of licensure	**$50**
Verification of licensure	**$10**
Duplicate wall license	**$10**
Temporary permit	**$25**
Renewal of a temporary permit	**$10**
Student permit	**$25**

(Medical Licensing Board of Indiana; 844 IAC 11-2-1.1; filed Jan 7, 2002, 10:08 a.m.: 25 IR 1635)

SECTION 2. 844 IAC 11-2-1 IS REPEALED.

LSA Document #01-248(F)
Notice of Intent Published: 24 IR 3662
Proposed Rule Published: October 1, 2001; 25 IR 179
Hearing Held: October 25, 2001
Approved by Attorney General: December 20, 2001
Approved by Governor: January 4, 2002
Filed with Secretary of State: January 7, 2002, 10:08 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 856 INDIANA BOARD OF PHARMACY

LSA Document #01-298(F)

DIGEST

Adds 856 IAC 1-28.1 concerning institutional pharmacies and pharmacy services. Repeals 856 IAC 1-28. Effective 30 days after filing with the secretary of state.

856 IAC 1-28
856 IAC 1-28.1

SECTION 1. 856 IAC 1-28.1 IS ADDED TO READ AS FOLLOWS:

Rule 28.1. Institutional Pharmacies and Pharmacy Services

856 IAC 1-28.1-1 Definitions
Authority: IC 25-26-13-4
Affected: IC 16-42-19-5; IC 25-6-3-7; IC 25-26-13

Sec. 1. In addition to the definitions in IC 25-26-13-2 and for purposes of this rule, the following definitions apply throughout this rule:

(1) "Cabinet" includes a mechanical storage device for dispensing drugs. The term means a locked or secured enclosure located outside the pharmacy licensed area:

(A) to which only specifically authorized personnel may obtain access by key or combination available only to those authorized persons by:

(i) security code;

(ii) password; or

(iii) other method of positively identifying an individual; and

(B) that is sufficiently secure to deny access to unauthorized persons.

(2) "Cognitive services" means those acts and operations related to a patient's drug therapy that are judgmental in nature, based on knowledge, and derived from empirical factual information.

(3) "Consultant pharmacist" means a pharmacist licensed pursuant to IC 25-26-13-11 and who engages in the practice of pharmacy in or for long term care facility or other residential patients, other than as a supplying pharmacist.

(4) "Consulting" means the provision of nonsupply related cognitive services that include, but are not necessarily limited to, the following:

(A) Drug regimen review as defined in IC 25-26-13-2.

(B) Provision of advice and counsel on drugs, the selection and use thereof to the facility, the patients therein, the health care providers of the facility regarding the appropriateness, use, storage, handling, administration, and disposal of drugs within the facility.

(C) Participation in the development of policies and procedures for drug therapy within the institution, including storage, handling, administration, and disposing of drugs and devices.

(D) Assuring the compliance with all applicable laws, rules, and regulations.

(E) Provision of educational and drug information sources for the education and training of the facility health care professionals.

(F) Accepting responsibility for the implementation and performance of review of quality-related or sentinel events as defined in this rule.

(5) "Emergency drugs" means those drugs that:

(A) may be required to meet the immediate therapeutic needs of patients; and

(B) are not available from any other authorized source in sufficient time to prevent risk of harm to patients by delay resulting from obtaining such drugs from other sources.

(6) "Institutional facility" means any health care facility whose primary purpose is to provide a physical environment for patients to obtain health care services, except those places where practitioners, as defined by IC 16-42-19-5, who are duly licensed, engage in private practice and pharmacies licensed under IC 25-26-13-17.

(7) "Institutional pharmacy" means that portion of an institutional facility where pharmacy is practiced and is:

(A) the location of the selection, compounding, production, sale, storage, and distribution of drugs, devices, and investigational or new drugs used in the diagnosis and treatment of injury, illness, and disease pursuant to drug orders and prescriptions by practitioners; and

(B) licensed with the board under IC 25-6-3-7.

(8) "Performance improvement program" means a continuous, systematic review of key medication use processes to identify, evaluate, and improve medication use and patient care.

(9) "Pharmacist in charge" (by whatever title, for example, "pharmacy manager", "pharmacy director", or "director of pharmacy") means the pharmacist who directs the activities of the institutional pharmacy and who is, as such, responsible for:

(A) all activities of the institutional pharmacy; and

(B) meeting the requirements of:

(i) IC 25-26-13;

(ii) the rules of the board; and

(iii) any federal requirements pertaining to institutional pharmacies.

The qualifying pharmacist may, depending on the circumstances, also be the pharmacist in charge, though the pharmacist in charge is not required to be the qualifying pharmacist.

(10) "Policy and procedure manual" means a written document containing the agreed-to institutional rules of operation and methodology for the effective delivery of pharmacy services.

(11) "Qualifying pharmacist" means the pharmacist who accepts responsibility for the operation of a pharmacy as defined in IC 25-26-13-2 and whose name is listed on the pharmacy permit granted under IC 25-26-13-17.

(12) "Quality-related event" means the inappropriate provision of pharmaceutical services whether or not resulting in an adverse health incident, including the following:

(A) A variation from the practitioner's order, including, but not limited to, the following:

(i) Dispensing an incorrect drug.

(ii) Dispensing an incorrect drug strength.

(iii) Dispensing an incorrect dosage form.

(iv) Dispensing a drug to a wrong patient.

(v) Providing inadequate or incorrect packaging, labeling, or directions.

(vi) Failing to provide an ordered drug.

(B) A failure to identify and manage:

(i) overutilization or underutilization;

(ii) therapeutic duplication;

(iii) drug-disease contraindications;

(iv) drug-drug interactions;

(v) incorrect drug dosage or duration of therapy;

(vi) drug-allergy interactions; or

(vii) clinical abuse and/or misuse.

(13) "Reversible condition" means a condition that requires intervention to resolve in a reasonable time.

(14) "Sentinel event" means an unexpected occurrence involving serious adverse effect, such as disability, life threatening condition, prolonged hospitalization, or death in a patient resulting from medication use.

(15) "Supplying pharmacist" means that pharmacist licensed in the state where the pharmacist is practicing and who is practicing in a supplying pharmacy (as defined in this rule) and who accepts responsibility for all aspects the drugs and devices sold (as defined in IC 25-26-13-2) or dispensed to a facility.

(16) "Supplying pharmacy" means a pharmacy licensed in the state where the pharmacy is located and which provides drugs and devices to patients in long term care or other facilities where patients reside.

(17) "Temporary condition" means a condition that resolves in a reasonable time without intervention.

(Indiana Board of Pharmacy; 856 IAC 1-28.1-1; filed Dec 26, 2001, 2:44 p.m.: 25 IR 1636)

856 IAC 1-28.1-2 Purpose

Authority: IC 25-26-13-4
Affected: IC 25-26-13-17

Sec. 2. The purpose of this rule is to set forth the responsibilities of pharmacists and pharmacies serving institutional and home health care patients. *(Indiana Board of Pharmacy; 856 IAC 1-28.1-2; filed Dec 26, 2001, 2:44 p.m.: 25 IR 1637)*

856 IAC 1-28.1-3 Applicability

Authority: IC 25-26-13-4
Affected: IC 25-26-13-17

Sec. 3. This rule is applicable to pharmacies located:

(1) within institutional facilities as defined in section 1 of this rule and classified as Type II pharmacies in IC 25-26-13-17; and

(2) outside institutional facilities that serve institutionalized patients who are classified as Type III and Type VI pharmacies as in IC 25-26-13-17.

(Indiana Board of Pharmacy; 856 IAC 1-28.1-3; filed Dec 26, 2001, 2:44 p.m.: 25 IR 1637)

856 IAC 1-28.1-4 Pharmacist in charge; responsibilities

Authority: IC 25-26-13-4
Affected: IC 25-26-13-17

Sec. 4. The pharmacist in charge or an appropriate designee shall:

(1) be responsible for establishing and carrying out a performance improvement program as defined in section 1 of this rule; and

(2) develop or be responsible for development of a policies and procedures manual that shall be of sufficient scope and detail that pharmacists practicing in the institutional pharmacy will be able to practice effectively and safely.

(Indiana Board of Pharmacy; 856 IAC 1-28.1-4; filed Dec 26, 2001, 2:44 p.m.: 25 IR 1637)

856 IAC 1-28.1-5 Policies and procedures manual

Authority: IC 25-26-13-4
Affected: IC 25-26-13-17

Sec. 5. (a) The pharmacist in charge shall develop or be responsible for the development of a policies and procedures manual that shall be of sufficient scope and detail that pharmacists practicing in the institutional pharmacy will be able to practice effectively and safely.

(b) The manual required in this section shall be available for inspection by a member of the board or its representative.

(c) The policies and procedures manual shall contain, at a minimum, the following:

(1) Provisions for a continuous quality improvement committee that shall be comprised of staff members of the pharmacy, including, but not necessarily limited to, the following:

(A) Pharmacists.

(B) Pharmacist interns or externs.

(C) Pharmacy technicians.

(D) Clerical or support staff.

(E) Other persons deemed necessary by the qualifying pharmacist.

(2) Provisions for the pharmacist in charge or designee to ensure that the committee conducts a review of quality related events at least every three (3) months.

(3) A process to record, measure, assess, and improve quality of patient care.

(4) The procedure for reviewing quality related or sentinel events.

(Indiana Board of Pharmacy; 856 IAC 1-28.1-5; filed Dec 26, 2001, 2:44 p.m.: 25 IR 1637)

856 IAC 1-28.1-6 Personnel

Authority: IC 25-26-13-4
Affected: IC 25-26-13-17

Sec. 6. The qualifying pharmacist and/or the pharmacist in charge shall develop and implement, or cause to be developed and implemented, policies and procedures that specify duties to be performed by pharmacy technicians and other ancillary personnel. *(Indiana Board of Pharmacy; 856 IAC 1-28.1-6; filed Dec 26, 2001, 2:44 p.m.: 25 IR 1638)*

856 IAC 1-28.1-7 Pharmacist's duties

Authority: IC 25-26-13-4
Affected: IC 16-42-19-3; IC 25-26-13-2; IC 25-26-13-31; IC 25-26-16

Sec. 7. (a) Pursuant to authority granted in IC 25-26-13-2 and IC 25-26-13-31, the duties of the pharmacists practicing in the institutional pharmacy include, but are not limited to, the requirements in this section.

(b) The pharmacist practicing in an institutional pharmacy shall, at a minimum, do the following:

(1) Obtain and maintain patient drug histories and drug profiles.

(2) Perform drug evaluations, drug utilization review, drug regimen review, and drug therapy management under protocol approved by the medical staff of the institution and authorized by IC 25-26-16.

(3) Interpret the drug order written by a practitioner in or transmitted to an institutional facility and either received in or subsequently transmitted to the pharmacy.

(4) Be responsible for checking all drug orders within a maximum of twenty-four (24) hours, including those written during periods when the pharmacy is closed and orders are filled from sources, including emergency kits, drug cabinets, or the pharmacy as authorized under section 8(c) of this rule.

(5) Be responsible for drug product selection of the item that will be used to fill the drug order that may be established either by policy or formulary pursuant to the institution's pharmacy and therapeutics committee or related committee.

(6) Be responsible for determining the legality, completeness, and appropriateness of the drug order and product pursuant to IC 16-42-19-3.

(7) Participate in drug or drug-related research.

(8) Provide counseling, advising, and education of patients, patients' care givers, and health care providers and professionals on issues regarding drugs or drug therapy.

(9) Compound, label, administer, and dispense drugs or devices.

(10) Assess, record, and report quality related events as defined in this rule.

(11) Be responsible for storage and distribution of drugs and devices.

(12) Provide documentation in the medical record of the recommendations made related to the patient's therapeutic response to medication.

(13) Any other duties that shall from time to time be necessary for the proper operation of the institutional pharmacy.

(c) The consultant pharmacist shall, in addition to the duties in subsection (b), provide cognitive services as defined in this rule, including, at a minimum, the following:

(1) Drug regimen reviews as defined in IC 25-26-13-2.

(2) Offer advice and counsel to other health care providers as deemed appropriate regarding the pharmaceutical care of the patient.

(3) Develop or assist in the development of policies and procedures for the legal, safe, and effective means of handling, storing, and disposing of drugs and devices.

(4) Be responsible for assuring the safe and appropriate receipt, labeling, storage, and disposal of all drugs placed outside the pharmacy licensed area in emergency drug kits or other storage devices as authorized by law or rule.

(Indiana Board of Pharmacy; 856 IAC 1-28.1-7; filed Dec 26, 2001, 2:44 p.m.: 25 IR 1638)

856 IAC 1-28.1-8 Absence of pharmacist

Authority: IC 25-26-13-4
Affected: IC 25-26-13-17

Sec. 8. (a) During such times as an institutional pharmacy is closed and unattended by a pharmacist, the drugs may be obtained for patient use as outlined in this section.

(b) Cabinets, including mechanical storage devices for dispensing drugs, are locked or secured enclosures located outside the pharmacy licensed area, to which only specifically authorized personnel may obtain access by key, combination, or security code, password, or other method of positively identifying an individual, and are sufficiently secure to deny access to unauthorized persons. The qualifying pharmacist and/or pharmacist in charge shall, in conjunction with the appropriate committee of the institutional facility, develop inventory listings of the drugs to be included in such cabinets and shall ensure the following:

(1) Such listed drugs, properly labeled, are available therein.

(2) Only prepackaged drugs (meaning that no repackaging is required at the time of removal for an individual patient's use) are available therein, in amounts sufficient for immediate therapeutic requirements for a period not to exceed twenty-four (24) hours.

(3) When drugs are used, a record is made to include a written physician's order or accountability record.

(4) All drugs therein are reviewed by a pharmacist upon return to duty, not to exceed twenty-four (24) hours.

(5) There are written policies, procedures, and forms established to implement the requirements of this subsection.

(c) Whenever any drug is not available from floor supplies or cabinets, as defined in this section, and such drug is required to treat the immediate needs of a patient, such drug may be obtained from the pharmacy in accordance with the requirements of this subsection. One (1) supervisory licensed nurse in any given shift may have access to the pharmacy and may remove drugs there from. The qualifying pharmacist shall require that the removal of any drug from the pharmacy by an authorized nurse be recorded on a suitable form, which includes the name of the drug, strength, amount, date, time, and signature of nurse, and that a copy of the order shall be left with the form.

(d) Requirements for hospital emergency drug boxes, drug carts, emergency kits, emergency drug kits, crash carts, drug kits, or other storage method for emergency drugs are as follows:

(1) Pharmacy policy and procedures shall assure the:

(A) availability;

(B) control; and

(C) security;

of emergency drug carts, drug kits, or drug boxes in the pharmacy and patient care areas.

(2) Procedures shall include the following:

(A) Determination of drugs and quantities of drugs to be included.

(B) Labeling for expiration date.

(C) Process for restocking the cart, kit, or box.

(D) Security measures to prevent unauthorized access.

(Indiana Board of Pharmacy; 856 IAC 1-28.1-8; filed Dec 26, 2001, 2:44 p.m.: 25 IR 1638)

856 IAC 1-28.1-9 Emergency drug kits from Type III and Type VI pharmacies

Authority: IC 25-26-13-4
Affected: IC 25-26-13-17; IC 35-38

Sec. 9. (a) Emergency drug kits supplied by pharmacies with a Type III or Type VI permit shall be in compliance with this section.

(b) All drugs in the emergency kit shall be provided and owned by a single supplying pharmacy.

(c) All drugs in the emergency drug kit shall be selected and approved by a committee whose membership includes, at a minimum, the following:

(1) The facility's consultant pharmacist.

(2) A licensed nurse.

(3) A physician (medical doctor or doctor of osteopathy).

(4) The facility administrator.

(d) The selection process must identify drugs and quantities thereof in the emergency drug kit.

(e) The lists of drugs and quantities included in the emergency drug kit shall be reviewed as required periodically, but no less often than yearly.

(f) Labeling as follows:

(1) The exterior labeling of the emergency drug kit as described in this subsection shall contain, at a minimum, the following:

(A) Drug name (trade name, generic name, or active ingredients).

(B) Drug strength or size, if any.

(C) Quantity included therein.

(D) Expiration date of the kit as defined in this section.

(2) All drugs contained in the emergency drug kit as described in this section shall be labeled, at a minimum, with the following:

(A) Drug name (trade name, generic name, or active ingredients).

(B) Drug strength or size, if applicable.

(C) Name of the manufacturer, packer, or distributor.

(D) Lot number.

(E) Expiration date.

(g) The expiration date of the emergency drug kit, as required in subsection (f)(1)(D) shall be the earliest date of expiration of any of the drugs included in the kit at any time.

(h) All emergency kits subject to this subsection:

(1) shall be stored in a secure area, suitable for the prevention of unauthorized access to or diversion of the drugs therein;

(2) if controlled substances, as defined in IC 35-38, are stored in such a manner as to facilitate periodic reconciliation by the facility nursing staff, that reconciliation shall be recorded in an appropriate manner as determined by the committee described under this section; and

(3) all controlled substances contained in emergency drug kits shall remain the property of the supplying pharmacy and as such shall be included in the pharmacy's biennial inventory as required by 21 CFR 1303.04 and 21 CFR 1301.11.

(i) The nurse responsible for removing drugs from an emergency drug kit shall record or cause to be recorded, in a manner designated under subsection (h)(2), the following minimum information:

(1) Name of the patient.

(2) Name of the drug.

(3) Strength of the drug.

(4) Quantity removed.

(5) Date of removal.

(6) Time of removal.

(j) Removal of a controlled substance in Schedule II pursuant to an oral authorization from a practitioner shall be documented, and the nurse accepting such authorization is responsible for compliance with 856 IAC 2-6-7 regarding prescription requirements for controlled substances in Schedule II.

(k) Removal of a controlled substance in Schedule III, IV, or V, pursuant to an oral authorization from a practitioner, shall be documented, and the nurse accepting such authorization is responsible for compliance with 856 IAC 2-6-12.

(l) Whenever an emergency kit is opened, for any reason, the supplying pharmacy shall be notified in a timely manner, and the pharmacy shall restock, if necessary, and reseal the kit promptly so as to prevent risk of harm to patients of the facility. *(Indiana Board of Pharmacy; 856 IAC 1-28.1-9; filed Dec 26, 2001, 2:44 p.m.: 25 IR 1639)*

856 IAC 1-28.1-10 Security

Authority: IC 25-26-13-4
Affected: IC 25-26-13-17

Sec. 10. The pharmacy shall be capable of being secured against entry by key, combination, code, password, or other method developed that can positively identify an individual so as to prevent access by unauthorized personnel. *(Indiana Board of Pharmacy; 856 IAC 1-28.1-10; filed Dec 26, 2001, 2:44 p.m.: 25 IR 1640)*

856 IAC 1-28.1-11 Performance improvement events, sentinel events, corrective and avoidance measures, review, records, and documentation

Authority: IC 25-26-13-4
Affected: IC 25-26-13-17

Sec. 11. (a) The pharmacist in charge shall, as a part of the pharmacy's performance improvement program, assure or be responsible for assuring that data are collected to:

(1) monitor the stability of existing medication use processes;

(2) identify opportunities for improvement; and

(3) identify changes that will lead to and sustain improvement.

(b) Identification of quality related or sentinel event as defined in section 1 of this rule shall be cause for:

(1) an intensive analysis of causal factors involved in the event; and

(2) plans for corrective actions.

(c) Records of all processes, analysis, and corrective measures instituted involving such pharmacy quality related or sentinel event shall be maintained for a period of not less than two (2) years.

(d) The committee created under section 5(c)(1) of this rule shall, at a minimum, consider the effects on quality of the pharmacy system due to the following:

(1) Staffing levels of both professional and technical personnel.

(2) Workflow.

(3) Use of technology.

(e) Requirements for documentation of performance improvement monitoring of medication use processes, confidentiality of records, summarization, and examination by the board shall be as follows:

(1) Each quality related or sentinel event that occurs, or is alleged to have occurred, as the result of activities involving pharmacy operations, shall be documented in a written or electronic storage record created solely for that purpose.

(2) The quality related or sentinel event shall be:

(A) initially documented by the pharmacist to whom it is first described; and

(B) recorded on the same day of its having been so described to the pharmacist.

(3) Documentation shall include a description of the event that is of sufficient detail to permit analysis of the event.

(4) The pharmacist in charge shall summarize, or cause to be summarized, efforts to improve the medication use process on a semiannual basis.

(5) No patient names or employee names shall be included in this summary report.

(6) This report shall be maintained for a period of not less than two (2) years.

(7) The records created and maintained as a component of a pharmacy performance improvement program are confidential to the extent law permits. However, to assure compliance, the board or its representative may review the policies and procedures manual and a summarization of events described in subsection (b).

(Indiana Board of Pharmacy; 856 IAC 1-28.1-11; filed Dec 26, 2001, 2:44 p.m.: 25 IR 1640)

856 IAC 1-28.1-12 Drug distribution, storage, and accountability

Authority: IC 25-26-13-4
Affected: IC 25-26-13-17

Sec. 12. (a) All drugs and devices in pharmacies located within institutions shall be obtained and used in accordance with written policies and procedures that have been prepared or approved by the qualifying pharmacist or pharmacist in charge and the medical staff who explain the:

(1) selection;

(2) distribution;

(3) storage; and

(4) safe and effective use of:

(A) drugs;

(B) new drugs;

(C) investigational new drugs; and

(D) devices;

in the facility.

(b) The pharmacist in charge of the pharmacy located within an institution shall be responsible for the following:

(1) The safe and efficient:

(A) distribution;

(B) control;

(C) storage; and

(D) accountability;

for all drugs and devices.

(2) The compliance with all applicable Indiana and federal laws and rules.

(c) Labeling requirements are as follows:

(1) All drugs, other than unit-of-use packages, dispensed by an institutional pharmacy, intended for use within the facility, shall be distributed in appropriate containers and adequately labeled so as to identify, at a minimum, the following:

(A) Patient identification.

(B) Brand name or generic name, or both.

(C) Strength, if applicable.

(D) Route of administration.

(E) Quantity.

(F) Pharmacist's initials.

(G) Location of the patient within the institution.

(2) Unit-of-use packages shall contain information to adequately label them, at a minimum, as follows:

(A) Drug name (brand or generic, or both).

(B) Strength, if applicable.

(C) Control number and/or expiration date.

(3) All drugs dispensed by an institutional pharmacy to patients about to be discharged, or temporarily discharged, from institutions with Type III or Type IV permits, shall be labeled with the following minimum information:

(A) Name, address, and telephone number of the institutional pharmacy.

(B) Date and identifying serial number.

(C) Name of patient.

(D) Name of drug and strength, if applicable.

(E) Directions for use by the patient and route of administration.

(F) Name of prescribing practitioner.

(G) Precautionary information if any contained in the prescription.

(d) Requirements for the disposition of discontinued or recalled drugs are as follows:

(1) The qualifying pharmacist or pharmacist in charge shall be responsible for the development and implementation of policies and procedures for the return to the pharmacy of drugs and containers that are:

(A) discontinued, outdated, or recalled; or

(B) in containers with worn, illegible, or missing labels; for proper disposition.

(2) The qualifying pharmacist or pharmacist in charge or his or her designee shall make proper disposition of such drugs at the storage site.

(e) The qualifying pharmacist or pharmacist in charge shall ensure that drugs are dispensed from the institutional pharmacy only upon authorized practitioner's:

(1) written orders;

(2) direct copies;

(3) facsimiles thereof; or

(4) electronically transmitted by other means and printed or displayed appropriately.

(f) Accountability requirements are as follows:

(1) The qualifying pharmacist or pharmacist in charge of an institutional pharmacy shall ensure that policies and procedures documenting the trail of:

(A) controlled substances; and

(B) such other drugs as may be specified by the appropriate committee of the institutional facility, from ordering and receiving by the pharmacy through administration or wastage of drug at the patient level.

(2) The qualifying pharmacist or pharmacist in charge shall be responsible for review of this process on a continual basis by review of:

(A) proofs-of-use documentation; or

(B) other electronic documentation methodology.

(3) At a minimum, the documentation process shall be able to identify the following:

(A) The name of the drug.

(B) The dose.

(C) The patient's name.

(D) The date and time of administration to the patient.

(E) The identification of the individual administering.

(F) The record of aliquot portion destroyed, if any, and identification of witness.

(g) All records and reports that are required for pharmacy functions shall be maintained according to policies and procedures developed within the institution with the approval of the pharmacist in charge for a period of not less than two (2) years. *(Indiana Board of Pharmacy; 856 IAC 1-28.1-12; filed Dec 26, 2001, 2:44 p.m.: 25 IR 1641)*

856 IAC 1-28.1-13 Drug self-administration

Authority: IC 25-26-13-4
Affected: IC 25-26-13-17

Sec. 13. Self-administration of drugs by patients of an institutional facility shall be permitted only if such use is specifically authorized by the treating or ordering physician and:

(1) the patient's knowledge of self-administration has been evaluated; or

(2) the patient has received training in the proper manner of self-administration:

(A) by a pharmacist; or

(B) according to hospital policy; and

there is no risk of harm to the patient. *(Indiana Board of Pharmacy; 856 IAC 1-28.1-13; filed Dec 26, 2001, 2:44 p.m.: 25 IR 1642)*

856 IAC 1-28.1-14 Patient's own medication

Authority: IC 25-26-13-4
Affected: IC 25-26-13-17

Sec. 14. (a) An institutional pharmacy is prohibited from accepting and dispensing drugs that are brought into the institution by the patient, even if intended for use by that same patient. However, use of the patient's own medication may be permitted if:

(1) the patient or the patient's representative may maintain the patient's own medication:

(A) at the bedside; or

(B) for drugs with special storage requirements, including, but not limited to, refrigeration in an appropriate storage area in the patient care area under control of nursing personnel for appropriate administration to that patient only; and

(2) the nurses in charge of that patient's care shall witness the administration and maintain records of such use.

(b) If the patient or the patient's representative brings in medication part or all of which is still present at such time a patient expires, those drugs shall be delivered to the institutional pharmacy for appropriate destruction. Such drugs may not be turned over to the patient's representatives. This rule shall be made clear to the parties involved prior to the permission to use such medication. Patients who are discharged shall take with them their own medications brought to the institution under the terms of this section.

(c) In the event the patient is discharged and leaves drugs brought in under this section, either deliberately or inadvertently, such drugs shall be documented and stored at the appropriate nursing location for a maximum of seven (7) calendar days. If not claimed by the patient or the patient's agent within those seven (7) calendar days, the drugs so stored shall be destroyed as described in subsection (b). *(Indiana Board of Pharmacy; 856 IAC 1-28.1-14; filed Dec 26, 2001, 2:44 p.m.: 25 IR 1642)*

856 IAC 1-28.1-15 Inspections

Authority: IC 25-26-13-4
Affected: IC 16-42-3-3; IC 25-26-13-17

Sec. 15. The qualifying pharmacist or pharmacist in charge shall be responsible for the timely inspection of all areas where drugs are stored, used, or administered. The inspection can be carried out by qualified designee and appropriate records kept. The inspection shall verify, at a minimum, the following:

(1) Disinfectants and drugs solely for nontherapeutic external use are stored separately and apart from drugs for internal use or injection.

(2) Drugs requiring special storage conditions are appropriately stored to assure the drugs are not adulterated as described in IC 16-42-3-3.

(3) Drugs subject to deterioration are removed from any accessible location prior to the expiration date (manufacturer's or other such as required under 856 IAC 1-21) and disposed of appropriately.

(4) Emergency drugs designated by the institution are in adequate supply and are properly stored in the institution.

(5) All necessary and required security and storage standards are met.

(6) All pharmacy-related policies and procedures of the institution are complied with.

(Indiana Board of Pharmacy; 856 IAC 1-28.1-15; filed Dec 26, 2001, 2:44 p.m.: 25 IR 1642)

SECTION 2. 856 IAC 1-28 IS REPEALED.

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TITLE 898 INDIANA ATHLETIC TRAINERS BOARD

LSA Document #01-198(F)

DIGEST

Adds 898 IAC 1-2-6 concerning temporary permits. Adds 898 IAC 1-2-7 concerning exemption from examination through grandparenting. Effective 30 days after filing with the secretary of state.

898 IAC 1-2-6
898 IAC 1-2-7

SECTION 1. 898 IAC 1-2-6 IS ADDED TO READ AS FOLLOWS:

898 IAC 1-2-6 Temporary permits

Authority: IC 25-5.1-2-6
Affected: IC 25-5.1-3-8

Sec. 6. (a) As used in IC 25-5.1-3-8(c)(2), "the date the board disapproves the person's license application" means the date the applicant for licensure receives notice from the board of:

(1) failure of the required examination; or

(2) denial of the individual's license application.

(b) As used in IC 25-5.1-3-8(a)(2), "national athletic training association approved by the board" means the National Athletic Trainer's Association Board of Certification. *(Indiana Athletic Trainers Board; 898 IAC 1-2-6; filed Dec 18, 2001, 9:04 a.m.: 25 IR 1643)*

SECTION 2. 898 IAC 1-2-7 IS ADDED TO READ AS FOLLOWS:

898 IAC 1-2-7 Exemption from examination

Authority: IC 25-5.1-2-6
Affected: IC 25-5.1; P.L.173-2001, SECTION 5

Sec. 7. (a) As used in P.L.173-2001, SECTION 5(b)(1), "actively engaged as an athletic trainer" means practicing athletic training at least ten (10) hours a week over the period of twelve (12) months.

(b) As used in P.L.173-2001, SECTION 5(b)(4)(B), "NATA" means the National Athletic Trainers Association Board of Certification or NATABOC.

(c) As used in P.L.173-2001, SECTION 5(b)(4)(B), "has been certified by the NATA" means the applicant's certification with NATABOC is current and in good standing.

(d) As used in P.L.173-2001, SECTION 5(c), "must be made" means all application materials, including all supporting documentation, must have been received by the health professions bureau. *(Indiana Athletic Trainers Board; 898 IAC 1-2-7; filed Dec 18, 2001, 9:04 a.m.: 25 IR 1643)*

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